

CONVENTION ON INTERNATIONAL INTERESTS
IN MOBILE EQUIPMENT AND PROTOCOL THERETO
ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

**DIPLOMATIC CONFERENCE
TO ADOPT A MOBILE EQUIPMENT CONVENTION
AND AN AIRCRAFT PROTOCOL**

ACTS AND PROCEEDINGS

UNIDROIT
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INTRODUCTION

At the invitation of the Government of the Republic of South Africa, a Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol was held in Cape Town from 31 October 2001 to 16 November 2001 under the joint auspices of the International Institute for the Unification of Private International Law (UNIDROIT) and the International Civil Aviation Organization (ICAO).

The draft Convention and draft Protocol submitted for adoption at the Conference had been drawn up by a Committee of governmental experts convened jointly by UNIDROIT and ICAO. The other basic working materials for the Conference were draft final provisions for the draft Convention and the draft Protocol, presented by the UNIDROIT and ICAO Secretariats.

Sixty-eight Governments and fourteen Organisations were represented at the Conference, which elected as its President Professor M.R. Rwelamira (South Africa). Messrs H. Burman (United States of America), G. Hongfeng (China), S. Eid (Lebanon), J. Salgado Gama Filho (Brazil) and J. Atwood (Australia) were elected Vice-Presidents of the Conference.

The Conference completed its work on 16 November 2001 with the adoption of the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, which were both opened to signature, following the signature of the Final Act of the Conference, at the closing session of the Conference.

This volume has been prepared by the UNIDROIT Secretariat and contains the text of all the principal Conference documents and information papers, the text of the instruments that were adopted by the Conference, a list of Conference participants and a summary record of all the meetings of the Plenum and the Commission of the Whole.

PART ONE

CONFERENCE DOCUMENTS

PROVISIONAL AGENDA

1. Opening of the Conference.
2. Adoption of the Agenda.
3. Adoption of the Rules of Procedure.
4. Election of the President and the Vice-Presidents of the Conference.
5. Establishment of the Credentials Committee, the Commission of the Whole and other Committees as necessary.
6. Election of the Chairman of the Commission of the Whole.
7. Examination of the Report of the Credentials Committee.
8. Consideration of the draft Convention.
9. Consideration of the draft Protocol.
10. Consolidated Text:
 - (a) consideration of proposals submitted by ICAO and UNIDROIT; and
 - (b) consideration of action to be taken with regard to its status.
11. Examination of the Report of the Commission of the Whole.
12. Adoption of the Final Act of the Conference and of any instruments, recommendations and resolutions resulting from its work.
13. Signature of the Final Act and of any instruments adopted by the Conference.

PROVISIONAL RULES OF PROCEDURE

Rule 1 (Composition of the Conference)

- (1) The Conference shall be composed of the representatives of the States invited by the Council of the International Civil Aviation Organization (ICAO) and the President of the International Institute for the Unification of Private Law (UNIDROIT) to attend the Conference.
- (2) Representatives may be accompanied by alternates and advisers.
- (3) International organizations may be represented by observers if invited jointly by both Organizations to attend the Conference.

Rule 2 (Credentials)

The credentials of representatives of the States, their alternates and advisers and of observers shall be submitted to the Secretaries General of the Conference if possible not later than twenty-four hours after the opening of the Conference. The credentials of representatives shall be issued either by the Head of the State or Government, or by the Minister for Foreign Affairs. No person shall be the representative of more than one State.

Rule 3 (Credentials Committee)

- (1) A Credentials Committee shall be established at the beginning of the Conference. It shall consist of five members representing five States nominated by the President of the Conference.
- (2) The Credentials Committee shall elect its own Chairman and shall examine the credentials of representatives and observers and report to the Conference without delay.

Rule 4 (Eligibility for participation in meetings)

Any members of a Delegation shall be entitled, pending the presentation of a report by the Credentials Committee and Conference action thereon, to attend meetings and to participate in them, subject, however, to the limits set forth in these Rules. The Conference may bar from any further part in its activities any member of a Delegation whose credentials it finds to be insufficient.

Rule 5 (Officers)

- (1) The Conference shall elect its President. Until such election, the President of the Governing Council of UNIDROIT and the President of the ICAO Council or, in their absence, their nominees shall act as Co-Presidents of the Conference.
- (2) The Conference shall elect five Vice-Presidents and the Chairman of the Commission of the Whole referred to in Rule 6.
- (3) The Conference shall have two Co-Secretaries General who shall be the Secretaries General of ICAO and UNIDROIT or their nominees.
- (4) Each Co-Secretary General shall appoint an Executive Secretary, a Deputy Secretary and an Assistant Secretary of the Conference and shall provide and direct the staff required by the respective Organization for the Conference and its Committees.
- (5) The Secretaries General, the Executive Secretaries, the Deputy Secretaries and any member of the Conference staff designated for that purpose may, at any time, make oral or written statements concerning any question under consideration.

Rule 6 (Commissions, Committees and Working Groups)

- (1) The Conference shall establish a Commission of the Whole open to all Delegations, and a Drafting Committee and such other committees of limited membership, as it may deem necessary.
- (2) The Commission of the Whole, the Drafting Committee and any other committees shall establish such working groups as they may consider to be necessary or desirable.
- (3) The Drafting Committee, any other committee and working groups shall elect their own Chairmen.

Rule 7 (Powers of the presiding Officer)

The presiding Officer of the Conference, the Commission of the Whole, a committee or a working group shall declare the opening and closing of each meeting, direct the discussion, ensure observance of these Rules, accord the right to speak, put questions and announce decisions. He shall rule on points of order and subject to these Rules, shall have complete control of the proceedings of the body concerned and over the maintenance of order at its meetings.

Rule 8 (Public and private meetings)

Meetings of the Conference and the Commission of the Whole shall be held in public, unless the Conference decides otherwise. Meetings of committees and working groups shall be held in private unless the body concerned decides otherwise.

Rule 9 (Participation of observers and technical advisers)

(1) Subject to Rule 19(2), observers may participate in the deliberations of the Conference or any body thereof when the respective meetings are not held in private. With respect to private meetings, individual observers may be invited by the body concerned to attend and to be heard.

(2) Subject to Rule 19(2), technical advisers may be invited by the Conference or any of its bodies to attend and to be heard.

Rule 10 (Quorum)

A majority of the States represented at the Conference or at any body thereof and whose representatives have not notified the Secretaries General of their departure shall constitute a quorum.

Rule 11 (Speakers)

(1) The presiding Officer shall call upon speakers in the order in which they have expressed their desire to speak; he may call a speaker to order if his observations are not relevant to the subject under discussion.

(2) Generally, no delegation should be called to speak a second time on any question except for clarification, until all other delegations desiring to speak have had an opportunity to do so.

(3) The presiding Officer may close the list of speakers, adjourn or close the debate and limit the time allowed to each speaker and the number of times each speaker may speak on any question, unless the body concerned decides otherwise. When the time allowed to each speaker is limited and a speaker has spoken for his allotted time, the presiding Officer shall call him to order without delay.

(4) At meetings of the Conference, the Chairman of a Commission or a Committee may be accorded precedence for the purpose of explaining the conclusions arrived at by the body concerned. In commission or committee meetings, a similar precedence may be given to the Chairman of a working group.

Rule 12 (Points of Order)

During the discussion on any matter, and notwithstanding the provisions of Rule 11, a representative may at any time raise a point of order, and the point of order shall be immediately decided by the presiding Officer. Any representative may appeal against the ruling of the presiding Officer and any discussion on the point of order shall be governed by the procedure stated in Rule 15. The ruling of the presiding Officer shall stand unless over-ruled by a majority of votes cast. A representative speaking on a point of order may speak only on this point, and may not speak on the substance of the matter under discussion before the point was raised.

Rule 13 (Basic Proposals and Consolidated Text)

- (1) The Draft Convention on International Interests in Mobile Equipment and the Draft Protocol thereto on Matters specific to Aircraft Equipment, prepared by UNIDROIT and ICAO, shall constitute the basic proposals for discussion by the Conference.
- (2) In addition, proposals on a consolidated text, prepared by ICAO and UNIDROIT, shall be before the Conference to decide on the status, if any, to be given thereto.

Rule 14 (Motions and Amendments)

- (1) A motion or amendment shall not be discussed until it has been seconded. Motions and amendments may be presented and seconded only by representatives. However, observers may make a motion or amendment provided that such motion or amendment is seconded by the representatives of two States.
- (2) A motion shall not be withdrawn when an amendment to the motion is under discussion or has been adopted. A motion which has been withdrawn may be reintroduced by any representative.

Rule 15 (Procedural matters)

Subject to Rule 14(1) any representative may move at any time the suspension or adjournment of the meeting, the adjournment of the debate on any question, the deferment of discussion of an item, or the closure of the debate on an item. After such a motion has been made and explained by its proposer, only one speaker shall normally be allowed to speak in opposition to it, and no further speeches shall be made in its support before a vote is taken. Additional speeches on such motion may be allowed at the discretion of the presiding Officer, who shall decide the priority of recognition.

Rule 16 (Order of Procedural Motions)

Subject to Rule 12, the following motions shall have priority over all other motions, and shall be taken in the following order:

- (a) to suspend the meeting;
- (b) to adjourn the meetings;
- (c) to adjourn the debate on an item;
- (d) to defer the debate on an item;
- (e) for closure of the debate on an item.

Rule 17 (Reconsideration of Proposals)

When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to the mover and one other supporter and to two speakers opposing the motion, after which it shall be put immediately to the vote.

Rule 18 (Discussions in Working Groups)

Working groups shall conduct their deliberations informally and Rules 11(3), 12, 14, 15, 16 and 17 shall not apply to them.

Rule 19 (Voting Rights)

- (1) Each State duly represented at the Conference or at any body thereof shall have one vote.

- (2) Observers and technical advisers shall not be entitled to vote.

Rule 20 (Voting of presiding Officer)

The presiding Officer of the Conference or of any of its bodies shall not have the right of vote on behalf of his State.

Rule 21 (Majority required)

- (1) Decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the representatives present and voting. Decisions on matters of procedure shall be taken by a majority of the representatives present and voting.
- (2) If the question arises whether a matter is one of procedure or of substance, the presiding Officer shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the presiding Officer's ruling shall stand unless the appeal is approved by a majority of the representatives present and voting.
- (3) For the purpose of these rules, the phrase "representatives present and voting" means representatives present and casting an affirmative or negative vote. Representatives abstaining from voting or casting an invalid vote shall be considered as not voting.

Rule 22 (Method of Voting)

Voting shall normally be by voice, by show of hands, or by standing. In meetings of the Conference there shall be a roll-call if requested by the representatives of two States. The vote or abstention of each State participating in roll-call shall be recorded in the minutes.

Rule 23 (Conduct during Voting)

After the presiding Officer has announced the beginning of voting, no representative shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. Except in the case of elections held by secret ballot, the presiding Officer may permit representatives to explain their votes after the voting. The presiding Officer may limit the time to be allowed for such explanations.

Rule 24 (Division of Proposals and Amendments)

- (1) Parts of a proposal or amendment thereto shall be voted on separately if the presiding Officer, with the consent of the proposer, so decides or if a representative requests that the proposal or amendment thereto be divided and the proposer raises no objection. If the proposer objects to a request for division, permission to speak on the request shall be given first to the representative making the request to divide the proposal or amendment, and then to the mover of the original proposal or amendment under discussion, after which the request to divide the proposal or amendment shall be put immediately to the vote.
- (2) If all the operative parts of the proposal or amendment have been rejected, the proposal or amendment shall be considered to have been rejected as a whole.

Rule 25 (Voting on Amendments)

Any amendment to a motion shall be voted on before a vote is taken on the motion. When two or more amendments are moved to a motion, the vote should be taken on them in their order of remoteness from the original motion, commencing with the most remote. The presiding Officer shall determine whether a proposed amendment is so related to the motion as to constitute a proper amendment thereto, or whether it must be considered as an alternative or substitute motion.

Rule 26 (Voting on Alternative or Substitute Motions)

Alternative or substitute motions, shall, unless the meeting otherwise decides, be put to vote in the order in which they are presented, and after the disposal of the original motion to which they are alternative or in substitution. The presiding Officer shall decide whether it is necessary to put such alternative or substitute motions to vote in the light of the vote on the original motions and any amendments thereto. This ruling may be reversed by a majority of votes cast.

Rule 27 (Decisions on Competence)

Subject to Rule 12, any motion calling for a decision on the competence of the Conference to discuss any matter or to adopt a proposal or an amendment submitted to it shall be put to the vote before the matter is discussed or a vote is taken on the proposal or amendment in question.

Rule 28 (Tie vote)

In the event of a tie vote, a second vote on the motion concerned shall be taken at the next meeting, unless the Conference, Commission, Committee or working group decides that such second vote be taken during the meeting at which the tie vote took place. Unless there is a majority in favour of the motion on this second vote, it shall be considered lost.

Rule 29 (Proceedings of Commissions, Committees and Working Groups)

Subject to Rule 18, Rules 11 to 28 above shall be applicable, *mutatis mutandis*, to the proceedings of commissions, committees and working groups, except that decisions of such bodies shall be taken by a majority of the representatives present and voting but not in the case of a reconsideration of proposals or amendments in which the majority required shall be that established by Rule 17.

Rule 30 (Languages)

- (1) Documents of the Conference shall be prepared and circulated in the English, Arabic, French, Russian and Spanish languages.
- (2) The English, Arabic, French, Russian and Spanish languages shall be used in the deliberations of the Conference, the Commission of the Whole and the Drafting Committee. Speeches made in any of the five languages shall be interpreted into the other four languages, except where such interpretation is dispensed with by unanimous consent.
- (3) Any representative may make a speech in a language other than the official languages. In this case he shall himself provide for interpretation into one of the working languages. Interpretation into the other working languages by the interpreters of the Secretariat may be based on the interpretation given in the first working language.
- (4) Documents and written statements submitted by observers will be distributed by the Secretariat to the delegations at the Conference in the language in which they have been presented.

Rule 31 (Record of Proceedings)

- (1) Minutes of the meetings of the Conference shall be prepared by the Secretariat and approved by the President of the Conference.
- (2) Proceedings of commissions, committees and working groups shall be recorded in such form as the body concerned may decide.

Rule 32 (Amendment of the Rules of Procedure)

These Rules may be amended, or any portion of the Rules may be suspended, at any time by a decision of the Conference taken by a two-thirds majority vote of the representatives present and voting.

Rule 33 (Signature of Instruments)

- (1) The Final Act resulting from the deliberation of the Conference shall be submitted for signature by the delegations.
- (2) Full Powers shall be required of each representative or alternate representative who signs any convention or other international instrument which may be drawn up and opened for signature by the Conference.
- (3) Full Powers shall be issued either by the Head of State or Head of Government, or by the Minister for Foreign Affairs.

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6/4/01

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

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:

* The Governing Council of UNIDROIT approved the text with “[UNIDROIT]” in the title of the Convention.

** The Legal Committee of ICAO approved the text with the deletion of “[UNIDROIT]” in the title of the Convention.

- (a) “agreement” means a security agreement, a title reservation agreement or a leasing agreement;
- (b) “assignment” means a contract which, whether by way of security or otherwise, confers on the assignee rights in the international interest;
- (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;
- (d) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;
- (e) “conditional buyer” means a buyer under a title reservation agreement;
- (f) “conditional seller” means a seller under a title reservation agreement;
- (g) “contract of sale” means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above;
- (h) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;
- (i) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;
- (j) “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;
- (k) “insolvency administrator” means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;
- (l) “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;
- (m) “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;
- (n) “internal transaction” means a transaction of a type listed in Article 2(2)(a) to (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;
- (o) “international interest” means an interest to which Article 2 applies;
- (p) “International Registry” means the international registration facilities established for the purposes of this Convention or the Protocol;
- (q) “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;
- (r) “national interest” means an interest in an object created by an internal transaction;
- (s) “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) “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 48(1);
- (u) “object” means an object of a category to which Article 2 applies;

(v) “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;

(w) “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;

(x) “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;

(y) “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;

(z) “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;

(aa) “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;

(bb) “registered” means registered in the International Registry pursuant to Chapter V;

(cc) “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;

(dd) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 38;

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

(ff) “regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol;

(gg) “sale” means a transfer of ownership of an object pursuant to a contract of sale;

(hh) “secured obligation” means an obligation secured by a security interest;

(ii) “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;

(jj) “security interest” means an interest created by a security agreement;

(kk) “Supervisory Authority” means, in respect of the Protocol, the Supervisory Authority referred to in Article 16(1);

(ll) “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;

(mm) “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; and

(nn) “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.¹

¹ It was noted that this definition should be further reviewed.

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

- (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(m)(i) and (ii); and
- (b) interested persons specified in Article 1(m)(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 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 52(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) to (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; and
 - (e) 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) ensure that any rights required for the continued effective operation of the International Registry are such as may be assigned in the event of a change of Registrar;
 - (d) 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;

- (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
- (f) supervise the Registrar and the operation of the International Registry;
- (g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;
- (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
- (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and
- (j) 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 Supervisory Authority shall own all proprietary rights in the data and archives of the International Registry.

5. 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.

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 either party with the consent in writing of the other.

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 declarations and declared non-consensual rights or interests

The Registrar shall maintain a list of declarations, withdrawals of declaration and 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 or withdrawal of 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.

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.

5. The Supervisory Authority may waive the immunity conferred by paragraph 4.

CHAPTER VII – LIABILITY OF THE REGISTRAR***Article 27 – Liability and insurance***

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 and its officers and employees or from a malfunction of the international registration system [except ...]

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.

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.

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 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 ² – 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.
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 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 was discussed but there was insufficient time to give the alternatives full consideration. 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. This matter was not further discussed at the 31st Session of the ICAO Legal Committee.

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.³

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.

³ The Drafting Committee of the third Joint Session noted that this provision would require further technical consideration. However, this matter was not discussed by the third Joint Session Plenary, nor by the 31st Session of the ICAO Legal Committee.

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. Such a declaration may be modified from time to time.

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***

This Convention shall apply to the sale or prospective sale of an object as provided for in the Protocol with any modifications therein.

CHAPTER XII – JURISDICTION***Article 41 – Choice of forum***

Subject to Articles 42 and 43, the courts of a Contracting State chosen by the parties to a transaction have exclusive jurisdiction in respect of any claim brought under this Convention, unless otherwise agreed between the parties, whether or not the chosen forum has a connection with the parties or the transaction.

Article 42 – Jurisdiction under Article 12(1)

1. The courts of a Contracting State chosen by the parties and the courts on the territory of which the object is situated may exercise jurisdiction to grant relief under Article 12(1)(a), (b), (c) and Article 12(4) in respect of that object.

2. The courts of a Contracting State chosen by the parties and the courts on the territory of which the debtor is situated may exercise jurisdiction to grant relief under Article 12(1)(d) and Article 12(4) if the enforcement of such relief is limited to the territory of the forum.

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 Contracting 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.

CHAPTER XIII – RELATIONSHIP WITH OTHER CONVENTIONS**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).]⁴

CHAPTER XIV – FINAL PROVISIONS**Article 47 – 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 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.

⁴ This provision may be modified or deleted depending on the final form of the future UNCITRAL Convention.

Article 48 – 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 49 – 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 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 50 – 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 49.

Article 51 – Determination of courts

A Contracting State may 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 52 – 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 53 – 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 54 – 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 55 – 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 B⁵

[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 [10 years] after the entering 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]

⁵ The ICAO Legal Committee, while maintaining both alternatives A and B, expressed the view that in case alternative B was selected, the fees charged with respect to these transactions should be nominal.

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6/4/01

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

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the [UNIDROIT] ~~[UNIDROIT]~~ Convention on International Interests in Mobile Equipment as it relates to aircraft equipment, 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,

HAVE AGREED upon the following provisions relating to aircraft equipment:

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;

(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 lb 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;

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

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

(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,

* The Governing Council of UNIDROIT approved the text with “[UNIDROIT]” in the title of the Convention.

** The Legal Committee of ICAO approved the text with the deletion of “[UNIDROIT]” in the title of the Convention.

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

- (f) “authorised party” means the party referred to in Article XIII(2);
- (g) “Chicago Convention” means the *Convention on International Civil Aviation*, opened for signature in Chicago on 7 December 1944, as amended, and its annexes;
- (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;
- (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;
- (j) “guarantee contract” means a contract entered into by a person as guarantor;
- (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;
- (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;

- (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;
- (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) “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; 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.

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] ~~[UNIDROIT]~~ Convention on International Interests in Mobile Equipment as applied to aircraft objects.

Article III – Application of Convention to sales

The following provisions of the Convention apply in relation to a sale and shall do so as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a contract of sale, a prospective sale, the seller and the buyer respectively:

- Articles 3 and 4;
- Article 15(1)(a);
- Article 17;
- Article 18(3);
- Article 19(1) (as regards registration of a contract of sale or a prospective sale);
- Article 24(2) (as regards a prospective sale); and
- Article 29.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 28 (other than Article 28(3) which is replaced by Article XIV(1)), Chapter X, Chapter XII (other than Article 42), Chapter XIII and Chapter XIV (other than Article 55) shall apply to contracts of sale and prospective sales.

Article IV – Sphere of application

1. 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. And in such circumstances the application of the Convention shall be from the earlier of:

- (a) the date the aircraft is so registered; and
- (b) the date of an agreement providing that the aircraft shall be so registered.

2. 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.

3. 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 Article IX (2)-(4).

Article V – Formalities, effects and registration 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. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

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 Articles 6(c) and 30(2)(b) 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”,
and Article 42(2) applies with the insertion after the words “Article 12(1)(d)” of the words “and (e)”.

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. With regard to the remedies in Article IX(1):

(a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than [five] working days after the creditor notifies such authorities that the relief specified in Article IX(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with this Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the 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. With regard to the remedies in Article IX(1):

(a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with this Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

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. The provisions of Article 28(1) – (4) of the Convention shall determine the priority of the holders of interests in an aircraft engine and Article 28(6) shall not apply.

3. Ownership of an aircraft engine shall not pass by virtue of its installation on, or removal from, an airframe or an aircraft.

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.”¹

[2. Article 35 of the Convention applies as if the words following the phrase “under Article 28” were omitted].

**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 Y.

2. 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 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.

¹ The removal of square brackets in Article 32(1)(c) Convention may have implications for this provision.

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:

- (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.

3. The fees referred to in Article 16(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 16(2) of the Convention.

4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated 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 and subject to Article 41 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. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

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.

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.

CHAPTER VI – FINAL PROVISIONS***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 Protocol to the [UNIDROIT] ~~[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.

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 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 the Protocol 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 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 six 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.

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.

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, accession, declaration or withdrawal of a declaration, so that the information contained therein may be made publicly accessible; and
- (d) perform such other functions customary for depositaries.

Annex

**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 manufacturers 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] ~~[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 *Convention on International Civil Aviation*, signed at Chicago, on 7 December 1944, 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]

By: [insert name of signatory]
Its: [insert title of signatory]

[insert relevant notational details]

* Select the term that reflects the relevant nationality registration criterion

**CONSOLIDATED TEXT
DRAFT CONVENTION ON INTERNATIONAL INTERESTS IN
MOBILE EQUIPMENT**

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use aircraft 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 words are employed with the meanings set out below:

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

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

(c) “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 lb 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;

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

(e) “aircraft register” means a register maintained by a state or a common mark registering authority for the purposes of the Chicago Convention;

(f) “airframes” means airframes (other than those used in military, customs and 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;

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

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

(i) “authorised party” means the party referred to in Article 24(2);

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

(k) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;

(l) “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;

(m) “conditional buyer” means a buyer under a title reservation agreement;

(n) “conditional seller” means a seller under a title reservation agreement;

(o) “contract of sale” means a contract for the sale of an aircraft object by a seller to a buyer which is not an agreement as defined in (a) above;

(p) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;

(q) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;

(r) “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 aircraft object is burdened by a registrable non-consensual right or interest;

(s) “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;

(t) “guarantee contract” means a contract entered into by a person as guarantor;

(u) “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;

(v) “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;

(w) “insolvency administrator” means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;

(x) “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;

(y) “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;

(z) "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 aircraft object;

(aa) "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 aircraft object is located (as specified in the Convention), in the same Contracting State at the time of the conclusion of the transaction;

(bb) "international interest" means an interest to which Article 2 applies;

(cc) "International Registry" means the international registration facilities established for the purposes of this Convention ;

(dd) "leasing agreement" means an agreement by which a lessor grants a right to possession or control of an aircraft object (with or without an option to purchase) to a lessee in return for a rental or other payment;

(ee) "national interest" means an interest in an aircraft object created by an internal transaction;

(ff) "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;

(gg) "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 under Article 64(1);

(hh) "pre-existing right or interest" means a right or interest of any kind in an aircraft 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 52 and to the extent of that declaration;

(ii) "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;

(jj) "proceeds" means money or non-money proceeds of an aircraft object arising from the total or partial loss or physical destruction of the aircraft object or its total or partial confiscation, condemnation or requisition;

(kk) "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;

(ll) "prospective international interest" means an interest that is intended to be created or provided for in an aircraft 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 aircraft object), whether or not the occurrence of the event is certain;

(mm) "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;

(nn) "registered" means registered in the International Registry pursuant to Chapter V;

(oo) "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;

(pp) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 51;

(qq) “Registrar” means, the person or body designated or appointed under Articles 26(2)(b) and 27(1);

(rr) “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;

(ss) “regulations” means regulations made or approved, by the Supervisory Authority;

(tt) “sale” means a transfer of ownership of an aircraft object pursuant to a contract of sale;

(uu) “secured obligation” means an obligation secured by a security interest;

(vv) “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 aircraft object to secure the performance of any existing or future obligation of the chargor or a third person;

(ww) “security interest” means an interest created by a security agreement;

(xx) “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;

(yy) “Supervisory Authority” means the Supervisory Authority referred to in Article 26(1);

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

(aaa) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which Article 52 applies) which has not been registered, whether or not it is registrable under this Convention; and

(bbb) “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.¹

Article 2 – The international interest

1. This Convention provides for the constitution and effects of an international interest in aircraft objects and associated rights.

2. For the purposes of this Convention, an international interest in aircraft objects is an interest, constituted under Article 10, in airframes, aircraft engines or helicopters:

(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

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

4. An international interest in an aircraft object extends to proceeds of that aircraft object.

¹ It was noted that this definition should be further reviewed.

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.
3. Without prejudice to paragraph 1 of this article, the Convention shall also apply if an aircraft is registered in an aircraft register of a Contracting State. In such circumstances the application of the Convention shall be from the earlier of:
 - (a) the date the aircraft is so registered; and
 - (b) the date of an agreement providing that the aircraft shall be so registered.²
4. For the purposes of the definition of “internal transaction” in Article 1:
 - (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.

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.

² This paragraph should be reviewed by the Diplomatic Conference with regard to the question whether in its line 2 it should also make reference to joint registration facilities under Article 77 of the Chicago Convention of 1944.

Article 6 – Application to sale and prospective sale

The following provisions of this Convention apply in relation to a sale and shall do so as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a contract of sale, a prospective sale, the seller and the buyer, respectively:

Articles 3 and 4;
Article 25(1)(a);
Article 30;
Article 31(3);
Article 32(1) (as regards registration of a contract of sale or a prospective sale);
Article 37(2) (as regards a prospective sale); and
Article 42

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 41 (other than Article 41(3), Chapter X, Chapter XI (other than Article 54), Chapter XII and Chapter XIII (other than Article 75) shall apply to sales and prospective sales.³

Article 7 – 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 this Convention.

Article 8 – 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 aircraft object for the purposes of Articles 10(c), 11(1)(c) and 43(2)(b) of this Convention.

Article 9 – 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 – CONSTITUTION OF AN INTERNATIONAL INTEREST; CONTRACTS OF SALE*Article 10 – 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 aircraft object of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the aircraft object to be identified; 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.

³ The drafting of this Article should be reviewed by the Diplomatic Conference.

Article 11 – Formalities and effects of contract of sale

1. For the purposes of this Convention, 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.
2. A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.

CHAPTER III – DEFAULT REMEDIES*Article 12 – Remedies of chargee*

1. In the event of default as provided in Article 16, 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 aircraft object charged to it;
 - (b) sell or grant a lease of any such aircraft object;
 - (c) collect or receive any income or profits arising from the management or use of any such aircraft object,or apply for a court order authorising or directing any of the above acts.
2. A chargee proposing to sell or grant a lease of an aircraft 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(z)(i) and (ii); and
 - (b) interested persons specified in Article 1(z)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.
3. 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 paragraph 2 of this article. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.
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 13 – Vesting of aircraft object in satisfaction; redemption

1. At any time after default as provided in Article 16, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any aircraft 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 aircraft 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 commensurate with the value of the aircraft 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 16 and before sale of the charged aircraft 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 12(1). 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 12(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 41.

Article 14 – Remedies of creditor

1. In addition to the remedies specified in Article 12 and in Articles 15 and 19, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in such provisions:

- (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 paragraph 1 without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.

Article 15 – 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 16, the conditional seller or the lessor, as the case may be, may:

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

Article 16 – 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 12 to 15 and 19.

2. In the absence of such an agreement, “default” for the purposes of Articles 12 to 15 and 19 means a substantial default.

Article 17 – 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 21.

Article 18 – Standard for exercising remedies

Any remedy given by this Convention shall be exercised in a commercially reasonable manner. An agreement between the debtor and the creditor as to what is a commercially reasonable manner shall be conclusive.

Article 19 – 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 aircraft object and its value;
- (b) possession, control or custody of the aircraft object;
- (c) immobilisation of the aircraft object; and/or
- (d) lease or management of the aircraft object and the income therefrom;
- (e) sale and application of proceeds therefrom.

2. For the purposes of the preceding paragraph, “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. Ownership or any other interest of the debtor passing on a sale under sub-paragraph (e) of paragraph 1 of this article is free from any other interest over which the creditor’s international interest has priority under the provisions of Article 41 of this Convention.

4. In making any order under paragraph 1 of this Article, 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
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.

5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of the preceding paragraph.

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

7. Nothing in this Article affects the application of Article 18 or limits the availability of forms of interim relief other than those set out in paragraph 1.

8. With regard to the remedies in Article 14(1):

- (a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than [five] working days after the creditor notifies such authorities that the relief specified in Article 14(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with this Convention; and

- (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

9. Paragraphs 1(e), 2, 3, 5 and 8 of this Article apply only where a Contracting State has made a declaration to that effect under Article 68(2) and to the extent stated in such declaration.

Article 20 – Procedural requirements

Subject to Article 67(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 21 – Derogation

The parties may, by agreement in writing, exclude the application of Article 22 and, in their relations with each other, derogate from or vary the effect of any of the provisions of Articles [...].⁴

Article 22 – 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 68(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. With regard to the remedies in Article 14(1) :

- (a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with this Convention; and
- (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

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

⁴ This Article should be reviewed by the Diplomatic Conference with a view to determining the provisions to be inserted.

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 52(1), shall have priority in the insolvency over registered interests.

13. The rules of this Convention 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 68(3) whether it will:

(a) cure all defaults and to 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 23 – 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 22.

Article 24 – 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 Convention 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 14(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 14(1).

CHAPTER IV – THE INTERNATIONAL REGISTRATION SYSTEM

Article 25 – 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) notices of national interests.
2. For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

Article 26 – The Supervisory Authority

1. There shall be a Supervisory Authority which shall be [.....].
2. The Supervisory Authority shall:
 - (a) establish or provide for the establishment of the International Registry;
 - (b) appoint or re-appoint the Registrar in accordance with the provisions of Article 27;
 - (c) ensure that any rights required for the continued effective operation of the International Registry are such as may be assigned in the event of a change of Registrar;
 - (d) after consultation with the Contracting States, make or approve and ensure the publication of regulations dealing with the operation of the International Registry;
 - (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
 - (f) supervise the Registrar and the operation of the International Registry;
 - (g) at the request of the Registrar provide such guidance to the Registrar as the Supervisory Authority thinks fit;
 - (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
 - (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention; and
 - (j) report periodically to Contracting States concerning the discharge of its obligations under this Convention.
3. The Supervisory Authority may enter into any agreement requisite for the performance of its functions including any agreement referred to in Article 39(3).
4. The Supervisory Authority shall own all proprietary rights in the data and archives of the International Registry.
5. The first regulations shall be made by the Supervisory Authority so as to take effect on the entry into force of this Protocol.

Article 27 – The Registrar

1. The first Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Convention. Thereafter, the Registrar shall be appointed or re-appointed at regular five-yearly intervals by the Supervisory Authority.

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

3. The fees referred to in Article 26(2)(h) shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry, and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 26(2) of this Convention.

Article 28 – Designated entry points

1. At the time of ratification, acceptance, approval of, or accession to this Convention, 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:

- (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 29 – Working hours of the registration facilities

The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated during working hours in their respective territories.

CHAPTER V – MODALITIES OF REGISTRATION*Article 30 – Registration requirements*

1. In accordance with this Convention, the regulations shall specify the requirements:

- (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.

2. Such requirements shall not include any evidence that a consent to registration required by Article 32(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.

Article 31 – When registration takes effect

1. A registration shall be valid only if made in conformity with Article 32 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 manufacturer's serial number, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

Article 32 – 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 either party with the consent in writing of the other.

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 33 – Duration of registration

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

2. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

Article 34 – Searches

1. Any person may, in the manner prescribed by the 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 regulations, shall issue a registry search certificate with respect to any aircraft 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 35 – List of declarations and declared non-consensual rights or interests

The Registrar shall maintain a list of declarations, withdrawals of declarations, and 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 52 and the date of each such declaration or withdrawal of declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the regulations to any person requesting it.

Article 36 – 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 37 – 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. For the purpose of the preceding paragraph 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.

4. 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 38 – 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 39 – 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.

4. Except for the purposes of Article 40(1) and in relation to any claim made under that paragraph and for the purposes of Article 55:

(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.

5. The Supervisory Authority may waive the immunity conferred by paragraph 4 of this Article.

CHAPTER VII – LIABILITY OF THE REGISTRAR

Article 40 – Liability and insurance

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 and its officers and employees or from a malfunction of the international registration system [except].

2. The Registrar shall provide insurance or a financial guarantee covering all liability of the Registrar under this Convention.

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

Article 41 – 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. 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.

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 aircraft 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 an aircraft object and the holder of an international interest in that aircraft object.

7. The provisions of paragraphs (1) to (4) of the present Article shall determine the priority of the holders of interests in an aircraft engine and paragraph (6) of the present Article shall not apply.

8. Ownership of an aircraft engine shall not pass by virtue of its installation on, or removal from, an airframe or an aircraft.

Article 42 – 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 IX⁵ – ASSIGNMENTS OF INTERNATIONAL INTERESTS AND RIGHTS OF SUBROGATION

Article 43 – 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 aircraft 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 this Convention but without the need to state a sum or maximum sum secured;
- (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.⁶

Article 44 – Effects of assignment

1. An assignment of an international interest in an aircraft 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.

⁵ At the third Joint Session the Chairman invited three delegations to develop proposals designed to bring Chapter IX more into line with national legal systems under which an assignment of associated rights would carry with it the interest securing those rights. A proposal containing two alternatives was discussed but there was insufficient time to give the alternatives full consideration. 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. This matter was not further discussed at the 31st Session of the ICAO Legal Committee.

⁶ The removal of square brackets in Article 45(1)(c) may have implications for this provision.

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 by the assignment have been discharged.

Article 45 – 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 44(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 46 – 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 12 to 14 and 16 to 20 * 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 aircraft object were references to the assigned rights relating to the aircraft object.⁷

* Cross-references to be confirmed.

⁷ It was noted that this provision would require further technical consideration. However, this matter was not discussed by the third Joint Session Plenary, nor by the 31st Session of the ICAO Legal Committee.

Article 47 – 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 41 apply as if the references to an international interest were references to an assignment of an international interest.

Article 48 – 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 41 [only to the extent that such associated rights relate to:

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

and the reasonable costs referred to in Article 12(5).]

Article 49 – Effects of assignor’s insolvency

The provisions of Article 42 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Article 50 – 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.

CHAPTER X – NON-CONSENSUAL RIGHTS OR INTERESTS***Article 51 – Registrable non-consensual rights or interests***

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

Article 52 – 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 this Convention declare, generally or specifically, those categories of non-consensual right or interest (other than a right or interest to which Article 51 applies) which under that State’s law would have priority over an interest in the aircraft 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 – JURISDICTION***Article 53 – Choice of forum***

Subject to Articles 54 and 55, the courts of a Contracting State chosen by the parties to a transaction have exclusive jurisdiction in respect of any claim brought under this Convention, unless otherwise agreed between the parties, whether or not the chosen forum has a connection with the parties or the transaction.

Article 54⁸ – Jurisdiction under Article 19(1)

1. The courts of a Contracting State chosen by the parties and the courts on the territory of which the aircraft object is situated or in which the aircraft is registered may exercise jurisdiction to grant relief under Article 19(1)(a), (b), (c), and Article 19(7) in respect of that aircraft object.

2. The courts of a Contracting State chosen by the parties and the courts on the territory of which the debtor is situated may exercise jurisdiction to grant relief under Article 19(1)(d) and (e) and Article 19(4) if the enforcement of such relief is limited to the territory of the forum.

3. A court may exercise jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 19(1) will or may take place in a court of another Contracting State or in an arbitral tribunal.

Article 55 – 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 40.

2. Where a person fails to respond to a demand made under Article 37(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 56 – General jurisdiction

1.– Except as provided by Articles 53, 54 and 55, 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.

2. For the purposes of this Article, and of Article 54, and subject to Article 53, a court of a Contracting State also has jurisdiction where that State is the State of registry.

Article 57 – Waivers of sovereign immunity

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Articles 53, 54 or 56 of this Convention or relating to enforcement of rights and interests

⁸ This Article should be further reviewed by the Diplomatic Conference.

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 XII – RELATIONSHIP WITH OTHER CONVENTIONS

Article 58 – Relationship with the Convention on the International Recognition of Rights in Aircraft

This 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 Convention, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

Article 59 – Relationship with the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft

1. This 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 Convention.

2. A Contracting State Party to the above Convention may declare, at the time of ratification, acceptance, approval of, or accession to this Convention, that it will not apply this Article.

Article 60 – Relationship with the UNIDROIT Convention on International Financial Leasing

This Convention shall supersede the *UNIDROIT Convention on International Financial Leasing*, opened for signature in Ottawa on 28 May 1988, as it relates to aircraft objects.

Article 61 – 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 aircraft objects].⁹

CHAPTER XIII – FINAL PROVISIONS

Article 62 – Adoption of Convention

1. This Convention is open for signature at the concluding meeting of the Diplomatic Conference for its adoption and will remain open for signature by all Contracting States at [...] until [...].

2. This Convention is subject to ratification, acceptance or approval of Contracting States which have signed it.

⁹ This provision may be modified or deleted depending on the final form of the future UNCITRAL Convention.

3. This Convention 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.

Article 63 – Entry into force

1. This Convention 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 Convention after the deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that Contracting State on the first day of the month following the expiration of [three] months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article 64 – Internal transactions

1. A Contracting State may declare at the time of ratification, acceptance, approval or accession 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 12(2) and 13(1), Chapter V, Article 41, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

Article 65 – 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 Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention 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 Convention extends.

3. If a Contracting State makes no declaration under paragraph 1, this Convention is to extend to all territorial units of that Contracting State.

Article 66 – Determination of courts

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

Article 67 – Declarations regarding remedies

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

2. A Contracting State at the time of signature, ratification, acceptance, approval or accession 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 68 – Declarations relating to certain provisions

1. A Contracting State, at the time of ratification, acceptance, approval, or accession may declare that it will apply any one or more of Articles 9, 23 and 24 of this Convention.

2. A Contracting State may declare, at the time of ratification, acceptance, approval, or accession, that it will/will not apply Article 19 of this Convention wholly or in part. If it so declares with respect to Article 19(2), it shall specify the time-period required thereby.

3. A Contracting State may declare, at the time of ratification, acceptance, approval, or accession, that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article 22 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 22.

4. The courts of Contracting States shall apply Article 22 in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

Article 69 – Reservations, declarations and non-application of reciprocity principle

1. No reservations are permitted except those expressly authorised in this Convention.

2. No declarations are permitted except those expressly authorised in this Convention.

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 70 – Subsequent declarations

1. A Contracting State may make a subsequent declaration at any time after the date on which this Convention 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 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 Convention 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 71 – Withdrawal of declarations and reservations

Any Contracting State which makes a declaration under, or a reservation to this Convention 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 six months after the date of the receipt of the notification by the depositary.

Article 72 – Denunciations

1. This Convention 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 Convention 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.

Article 73 – 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) to (d) of paragraph 2.

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 Convention and its effectiveness in facilitating the asset-based financing and leasing of aircraft objects;
- (b) the judicial interpretation given to the terms of this Convention 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 Convention or the arrangements relating to the International Registry are desirable.

Article 74 – Depositary arrangements

1. This Convention shall be deposited with the [...].

2. The [depositary] shall:

- (a) inform all Contracting States of this Convention 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 Convention;
 - (iii) the withdrawal of any declaration;
 - (iv) the date of entry into force of this Convention; and
 - (v) the deposit of an instrument of denunciation of this Convention together with the date of its deposit and the date on which it takes effect;
- (b) transmit certified true copies of this Convention to all signatory States, to all States acceding to the Convention and to [...];
- (c) provide the Registrar with the contents of each instrument of ratification, acceptance, approval, accession, declaration or withdrawal of a declaration, so that the information contained therein may be made publicly accessible; and
- (d) perform such other functions customary for depositaries.

*Article 75 – 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*¹⁰

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 [10 years] after the entering 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 41.

3. The preceding paragraph does not apply to any right or interest in an aircraft 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]

DCME Doc No. 5

6/4/01

CORRIGENDUM

24/4/01

**CONSOLIDATED TEXT
CORRIGENDUM**

Please note that the title on the cover * and first pages of the above-mentioned document should read: “Draft Convention on International Interests in Aircraft Equipment” instead of “Draft Convention on International Interests in Mobile Equipment”.

¹⁰ The ICAO Legal Committee, while maintaining both Alternatives A and B, expressed the view that in case Alternative B was selected, the fees charged with respect to these transactions should be nominal.

* The covers of DCME Documents are not reproduced in this volume.

DCME Doc No. 6

5/10/01

English and French only

CONSOLIDATED TEXT
(presented by the UNIDROIT Secretariat)
of the
DRAFT [UNIDROIT] ~~[UNIDROIT]~~ CONVENTION ON
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
AS APPLIED TO AIRCRAFT EQUIPMENT

Purpose of this document: A user-friendly working tool (“text of convenience”)

To facilitate work of delegates at the diplomatic Conference who may wish to see how the two draft texts (Convention and Aircraft Protocol) function as applied to aircraft equipment.

- At the 3rd Joint Session of the UNIDROIT Committee of Governmental Experts and a Sub-Committee of the ICAO Legal Committee, the two-tiered structure (Convention and Aircraft Protocol) received almost unanimous support, only one delegation expressing another preference.
- The UNIDROIT Governing Council, at its 79th Session, authorised the two basic proposals to be submitted to the diplomatic Conference.
- At the 31st Session of the ICAO Legal Committee, there was a “strong preference... for a dual structure”, and “[t]he dual structure would therefore be maintained”. “The consolidated text could be given some more formal status by the [Diplomatic] Conference through a Resolution or through some other action”. “[The Chairman] emphasized the need for close cooperation between the two Secretariats in the preparation of the text.” (Cf. Report of the 31st Session of the Legal Committee, Doc 9765-LC/191, para. 3:132).

Status of the document

The Consolidated Text has no formal status yet. It is a working tool which will need to be revised under the auspices of the co-sponsoring organisations (UNIDROIT and ICAO) to reflect amendments to the draft Convention and draft Aircraft Protocol adopted at the Diplomatic Conference.

Issue of the revised Consolidated Text

The revised consolidated text will serve as a helpful working document which, prepared under the supervision of the two organisations and issued under their imprimatur, will be able to be used with confidence as accurately reflecting the combined effect of the two legal instruments.

CONSOLIDATED TEXT
of the
DRAFT [UNIDROIT] ~~[UNIDROIT]~~ CONVENTION ON
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
AS APPLIED TO AIRCRAFT EQUIPMENT

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**DRAFT [UNIDROIT] ~~[UNIDROIT]~~ CONVENTION ON
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
AS APPLIED TO AIRCRAFT EQUIPMENT**

THE STATES PARTIES TO THE [UNIDROIT] ~~[UNIDROIT]~~ CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT AND THE PROTOCOL TO THAT CONVENTION ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT,

AWARE of the need to acquire and use aircraft 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,

DESIRING to facilitate the work with and the application of the (base) Convention and the (equipment-specific) Aircraft Protocol for all interested parties,

HAVE AGREED to entrust the Secretariat of the International Institute for the Unification of Private Law – UNIDROIT – and the [Legal Bureau] [Chairman of the Legal Committee] of the International Civil Aviation Organization – ICAO – with the drawing up of an authoritative consolidated text (“text of convenience”, hereafter referred to as the “Convention”) whose provisions read as follows:

CHAPTER I – SPHERE OF APPLICATION AND GENERAL PROVISIONS***Article 1 – Definitions***

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

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

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

(c) “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 lb 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;

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

(e) “aircraft register” means a register maintained by a state or a common mark registering authority for the purposes of the Chicago Convention;

(f) “airframes” means airframes (other than those used in military, customs and 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;

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

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

(i) “authorised party” means the party referred to in Article 24(2);

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

(k) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;

(l) “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;

(m) “conditional buyer” means a buyer under a title reservation agreement;

(n) “conditional seller” means a seller under a title reservation agreement;

(o) “contract of sale” means a contract for the sale of an aircraft object by a seller to a buyer which is not an agreement as defined in (a) above;

(p) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;

(q) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;

(r) “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 aircraft object is burdened by a registrable non-consensual right or interest;

(s) “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;

(t) “guarantee contract” means a contract entered into by a person as guarantor;

(u) “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;

(v) “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;

(w) “insolvency administrator” means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;

(x) “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;

(y) “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;

(z) “interested persons” means:

(i) the debtor;

(ii) any guarantor under a guarantee;

(iii) any other person having rights in or over the aircraft object;

(aa) “internal transaction” means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant aircraft object under Article 3(4) is deemed to be located, in the same Contracting State at the time of the conclusion of the transaction;

(bb) “international interest” means an interest to which Article 2 applies;

(cc) “International Registry” means the international registration facilities established for the purposes of this Convention ;

(dd) “leasing agreement” means an agreement by which a lessor grants a right to possession or control of an aircraft object (with or without an option to purchase) to a lessee in return for a rental or other payment;

(ee) “national interest” means an interest in an aircraft object created by an internal transaction;

(ff) “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;

(gg) “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 under Article 64(1);

(hh) “pre-existing right or interest” means a right or interest of any kind in an aircraft 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 52 and to the extent of that declaration;

(ii) “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 owned, unless proved otherwise;

(jj) “proceeds” means money or non-money proceeds of an aircraft object arising from the total or partial loss or physical destruction of the aircraft object or its total or partial confiscation, condemnation or requisition;

(kk) “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;

(ll) “prospective international interest” means an interest that is intended to be created or provided for in an aircraft 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 aircraft object), whether or not the occurrence of the event is certain;

(mm) “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;

(nn) “registered” means registered in the International Registry pursuant to Chapter V;

(oo) “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;

(pp) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 51;

(qq) “Registrar” means, the person or body appointed under Articles 26(2)(b) and 27(1);

(rr) “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;

(ss) “regulations” means regulations made or approved by the Supervisory Authority;

(tt) “sale” means a transfer of ownership of an aircraft object pursuant to a contract of sale;

(uu) “secured obligation” means an obligation secured by a security interest;

(vv) “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 aircraft object to secure the performance of any existing or future obligation of the chargor or a third person;

(ww) “security interest” means an interest created by a security agreement;

(xx) “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;

(yy) “Supervisory Authority” means the Supervisory Authority referred to in Article 26(1);

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

(aaa) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which Article 52 applies) which has not been registered, whether or not it is registrable under this Convention; and

(bbb) “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.¹

Article 2 – The international interest

1. This Convention provides for the constitution and effects of an international interest in aircraft objects and associated rights.

2. For the purposes of this Convention, an international interest in aircraft objects is an interest, constituted under Article 10, in airframes, aircraft engines or helicopters:

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

4. An international interest in an aircraft object extends to proceeds of that aircraft 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.

3. Without prejudice to paragraph 1 of this article, the Convention shall also apply if an aircraft is registered in an aircraft register of a Contracting State. In such circumstances the application of the Convention shall be from the earlier of:

- (a) the date the aircraft is so registered; and
 - (b) the date of an agreement providing that the aircraft shall be so registered.²
4. For the purposes of the definition of “internal transaction” in Article 1:
- (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.

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;

¹ It was noted that this definition should be further reviewed.

² This paragraph should be reviewed by the Diplomatic Conference with regard to the question whether in its line 2 it should also make reference to joint registration facilities under Article 77 of the Chicago Convention of 1944.

- (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.

Article 6 – Application to sale and prospective sale

The following provisions of this Convention apply in relation to a sale and shall do so as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a contract of sale, a prospective sale, the seller and the buyer, respectively ³:

- Articles 3 and 4;
- Article 25(1)(a);
- Article 30;
- Article 31(3);
- Article 32(1) (as regards registration of a contract of sale or a prospective sale);
- Article 37(2) (as regards a prospective sale); and
- Article 42.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 41 (other than Article 41(3), Chapter X, Chapter XI (other than Article 54), Chapter XII and Chapter XIII (other than Article 75) shall apply to sales and prospective sales.⁴

Article 7 – 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 this Convention.

³ The following alternative wording should be considered: “The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively.”

⁴ The drafting of this Article should be reviewed by the Diplomatic Conference.

Article 8 – 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 aircraft object for the purposes of Articles 10(c), 11(1)(c) and 43(2)(b) of this Convention.

Article 9 – 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 – CONSTITUTION OF AN INTERNATIONAL INTEREST; CONTRACTS OF SALE*Article 10 – 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 aircraft object of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the aircraft object to be identified; 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.

Article 11 – Formalities and effects of contract of sale

1. For the purposes of this Convention, 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.
2. A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.

CHAPTER III – DEFAULT REMEDIES*Article 12 – Remedies of chargee*

1. In the event of default as provided in Article 17, 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 aircraft object charged to it;
 - (b) sell or grant a lease of any such aircraft object;
 - (c) collect or receive any income or profits arising from the management or use of any such aircraft object,or apply for a court order authorising or directing any of the above acts.

2. A chargee proposing to sell or grant a lease of an aircraft object under the preceding paragraph 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(z)(i) and (ii); and
- (b) interested persons specified in Article 1(z)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

3. 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 the preceding paragraph. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

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 13 – Vesting of aircraft object in satisfaction; redemption

1. At any time after default as provided in Article 17, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any aircraft 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 aircraft 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 commensurate with the value of the aircraft 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 17 and before sale of the charged aircraft 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 12(1). 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 12(1) 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 41.

Article 14 – 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 17, the conditional seller or the lessor, as the case may be, may terminate the agreement and take possession or control of any aircraft object to which the agreement relates or apply for a court order authorising or directing either of these acts.

Article 15 – Additional remedies of creditor

1. In addition to the remedies specified in Article 12 and in Articles 14 and 18, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in such provisions:

- (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.

Article 16 – Additional remedies under applicable law

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 21.

Article 17 – 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 12 to 16 and 18.

2. In the absence of such an agreement, “default” for the purposes of Articles 12 to 16 and 18 means a substantial default.

Article 18 – 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 aircraft object and its value;
- (b) possession, control or custody of the aircraft object;
- (c) immobilisation of the aircraft object;
- (d) lease or management of the aircraft object and the income therefrom; and/or
- (e) sale and application of proceeds therefrom.

2. For the purposes of the preceding paragraph, “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. Ownership or any other interest of the debtor passing on a sale under sub-paragraph e) of paragraph 1 of this article is free from any other interest over which the creditor's international interest has priority under the provisions of Article 41 of this Convention.

4. In making any order under paragraph 1 of this Article, 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
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.

5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of the preceding paragraph.

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

7. Nothing in this Article affects the application of Article 19 or limits the availability of forms of interim relief other than those set out in paragraph 1.

8. With regard to the remedies in Article 15(1):

(a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than [five] working days after the creditor notifies such authorities that the relief specified in Article 15(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with this Convention; and

(b) the applicable⁵ authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

Article 19 – Standard for exercising remedies

Any remedy given by this Convention shall be exercised in a commercially reasonable manner. An agreement between the debtor and the creditor as to what is a commercially reasonable manner shall be conclusive.

Article 20 – Procedural requirements

Subject to Article 67(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 21 – 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 12(3) to (5), 13(3) and (4), 19 and 20.⁶

Article 22 – 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 68(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.

⁵ The alternatives “relevant” or “competent” should be considered. Cf. also Article 22(8)(b).

⁶ This wording reflects the wording of Article 14 draft Convention as drafted by the Joint Sessions. The wording chosen by the Consolidated Text as attached to the Report on the 31st Session of the LC is drafted differently. The Rapporteur notes that “This Article should be reviewed by the Diplomatic Conference with a view to determining the provisions to be inserted”.

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. With regard to the remedies in Article 15(1)

(a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with this Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

9. No exercise of remedies permitted by this Convention 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 52(1), shall have priority in the insolvency over registered interests.

13. The provisions of this Convention 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 68(3) whether it will:

(a) cure all defaults and to 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 23 – 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 22.

Article 24 – 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 Convention 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 15(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 15(1).

CHAPTER IV – THE INTERNATIONAL REGISTRATION SYSTEM

Article 25 – 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; and
 - (e) notices of national interests.
2. For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

Article 26 – The Supervisory Authority

1. There shall be a Supervisory Authority which shall be [].
2. The Supervisory Authority shall:
 - (a) establish or provide for the establishment of the International Registry;
 - (b) appoint or re-appoint the Registrar in accordance with the provisions of Article 27;

- (c) ensure that any rights required for the continued effective operation of the International Registry are such as may be assigned in the event of a change of Registrar ;
- (d) after consultation with the Contracting States, make or approve and ensure the publication of regulations dealing with the operation of the International Registry ⁷;
- (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
- (f) supervise the Registrar and the operation of the International Registry;
- (g) at the request of the Registrar provide such guidance to the Registrar as the Supervisory Authority thinks fit;
- (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
- (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention; and
- (j) report periodically to Contracting States concerning the discharge of its obligations under this Convention.

3. The Supervisory Authority may enter into any agreement requisite for the performance of its functions including any agreement referred to in Article 39(3).

4. The Supervisory Authority shall own all proprietary rights in the data and archives of the International Registry.

5. The first regulations shall be made by the Supervisory Authority so as to take effect on the entry into force of this Convention.

Article 27 – The Registrar

1. The first Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Convention. Thereafter, the Registrar shall be appointed or re-appointed at regular five-yearly intervals by the Supervisory Authority.

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

3. The fees referred to in Article 26(2)(h) shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry, and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 26(2) of this Convention.

Article 28 – Designated entry points

1. At the time of ratification, acceptance, approval of, or accession to this Convention, 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:

- (a) international interests in, or sales of, helicopters or airframes pertaining to aircraft for which it is the State of registry;

⁷ The following alternative wording should be considered: “In the event of a change of Registrar, take such steps, including procuring the transfer of rights in software and communications systems, as may be expedient for the continuing efficient functioning of the Registry”.

- (b) registrable non-consensual rights or interests created under its domestic law; and
- (c) notices of national interests.

Article 29 – Working hours of the registration facilities

The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated during working hours in their respective territories.

CHAPTER V – MODALITIES OF REGISTRATION

Article 30 – Registration requirements

1. In accordance with this Convention, the regulations shall specify the requirements:
 - (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.
2. Such requirements shall not include any evidence that a consent to registration required by Article 32(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.

Article 31 – When registration takes effect

1. A registration shall be valid only if made in conformity with Article 32 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 manufacturer's serial number, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

Article 32 – 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 either party with the consent in writing of the other.

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 33 – Duration of registration

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

2. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

Article 34 – Searches

1. Any person may, in the manner prescribed by the 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 regulations, shall issue a registry search certificate with respect to any aircraft 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 35 – List of declarations and declared non-consensual rights or interests

The Registrar shall maintain a list of declarations, withdrawals of declarations, and of the categories of non-consensual right or interest communicated to the Registrar by the depositary as having been declared by Contracting States in conformity with Article 52 and the date of each such declaration or withdrawal of declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the regulations to any person requesting it.

Article 36 – 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 37 – 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. For the purpose of the preceding paragraph 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.

4. 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 38 – 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 39 – 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.

4. Except for the purposes of Article 40(1) and in relation to any claim made under that paragraph and for the purposes of Article 55:

(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.

5. The Supervisory Authority may waive the immunity conferred by the preceding paragraph.

CHAPTER VII – LIABILITY OF THE REGISTRAR

Article 40 – Liability and insurance

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 and its officers and employees or from a malfunction of the international registration system [except].

2. The Registrar shall provide insurance or a financial guarantee covering all liability of the Registrar under this Convention.

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

Article 41 – 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. A buyer under a registered contract of sale acquires 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.

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 aircraft object extends to proceeds.

6. Subject to the following paragraph, this Convention does not determine priority as between the holder of an interest in an item held prior to its installation on an aircraft object and the holder of an international interest in that aircraft object.

7. The provisions of paragraphs (1) to (4) of the present Article shall determine the priority of the holders of interests in an aircraft engine, whether or not installed on an airframe.

8. Ownership of an aircraft engine shall not pass by virtue of its installation on, or removal from, an airframe or an aircraft.

Article 42 – 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 IX⁸ – ASSIGNMENTS OF INTERNATIONAL INTERESTS
AND RIGHTS OF SUBROGATION**

Article 43 – 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 aircraft 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 this Convention but without the need to state a sum or maximum sum secured;
 - (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.⁹

Article 44 – Effects of assignment

1. An assignment of an international interest in an aircraft 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.
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 45 – 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 44(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

⁸ At the third Joint Session the Chairman invited three delegations to develop proposals designed to bring Chapter IX more into line with national legal systems under which an assignment of associated rights would carry with it the interest securing those rights. A proposal containing two alternatives was discussed but there was insufficient time to give the alternatives full consideration. 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. This matter was not further discussed at the 31st Session of the ICAO Legal Committee.

⁹ The removal of square brackets in Article 45(1)(c) may have implications for this provision.

(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 46 – 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 12 to 14 and 16 to 20¹⁰ 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 aircraft object were references to the assigned rights relating to the aircraft object.¹¹

Article 47 – 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 41 apply as if the references to an international interest were references to an assignment of an international interest.

Article 48 – 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 41 [only to the extent that such associated rights relate to:

(a) a sum advanced and utilised for the purchase of the aircraft object;

(b) the price payable for the aircraft object; or

(c) the rentals payable in respect of the aircraft object;

and the reasonable costs referred to in Article 12(5).]

Article 49 – Effects of assignor's insolvency

The provisions of Article 42 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

¹⁰ Cross-references to be confirmed.

¹¹ The Drafting Committee of the third Joint Session noted that this provisions would require further technical consideration. However, this matter was not discussed by the third Joint Session Plenary, nor by the 31st Session of the ICAO Legal Committee.

Article 50 – 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.

CHAPTER X – NON-CONSENSUAL RIGHTS OR INTERESTS*Article 51 – Registrable non-consensual rights or interests*

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

Article 52 – 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 this Convention declare, generally or specifically, those categories of non-consensual right or interest (other than a right or interest to which Article 51 applies) which under that State's law would have priority over an interest in the aircraft 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 – JURISDICTION*Article 53 – Choice of forum*

Subject to Articles 54 and 55, the courts of a Contracting State chosen by the parties to a transaction have exclusive jurisdiction in respect of any claim brought under this Convention, unless otherwise agreed between the parties, whether or not the chosen forum has a connection with the parties or the transaction.

Article 54 – Jurisdiction under Article 18(1)

1. The courts of a Contracting State chosen by the parties and the courts on the territory of which the aircraft object is situated or in which the aircraft is registered may exercise jurisdiction to grant relief under Article 18(1)(a), (b), (c), and Article 18(7) in respect of that aircraft object.
2. The courts of a Contracting State chosen by the parties and the courts of a Contracting State on the territory of which the debtor is situated may exercise jurisdiction to grant relief under Article 18(1)(d) and (e) and Article 18(4) if the enforcement of such relief is limited to the territory of the forum.

3. A court may exercise jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 18(1) will or may take place in a court of another Contracting State or in an arbitral tribunal.¹²

Article 55 – 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 40.

2. Where a person fails to respond to a demand made under Article 37(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 56 – General jurisdiction

1. Except as provided by Articles 53, 54 and 55, 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.

2. For the purposes of this Article, and of Article 54, and subject to Article 53, a court of a Contracting State also has jurisdiction where that State is the State of registry.

Article 57 – Waivers of sovereign immunity

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Articles 53, 54 or 56 of this 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 XII – RELATIONSHIP WITH OTHER CONVENTIONS

Article 58 – Relationship with the Convention on the International Recognition of Rights in Aircraft

This 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,

¹² The following alternative wording for Article 54 should be considered: “Jurisdiction to grant relief under Article 18(d) and (e) and Article 18 (4) may be exercised:

(a) by the courts chosen by the parties; or
 (b) by the courts of a Contracting State on the territory of which the debtor is situated, being relief which by the terms of the order granting it is enforceable only in the territory of that Contracting State.”

supersede that Convention as it relates to aircraft, as defined in this Convention, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

***Article 59 – Relationship with the Convention for the Unification of Certain Rules
Relating to the Precautionary Attachment of Aircraft***

1. This 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 Convention.

2. A Contracting State Party to the above Convention may declare, at the time of ratification, acceptance, approval of, or accession to this Convention, that it will not apply this Article.

Article 60 – Relationship with the UNIDROIT Convention on International Financial Leasing

This Convention shall supersede the UNIDROIT Convention on International Financial Leasing, opened for signature in Ottawa on 28 May 1988, as it relates to aircraft objects.

***Article 61 – Relationship with the [draft] UNCITRAL Convention on Assignment
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 aircraft objects.] ¹³

CHAPTER XIII – FINAL PROVISIONS

[On **Adoption** cf. Article XXV of the draft Protocol on Matters Specific to Aircraft Equipment]

[On **Entry into force** cf. Article 47 of the draft Convention on International Interests in Mobile Equipment and Article XXVI of the draft Protocol]

Article 62 – Internal transactions

1. A Contracting State may declare at the time of ratification, acceptance, approval or accession 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 12(2) and 13(1), Chapter V, Article 41, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

Article 63 – 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 Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention 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.

¹³ This provision may be modified or deleted depending on the final form of the future UNCITRAL Convention.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which this Convention extends.

3. If a Contracting State makes no declaration under paragraph 1, this Convention is to extend to all territorial units of that Contracting State.

Article 64 – Determination of courts

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

Article 65 – Declarations regarding remedies

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

2. A Contracting State at the time of signature, ratification, acceptance, approval of or accession to the Convention 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 66 – Declarations relating to certain provisions

1. A Contracting State may declare, at the time of ratification, acceptance, approval of, or accession to this Convention that it will apply any one or more of Articles 9, 23 and 24 of this Convention.

2. A Contracting State may declare, at the time of ratification, acceptance, approval of, or accession to this Convention, that it will apply Article 18 wholly or in part. If it so declares with respect to Article 19(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 Convention, that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article 22 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 22.

4. The courts of Contracting States shall apply Article 22 in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

Article 67 – Reservations, declarations and non-application of reciprocity principle

1. No reservations are permitted except those expressly authorised in this Convention.

2. No declarations are permitted except those expressly authorised in this Convention.

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 68 – Subsequent declarations

1. A Contracting State may make a subsequent declaration at any time after the date on which this Convention 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 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 Convention 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 69 – Withdrawal of declarations and reservations

Any Contracting State which makes a declaration under, or a reservation to this Convention 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 six months after the date of the receipt of the notification by the depositary.

Article 70 – Denunciations

1. This Convention 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 Convention 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.

Article 71 – 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) to (d) of paragraph 2.

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 Convention and its effectiveness in facilitating the asset-based financing and leasing of aircraft objects;
- (b) the judicial interpretation given to the terms of this Convention 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 Convention or the arrangements relating to the International Registry are desirable.

Article 72 – Depositary arrangements

- 1. This [Convention] shall be deposited with the [.....].
- 2. The [depositary] shall:
 - (a) inform all Contracting States of this [Convention] 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 Convention;
- (iii) the withdrawal of any declaration;
- (iv) the date of entry into force of this Convention; and
- (v) the deposit of an instrument of denunciation of this Convention together with the date of its deposit and the date on which it takes effect;
- (b) transmit certified true copies of this [Convention] to all signatory States, to all States acceding to the [Convention] and to [.....];
- (c) provide the Registrar with the contents of each instrument of ratification, acceptance, approval, accession, declaration or withdrawal of a declaration, so that the information contained therein may be made publicly accessible; and
- (d) perform such other functions customary for depositaries.

Article 73 – 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*¹⁴

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 [10 years] after the entering 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 41.

3. The preceding paragraph does not apply to any right or interest in an aircraft 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

FORM OF IRREVOCABLE DE-REGISTRATION AND EXPORT REQUEST AUTHORISATION

Annex Referred to in Article 24(1)

[Insert Date]

To: [Insert Name of Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorisation

¹⁴ The ICAO Legal Committee, while maintaining both Alternatives A and B, expressed the view that in case Alternative B was selected, the fees charged with respect to these transactions should be nominal.

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 24 of the [UNIDROIT] ~~[UNIDROIT]~~ Convention on International Interests in Mobile Equipment as applied to Aircraft Equipment (in its authoritative consolidated version). 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 Convention on International Civil Aviation, signed at Chicago, on 7 December 1944; 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]

By: [insert name of signatory]
Its: [insert title of signatory]

[insert relevant notational details]

DCME Doc No. 6
5/10/01
CORRIGENDUM
12/10/01

CORRIGENDUM

Please note that the references to the "draft UNIDROIT Convention on International Interests in Mobile Equipment" appearing in the title of, and on pages 2 and 5 of the above-mentioned document should read "draft [UNIDROIT] ~~[UNIDROIT]~~ Convention on International Interests in Mobile Equipment" and that the references to the "UNIDROIT Convention on International Interests in Mobile Equipment" appearing on pages 5 and 35 thereof should read "[UNIDROIT] ~~[UNIDROIT]~~ Convention on International Interests in Mobile Equipment".

DCME Doc No. 7
3/09/01
English and French only

COMMENTS ON DRAFT CONVENTION AND DRAFT PROTOCOL

(Presented by the Aviation Working Group (AWG)
and the International Air Transport Association (IATA))

The International Air Transport Association (“**IATA**”) and the Aviation Working Group (“**AWG**”) respectfully submit these joint comments to the above-identified Conference.

The AWG will also be representing the International Coordinating Committee of Aerospace Industries Associations (“**ICCAIA**”) at the Conference.

IATA, AWG and ICCAIA members consist of users, buyers, sellers, manufacturers, lessors, lessees and financiers of commercial aircraft equipment. One or more members of IATA, AWG and/or ICCAIA are involved in *over 90% of the commercial aircraft equipment transactions* falling within the scope of the Convention/Protocol.

Accordingly, the comments made in this letter derive from the collective experience and the *coordinated perspective of the principal participants in the commercial aircraft sector, including debtors and creditors.*

Based on our–

- (a) active participation in the development of the draft texts,
- (b) study of their potential economic benefits,
- (c) analysis of the relevant legal issues, and
- (d) assessment of the ability of the Convention and Protocol to attract ratifications and otherwise achieve political and industry acceptance –

we comment as follows:

1 Criteria for Support of the Final Texts: Substance and Entry Into Force

1.1 Substantive Criteria. The current draft texts, embodying, as they do, the fundamental principles underlying asset-based financing and leasing of aircraft equipment, will increase the availability and reduce the cost of aviation credit.

The positive effect of the texts on the financing of aviation transactions has always been, and remains, the basic substantive criterion for our support of the Convention/Protocol.

We will support the final texts if, and only if, they are not amended in a manner adverse to the substantive criterion.

1.2 Entry Into Force Criteria. Many treaties, including select air law treaties, duly adopted at diplomatic conferences, have either not come into force (e.g., *Guatemala City Protocol to Warsaw System*) or have come into force after an excessive time period (e.g., *Protocol to Convention of International Civil Aviation Article 83 bis*). This was due, to a large extent, to the “entry into force” standard agreed to at their diplomatic conferences.

We strongly support the current draft text, which requires three to five ratifications for entry into force, for the following reasons:

- (i) The Convention/Protocol are of significant economic value, but that value only accrues when and where they are in force.
- (ii) Significantly, the realisation of this economic value does not require a large number of ratifications.

(iii) The Convention/Protocol will provide maximum benefits to States and airlines taking deliveries of aircraft equipment in the near term *only if* the Convention/Protocol are in effect in those States at the time of such deliveries. Accordingly, a protracted entry into force period is prejudicial to governments and those airlines with current aircraft acquisition requirements, and, thus, is inequitable.

For these reasons, as well as the others discussed in a recently published law review article (*see* Vol. 66, No. 4 *Journal of Air Law & Commerce* (Fall, 2001)), the basic procedural criterion against which the final work of the Conference will be assessed by the aircraft industry relates to prompt entry into force.

The entry into force standard reflected in the draft text is in line with the approach taken in the Geneva Convention of 1948, the air law instrument most relevant to the Convention/Protocol. Geneva required a small number of ratifications (two) for a “transactional air law” instrument (in contrast with “public international law” or “non-transactional air law instruments”). This entry into force standard, despite the passage of time since adoption of the Geneva instrument, is also consistent with the current private international law treaty practice, as advanced by its leading sponsors, UNIDROIT, UNCITRAL, and the Hague Conference on Private International Law.

Some have questioned whether the creation of the International Registry contemplated by the Convention/Protocol might warrant a larger number of ratifications, so that a larger pool of user fees is available to cover its operational costs. *We believe that the question is inapposite and should not affect the appropriate number of minimum ratifications for the following reasons:* First, three States comprise in excess of 60% of transaction volume, whereas some 120 States comprise less than 10% of such volume. Consequently, there is no necessary connection between the *number* of ratifying States and actual *transaction volume*. Secondly, regardless of the transactional volume, there will be an initial funding gap since the International Registry must be financed prior to the first transaction. The appropriate way to address the funding gap, therefore, is with an appropriate funding mechanism, not with a higher number of required ratifications. As the anticipated costs of Registry-creation are relatively modest, this mechanism should not be problematic. Thirdly, the creation of the International Registry, while an important element of the new regime, should not be permitted to delay the economic benefits that flow from other aspects of the Convention/Protocol.

2 Economic Benefits Plus Other Policies: Opt-in Annex Plus Debtor Provision

The texts attempt to balance the dual objectives of producing economic benefits while respecting (i.e., not pre-empting) other policies, where applicable. As study has shown, special care is required in this regard since general or “soft” provisions (i.e., vague standards rather the predictable rules) are inconsistent with the requirements of advanced asset-based financing and leasing and will not lead to economic benefit.

After wide-ranging consultations, we believe that the balancing of those dual objectives would be furthered pursuant to two changes to the texts.

2.1 Opt-in Annex. A number of delicate, and highly negotiated, provisions are presented as “options,” in the sense that a State (i) may opt out of a provision (which would be applicable *unless* the State declares otherwise) or (ii) must opt into a provision (which would be applicable *only if* the State affirmatively so declares). (In Vienna Treaty terms, either approach amounts to a permitted “reservation.”)

However, these provisions, as well as the elective mechanisms, are at times difficult to locate in the texts and therefore, to fully comprehend.

In order to *clarify these options*, and, moreover, to ensure that they *only apply by affirmative declaration*, we strongly recommend (as we did, with considerable support, at the 31st Session of the ICAO Legal Committee) that a simple “opt-in annex” be annexed to the Protocol (and proposed nonlegally binding Consolidated text).

Pursuant to a final clause in the Protocol, this annex would apply, wholly or in part, only by affirmative declaration of a Government.

Annexed as **Appendix 1-A** to this comment letter is a draft of that final clause in the Protocol and an opt-in annex (**Annex I – Supplemental asset-based financing and leasing provisions**). (We are also sending an electronic version of these drafts, which are technical but do not have changes in substance, to the two Secretariats.)

Please note that this suggested approach leaves unaffected the more technical, permitted declarations for **(i)** non-consensual rights and interests (Convention Articles 38 and 39), **(ii)** use of entry points to the International Registry (Protocol Article XVIII) and **(iii)** internal transactions (Convention Article 48).

2.2 Debtor Provision. In the course of our consultations, it has become evident that an additional provision, which carefully addresses two debtor items, is desirable. This provision would –

(i) ensure that a debtor is entitled, under the Convention/Protocol, to *quiet possession* of aircraft equipment *absent* (a) a default, or (b) a contrary agreement between the transaction parties (which may form a key element of the relevant contract); and

(ii) expressly retain a creditor's liability for breach of its contract, as determined and quantified under applicable law.

Annexed as **Appendix 1-B** is a draft of that debtor provision.

3 Creation of the International Registry and Maximum User Fees

In furtherance of the above comments in support of a prompt entry into force, it is imperative that the Diplomatic Conference agree on *specific procedures* and a *date certain* for the *creation* of the International Registry. In this regard, consideration should be given to use of an interim registry.

As a matter of policy, and with a view toward avoiding potential ratification delays, it is important that an acceptable *maximum fee schedule* for use of the International Registry be agreed to at the Diplomatic Conference.

It is unreasonable to ask industry to agree to pay unspecified user fees. Any procedure that, in effect, does so will raise concerns and dampen enthusiasm for the Convention and Protocol.

As the International Registry is wholly electronic in nature, we believe it should be possible for scheduled fees to be modest.

4 Status of Consolidation

Without altering the basic legal structure of the texts, the multi-equipment approach generally, or the ratifiability of the Convention and Protocol as such, there is a need for an *official or sanctioned working purpose Consolidated text of the Convention and Protocol*.

That non legally-binding Consolidation ideally would be agreed to at the Conference and should be attached to the Aircraft Protocol.

If that is not practical, an acceptable process must be agreed to. The most appropriate candidate, in our view, would be joint post-Conference finalisation by UNIDROIT and ICAO, with assistance from interested governments and industry.

5 Limited Technical Comments

We have limited technical comments on the texts. They are set out – in the form of precise drafting suggestions coupled with their rationale in **Appendix 2**. We will be prepared to further elaborate on these technical comments at the Conference.

6 Post-Conference Matters: Commentary and Review

The Conference should reach specific agreement on two post-Conference items that are material to transaction parties. The first is the preparation of an official *Commentary* on the texts. The materials prepared by the Rapporteur to Joint Sessions, submitted by the Secretariats as DCME-IP/2, are excellent starting points. Second, the *Review Board* is an important feature of the Convention/Protocol, and one that will assist in keeping the system responsive to the evolving needs of the air transport sector. Industry representatives should be involved in both of these user-driven features.

Appendix 1-A: (Opt-in) Annex I Supplemental asset-based financing and leasing provisions

Appendix 1-B: Debtor Provision

Appendix 2: Limited Technical Comments

Appendix 1-A

Opt-in Annex

Immediately below please a draft final clause in the Protocol (replacing Art. XXVIII), which refers to the annex, a draft as follows:

Article XXVIII – Application of Annex I

1. A Contracting State, at the time of ratification, acceptance, approval of, or accession to this Protocol, may declare that it will apply the provisions contained in Annex I, wholly or in part.
2. The provisions subject to a declaration described in the preceding paragraph shall constitute an integral part of this Convention for the declaring Contracting State and shall be binding on it, without the need for a reciprocal declaration by any other Contracting States.
3. If a Contracting State does not make a declaration with respect to Article 2 of Annex I, but application of Article 13 in that Contracting State would not require leave of the court in exercising remedies, no such leave of the court is so required.
4. If a Contracting States makes such a declaration with respect to Article 3 of Annex I, it shall specify the time-period required thereby.
5. If a Contracting State makes such a declaration with respect to Article 6 of Annex I, it shall specify the types of insolvency proceeding, if any, to which it will apply the entirety of Alternative A or the entirety of Alternative B and shall specify the time period required thereby.
6. The courts of Contracting States shall apply Article 6 of Annex I in conformity with the declaration made (if any) by the Contracting State that is the primary insolvency jurisdiction.

Annex I – Supplemental asset-based financing and leasing provisions

Article 1 – 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 this 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.

Article 2 – Non-Judicial Remedies

Remedies available to the creditor under any provision of the Convention or Protocol which is not thereby expressed to require application to the court may be exercised without such application or leave of the court.

Article 3 – 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 speedy judicial relief in the form of such one or more of the following orders as the creditor requests:

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

2. For the purposes of the preceding paragraph, “speedy” in the context of obtaining judicial 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. The remedies specified in Article IX (1) of this Protocol shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than [five] working days after the creditor notifies such authorities that the relief specified in the preceding paragraphs is authorised or, in the case of judicial relief granted by a foreign court, recognised by a court of that Contracting State, and the creditor is entitled to procure those remedies in accordance with this Convention. The applicable authorities shall expeditiously cooperate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

4. In making any order under paragraph 1 of this Article, the court may impose such terms as it considers necessary to protect 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
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.

5. The creditor and debtor or any other interested person may agree in writing to exclude the application of the preceding paragraph.

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

7. Ownership or any other interest of the debtor passing on a sale under paragraph 1 is free from any other interest over which the creditor's international interest has priority under the provisions of Article 28 of the Convention.

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

Article 4 – Jurisdiction under Article 2(1) of this Annex

1. The courts of a Contracting State chosen by the parties and the courts in the territory of which the object is situated, or courts located in the State of Registry, may exercise jurisdiction in respect of any claim referred to in Article 3(1)(a) – (c) of this Annex.

2. The courts of a Contracting State chosen by the parties and the courts in the territory of which the debtor is situated, or courts located in the State of Registry may exercise jurisdiction in respect of any claim referred to in Article 3(1)(d) – (e) of this Annex.

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

Article 5 – De-registration and export request authorisation

1. Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form appended to this Annex 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(I) of the Protocol 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(1) of the Protocol and Article 3(3) of this Annex.

Article 6 – Remedies on insolvency

Alternative A

1. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 6, 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.

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

3. References in this Article to the “insolvency administrator” shall be to that person or body in his official, not in his personal, capacity.

4. Unless and until the creditor is given possession under paragraph 1:

- (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.

5. Subparagraph (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.

6. The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph 1, 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.

7. The remedies specified in Article IX(1) of the Protocol and Article 3(3) of this Annex shall be made available by the national registry authorities and the other administrative authorities, as

applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with this Convention. The applicable authorities shall expeditiously cooperate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

8. No exercise of remedies permitted by this Convention may be prevented or delayed after the date specified in paragraph 1.

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

10. 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.

11. No rights or interests, except for preferred nonconsensual rights or interests of a category covered by a declaration deposited under Article 29(l) of this Convention, shall have priority in the insolvency over registered interests.

12. The Convention shall apply to the exercise of any remedies under this Article.

Alternative B

1. 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 its declaration whether it will:

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

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

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

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

4. If the insolvency administrator or the debtor, as applicable, does not make such a declaration within a reasonable time period, 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.

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

Article 7 – 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 6 of this Annex.

Article 8 – Exclusion from insolvency provisions

In their relations with each other, the parties may, by agreement in writing, exclude the application of Article 6 of this Annex.

Appendix 1-A(I)

**FORM OF IRREVOCABLE DE-REGISTRATION
AND EXPORT REQUEST AUTHORISATION****Annex Referred to in Article 24(1)**

[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] as the authorised party) under the authority of Article 24 of the Convention on International Interests in 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 *Convention on International Civil Aviation*, signed at Chicago, on 7 December 1944; 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]

By: [insert name of signatory]

Its: [insert title of signatory]

* Select the term that reflects the relevant nationality registration criterion.

Appendix 1-B

Debtor Provision*Article 14 bis – Debtor Provision*

1. Unless otherwise agreed to by the debtor, absent a default as specified in Article 10, a debtor shall be entitled to the quiet possession and use of an aircraft object subject to, and in accordance with, the terms of the agreement.

2. Nothing in the Convention shall affect any liability of a creditor under applicable law for damages caused by its breach of an agreement, as determined under applicable law. References in the preceding sentence to law are to that specified in Article VIII of this Protocol, if applicable, or, if not, in Article 5(3) of the Convention.

Appendix 2

Limited Technical CommentsConvention

Table of Contents is needed to assist readers.

Third Recital – desiring to provide “broad and mutual economic and other benefits”

rationale: The economic impact assessment has established the mutuality of economic benefits associated with the Convention/Protocol. Others have identified several non-economic benefits (e.g., acquisition of modern, safe aircraft equipment) connected with Convention/Protocol.

Article 1(l) (definition of insolvency proceeding) – means “collective judicial, administrative or other procedures, including interim and non-judicial proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court or are otherwise statutorily regulated for the purpose of reorganisation or liquidation”.

rationale: Several legal systems have insolvency-type arrangements that may not be covered by the current wording in this clause.

Article 12(d) – “lease or management (other than as contemplated by (a) –(c))....”

rationale: Some observers have expressed concern that the term “management”, without qualification, could be read to overlap with the other remedies of preservation, possession and immobilisation. As the jurisdictional rules are different, *see* Convention Article 42, clarification is desirable.

Article 15(d) – “subordination of interests referred to in sub-paragraphs (a) and (e)....”

rationale: National interests could be the subject of subordinations.

Article 17(2) – this provision should be modified if reported developmental work of the International Registry Task Force confirms our view that *requiring two electronic consents* to registration is feasible.

rationale: The purpose of the current clause is to ensure an efficient notice-based electronic registry system, which, in particular, does not contemplate manual review of consents to registration. That objective is not compromised by requiring *electronic consents*, which, if feasible, would (i) enhance the accuracy of the data on the registry and (ii) guarantee debtor involvement in what is entered into the system.

Article 17(5) (NEW TEXT) – “5.- A Contracting State making a declaration permitted by the preceding paragraph and the Protocol may specify the requirements, if any, to be satisfied prior to transmission of such information through its designated entity.”

rationale: See similar recommendation contained in Second Report of the International Registry Task Force, Attachment 1 at footnote 8 – noting the importance of setting this matter out expressly, rather than relying on inference. As this point is intended, and such was confirmed at the ICAO Legal Committee meeting, we believe that the proposed clause is clarifying in nature.

Article 19 – as noted in connection with Article 17(2), if two-party electronic consents are feasible, then, with two exceptions, all registrations may be made by one party with the consent of the other. Amendments are needed to Articles 19(2), (4) (as regarding contractual subrogation), and (6). The two exceptions are those specified in Article 19(3) (discharges – made by the holder of the interest) and Article 19(5) (registrable non-consensual interests – registered by the holder thereof).

rationale: As noted above, if the two-party electronic consent approach is feasible, the policies underlying its use apply equally to subordinations, contractual subrogation and national interests.

Article 27 – “except for losses attributable to acts or circumstances arising prior to receipt of registration information at the International Registry.”

rationale: After appropriate risk-minimising techniques are employed (e.g., back-up servers to manage “acts of god” risk), and placing aside problems associated with acts or omissions by “unauthorised users” (which are not “errors or omissions” of the Registrar or system malfunction), the sole legitimate exclusion from the Registrar’s liability, in our view, relates to acts or circumstances prior to receipt of information at the International Registry. In other words, the Registrar does not take “telecommunications risk”. This exception is not troubling to users since they can self-protect, in particular by searching for their own registrations (which may well be “prospective registrations”) prior to transferring money and/or other property.

Article 39 – “...which under that State’s law would have priority without filing or other publication over an interest in an object equivalent....”

rationale: We believe that the policy underlying this provision – superpriority (priority of unfiled subsequent interests) of declared nonconsensual interests – is predicated on that interest having priority over a consensual interest under national law *without filing or registration*. Otherwise, a State could expand, rather than retain, this special priority. The former was never intended.

Article 46 – given the refusal of the UNCITRAL working group to exclude receivables associated with mobile equipment covered by the Convention/Protocol, an approach we find regrettable, this Article must be retained.

rationale: We fully concur with the generally accepted view that, absent an exclusion from the UNCITRAL Convention for receivables linked to mobile equipment, this treaty-override provision is essential, and will avoid (i) duplicative legal requirements, (ii) added transaction costs, and (iii) application of inappropriate “receivables-financing” rules in the “equipment-financing” context. Moreover, the UNCITRAL working group refused UNIDROIT/ICAO request for that exclusion, in part, relying on the subject clause.

Article 52(1) – while we continue to question the appropriateness of this clause in the aviation-finance context, believing it is at odds with both debtor and creditor interests, we appreciate its correspondence to certain legal systems and note its optional character.

Article 55 – we support Alternative A on grounds of fairness (no in effect retroactivity) and cost avoidance (no need to review prior transactions and incurring refile and associated legal costs).

Protocol

Table of Contents is needed to assist readers.

Article I(p) (definition of State of Registry) – “...the State on the national register of which the aircraft is entered or to be entered or the State of the common mark registering authority maintaining or to maintain the aircraft register.”

rationale: Absent this technical change, Article IV(1)(b) (sphere of application), and its connection with Article XX (jurisdiction), lacks appropriate force. The change is also required to permit use of a designated entry point (at the Contracting State's option) for prospective interests. *See* Article XVIII.

Article II(3)(NEW TEXT) – “3. An authentic version of a working purpose, non-legally binding ‘Consolidation of the “Convention on International Interests in Mobile Equipment as applied to aircraft objects’ –

alternative A [is attached as Annex X hereto].

alternative B [shall be finalised jointly by the Secretary Generals of UNIDROIT and the ICAO, with assistance from interested States and industry, no later than ninety days from the adoption of the Convention and Protocol].”

rationale: *See* point 4 of the main comment letter.

Article IV(3) – “...derogate from or vary the effect of any of the provisions of Chapter II except Articles IX(2)-(4) and XII-XV.”

rationale: The scope for derogation is too wide, since the Protocol, other than Chapter II, deals with public law or third party matters. Limiting the power of derogation to Chapter II, and further excluding the mandatory provisions of Articles IX(2)-(4) and XII-XV, is appropriate.

Article XV(2) – we support removal of the brackets, and retention of the text.

rationale: The retention of the texts would provide for a simple and comprehensive priority rule in respect of assigned associated rights, that is, contractual rights under agreements covered by the Convention/Protocol.

Article XVIII(2)(a) “international interests or prospective international interests in, assignments of international interests or prospective assignments in, or sales or prospective sales of, helicopters....”

rationale: The basic logic of, and policies underlying, the current wording in the clause applies equally to (i) assignments and (ii) prospective interests (of international interests, sales and assignments).

Article XVIII(2)(d) (NEW) – “(d) international interests or prospective international interests in, assignments of international interests or prospective assignments in, or sales or prospective sales of engines, that they may be so transmitted.”

rationale: While no particular state can be the *exclusive* point of entry for interests in engines, as engines have no inherent nationality under the Chicago Convention (and thus do not fall within the State of Registry concept), nothing should prohibit a State from *permitting* use of its designated entry point of input for such interests. Doing so may, depending on facts and circumstances, provide transactional efficiencies.

Article XIX(1) – “...the search criterion for the aircraft object shall be its manufacturer's serial number, the name of the manufacturer and its model designation.”

rationale: The current text, which looks to the regulations to supplement the manufacturer's serial number (MSN) to “ensure uniqueness,” is unnecessary *if* the legal search criteria (which, in turn, ties into Convention Article 18 in respect of the criteria for a valid registration) adds (to the MSN) the name of the manufacturer and the model designation. This change, therefore, would simplify use of the International Registry.

Article XXII – while the current negotiated wording (agreed to by a special working party) is acceptable, the final sentence underscores the need for sanctioned or official *commentary*, for example, to note the intended wide reach of the words “covered or affected”. There should be no scope for arguing, for example, that Article IX of the Geneva Convention is retained in light of Article IX(2) (and, if applicable, Article XIII) of the Protocol.

Article XXXII(1) – “a Review Board shall be promptly appointedThe Review Board shall be jointly administered by UNIDROIT and ICAO. All Contracting States may designate a representative to serve on the Review Board, which shall also include representatives of industry.”

rationale: The Review Board is an important aspect of the new system, providing it with an internal capacity to address legal and practical developments. To be effective, appropriate representation is required.

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17/10/01

English and Spanish only

COMMENTS ON DRAFT CONVENTION AND DRAFT PROTOCOL

(Presented by the Latin American Association of Aeronautical and Space Law -ALADA)

1. BACKGROUND

1.1 Knowledge of the background on this matter is required to understand clearly the provisions of the draft UNIDROIT Agreement and Protocol on this issue.

1.2 In June 1988, the Canadian government asked UNIDROIT to extend the scope of application of the provisions of the Convention on International Financial Leasing adopted on May 28, 1988 to cover mobile equipment in general.

1.3 Particularly of interest was the principle that the security interests of creditors would not be invalidated and would continue to be effective in the event of insolvency of the debtor.

1.4 The UNIDROIT Council asked the Secretariat to commission a study of this issue, to be carried out by an expert with extensive financial expertise, Professor Ronald C.C. Cuming of the University of Saskatchewan (Canada). Professor Cuming prepared a report which was considered at the 68th Session of the UNIDROIT Council in 1989.

1.5 A small group of experts meeting in Rome in March 1992 considered the report, entitled “International regulation on issues of general interest relating to Interests in Mobile Equipment” and evaluated a questionnaire addressed to representatives of certain States. The group decided to prepare draft standard international regulations on security interests in high-value mobile equipment located beyond national borders.

1.6 In December 1997, a study group headed by Sit Roy M. Goode of Oxford University and other academic and legal experts drew up the first preliminary draft of the UNIDROIT Convention. The primary purpose of such document is to govern the creation and effects of the new international interest in mobile equipment and particularly to duly protect the rights of creditors under a lease agreement.

1.7 The group considered that a registry, to be created by the same Convention, was required for such regulations to be effective. Such registry is the basis for each of the Protocols which specifically regulate each category of mobile equipment, as in the case of aircraft and aircraft equipment.

1.8 Before considering the participation of the International Civil Aviation Organization in the studies leading to the draft of an International Convention, which began in December 1997 with the approval of the ICAO Council, we will discuss some of the preliminaries within UNIDROIT.

1.9 A preliminary draft was completed on March 4, 1996 by the UNIDROIT Subcommittee, based on the work of the Study Group which met for the second time in Rome (April 12-16, 1996). It is worth noting that such second meeting considered a memorandum prepared jointly by Airbus Industrie and Boeing, as representatives of the Aviation Working Group (AWG) consisting of aircraft manufacturers, aircraft leasing companies and aircraft financing institutions. Such working group drafted the aeronautical text in response to the invitation made by the Subcommittee at its third meeting, also held in Rome (October 11-13, 1995).

1.10 The purpose of this text, which we shall refer to as the “aeronautical text”, was to supply some key elements not included in the draft Convention.

1.11 The Study Group, supported by the Drafting Group, met twice to set down the conclusions reached at its meetings in Rome (April 13-15, 1996) and Oxford (October 23-24, 1996).

1.12 Considerable progress was made in the course of the review of the draft, during which a wide range of issues were addressed to balance both the international interest in having expeditious and reliable procedures and to temporarily allow for the registration of non-consensual national interests, previously identified by the States, to give them priority over international interests.

1.13 The result of the review of the articles was submitted to the third meeting of the Study Group, held in Rome (15-21 January, 1997).

1.14 Such meeting considered a proposal submitted jointly by the AWG and IATA, calling for the future international instrument to be developed on the basis of the general principles laid down in the Convention, applicable to the various categories of mobile equipment and one or more specific protocols with additional particular regulations to govern each category of equipment, such as aircraft and aircraft equipment.

1.15 This method was based on the need to provide a margin of flexibility to those sectors or equipment in respect of which progress towards the future convention was greater (aircraft equipment), and also taking account of the fact that further progress in developing regulations applicable to certain classes of equipment (railway rolling stock and space property) was impossible.

1.16 At its meeting in Wurzburg on July 24-26, 1997, the Drafting Group added several amendments agreed at the third meeting, to the text prepared by Professor Goode, Coordinator of the Study Group, particularly with a view to regulating the relationship between the future Convention and each Protocol.

1.17 It was only on December 1, 1997 that the ICAO Council, at its 10th Session in its 152nd Period of Sessions, included the subject matter of this paper in the general work program of the Legal Committee.

1.18 Two important issues led the International Civil Aviation Organization to participate: the creation of an international interest in mobile equipment, an entirely new legal concept, consisting of an international interest in addition and unrelated to the various types of interests recognized by the national legislation of the various States and, in addition, the creation of an international registry where titles relating to this type of international interest were to be recorded.

1.19 This constitutes a complete innovation over the previous regulations of the Convention on the International Recognition of Interests in Aircraft, adopted in Geneva in 1948 and currently in effect.

1.20 The 32nd ICAO Assembly (September 22-October 2, 1998) continued to encourage the joint work undertaken with the UNIDROIT Secretariat and assigned a higher priority to the study of this matter in the Schedule of Activities of the Legal Committee. However it should be noted that ICAO

participated in the final stage of the work carried out by the international private law institution to which we owe the initiative on this project.

1.21 In October 1998, the ICAO Legal Committee decided to set up a Subcommittee to consider a draft instrument on international interests in mobile equipment, particularly aircraft equipment, and appointed the following States as members of the Subcommittee (three of which are LACAC Members): Germany, Saudi Arabia, Argentina, Australia, Brazil, Cameroon, Canada, China, Ivory Coast, Egypt, Spain, the United States, the Russian Federation, Finland, France, India, Indonesia, Ireland, Italy, Jamaica, Japan, Jordan, Mauritius, Nepal, the United Kingdom, Singapore and Venezuela.

1.22 The Subcommittee held three joint meetings with the UNIDROIT Committee of Experts in Rome (February 1-12, 1999), Montreal (August 24-September 3, 1999) and again in Rome (March 20-31, 2000).

1.23 As a result of this work and that of the 31st Period of Sessions of the ICAO Legal Committee in Montreal (August 28-September 8, 2000), several amendments were introduced to the draft Convention and Protocol and a text combining both instruments, based on the work of the Rapporteur, was approved. Mr. Gilles Lauzon (Canada) was appointed as Rapporteur at this 31st Period of Sessions of the ICAO Legal Committee.

1.24 In its 161st Period of Sessions and again in its 162nd Period of Sessions (March 2001), the ICAO Council once again assigned a high priority to consideration of this matter, and deeming that the requirements to call a diplomatic conference had been met, accepted the offer of the government of the Republic of South Africa for such meeting to be held in South Africa. The meeting is thus to be held in Capetown from October 29 to November 16 of this year, under the joint auspices of ICAO and UNIDROIT.

1.25 The Draft Convention, Draft Protocol and the Consolidated Text show that they are the result of arduous work originally undertaken many years ago by UNIDROIT, later joined by IATA and ICAO.

2. METHODOLOGY USED IN THE INTERNATIONAL DOCUMENTS

2.1 There is a separation in regulatory structure between the UNIDROIT Draft Convention on international interests in mobile equipment and each specific protocol, such as the Draft Protocol on specific matters relating to aircraft and aircraft equipment.

2.2 It would seem that in the first stage of development of the above instruments, the intention was to include specific rules for each type of equipment, such as railway rolling stock, space property and aircraft equipment in the Convention, but that it was finally decided to adopt a two-fold structure because, among other reasons, it was believed that this would expedite the process of ratification, regardless of the degree of development in respect of categories of equipment other than aircraft equipment.

2.3 This treatment, which is certainly innovative – at least in international aeronautic law treaties – has more drawbacks than advantages, stemming from the difficulties both in its understanding and enforcement, not to mention the problems entailed in the ratification of both instruments. This two-fold situation raises the need for a continuous cross-reference between both documents which makes their application a very complex matter.

2.4 Furthermore, the very specific character of the air transport system calls for specific treatment, independent of that applied to other systems; we thus favor a consolidated text, as prepared by the President of the ICAO Legal Committee for its 31st Session.

2.5 Bearing in mind the unique features of international air transport and the current state of the industry, required to secure financial support, for practical reasons it would be better to adopt a

single instrument, with provisions governing interests in aircraft and aircraft equipment. This issue of structure is extremely important in the expected life of the international instrument.

2.6 Having explained the position of ALADA regarding the economy of the instruments, we shall go on to consider the respective preambles setting forth the reason for adopting the system governing international interests.

2.7 The six -somewhat repetitive- recitals of the Preamble of the Draft Convention mention the need to facilitate financing for the acquisition and use of mobile equipment of high value or particular economic significance through asset based financing and leasing in two ways:

- a) by establishing a legal framework for international interests in this kind of equipment; and
- b) by creating an international registry to protect such interests.

2.8 In the Preamble of the Draft Protocol, which we shall refer to as the “Aeronautical Protocol”, two recitals refer directly to the Convention, recognizing the need to adapt it to bring it into line with the very specific nature of aircraft financing.

2.9 The Preamble of the Combined Text merges the recitals of both documents into its six recitals, making it much clearer. As we believe this to be the best alternative, we shall now consider the Combined Text, progress in which would be highly desirable.

2.10 While admitting that it is a significant improvement over the independent versions, we believe it is excessively based in the tradition of “common law” which could give rise to certain inconsistencies with Roman-Germanic or continental law systems. A better balance between both systems would thus be required, such as the play of the interests at stake, of creditors on the one hand, and those of debtors, who need to have all proper defenses, on the other. This balance would be the key to success in securing adhesions and ratifications from the largest number of States.

2.11 The other issue to be settled is its relationship with the 1948 Geneva Convention. While it is true that the Geneva Convention would continue to govern all rights and interests not contemplated in the Combined Text, it is not good legislative practice to adopt this kind of treatment which hampers interpretation and thus, application of the text. The project under consideration refers to a special type of guarantee, security interests rather than personal guarantees.

2.12 The Combined Text basically consists of 75 articles, grouped into thirteen chapters, preceded, as already mentioned, by a Preamble citing the general and specific bases for the Convention and the Aeronautical Protocol.

2.13 Despite the fact that the Combined Text is much clearer than the draft Convention and the draft Protocol, its wording is highly analytical and unclear on many issues, showing the marked influence of “common law”; it is thus not easy to understand for those of us governed by Roman-Germanic or continental law systems.

3. ANALYSIS OF THE PRINCIPLES OF TRANSPARENCY, PROMPT EXECUTION AND APPLICATION OF INSOLVENCY LAW

3.1 The Combined Text sets forth three requirements, resulting from the need to protect the interests of creditors, debtors and any affected third parties with the creation of this kind of “international interest”.

3.2 It could be said that there is a clear desire to maintain the “principle of transparency”. That is the same purpose pursued with the creation of an international registry to record not only existing international interests but also any such interests which may be created in the future, as well as registrable non-consensual rights and interests, existing and prospective assignments of such interests, acquisitions by legal or contractual subrogation, subordination of interests and notices of international interests.

3.3 Thus, this type of registry, placed under a supervisory authority, covers a wide range of rights and interests; however, many of the real rights contemplated in the 1948 Geneva Convention which, pursuant to article 58, as amended, would fall under the scope of this Convention are not covered, thus excluding a broad range of material from application of this Convention, limiting the scope of this Convention to rights in personam and rights other than rights in rem. Special attention should be paid to the possible inconsistency in interpretation between financial leases and leases with a term in excess of 6 months contemplated in the 1948 Geneva Agreement, where the right of the lessee is defined as a right in the aircraft arising from its capacity as operator, without discussing whether the said right is a right in rem or a right in personam.

3.4 The Geneva Convention provides that: “Contracting States undertake to recognize: a) Title in and to aircraft; b) The right granted to the holder of an aircraft to acquire title thereto by purchase; c) The right to hold an aircraft under a lease agreement with a term of not less than six months; d) Mortgages and similar rights in and to an aircraft, created by contract to secure payment of a debt; ...” (Article 1).

3.5 The right granted to the holder of an aircraft to acquire title thereto by purchase is the right of the holder of a purchase option, which seems to have been incorporated into the new Convention (Combined Text) as a typical right in personam. It is the imperfect or revocable ownership of a purchaser who made the transaction subject to a condition subsequent. That is the case in paragraph c) of article 1 of the 1948 Geneva Convention.

3.6 Summing up, transparency is based on publicity, which is essential. It is an alternative available to the financier or lessor to ensure that his interest in the subject matter of a financial or leasing transaction is senior to any other possible claim over the same object. The purpose is to protect him vis-à-vis third parties and ensure that his claim will have priority over the claims of such third parties.

3.7 It should be noted that contractual categories are included in the Registry created by the convention, with the sole exception of the so-called national interests, that is, non-consensual categories such as those of tax creditors, already indicated by each State at any time as required under sections 51 and 52 of the Combined Text of the Convention. Indeed, any Contracting State may, at any time, in a declaration deposited with the depositary of the Protocol, declare those categories of non-consensual rights or interests which, under the laws of that State, would have priority over an interest in the object equivalent to that of the holder of the international interest and which 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.

3.8 While this kind of option would in principle seem to benefit developing States, allowing them to preserve their tax claims, if the list envisaged by the convention is long, the “risk” to be factored in financial transactions will grow to the same extent, thus making it a double-edged sword for those States which depend on external financing.

3.9 The Combined Text also lays down the rule that priority will be determined on the basis of “first in time”.

3.10 The purpose of this so-called “transparency” principle is to prevent any concealed maneuver conferring a higher priority to claims other than those registered as laid down in the Convention, thus, facilitating international financing transactions by eliminating such risk.

3.11 The document provides for the creation of an international registry which is to operate round the clock, where interests in and to aircraft or aircraft engines are to be registered, and determines the priorities set forth above.

3.12 The other principle adopted in the document is the principle of “prompt execution” which would apply if the debtor incurs in default or insolvency, enabling the creditor to promptly recover the aeronautical object and re-export it.

3.13 Thus, the alternatives for the recovery of the subject matter of the interest, both judicial and non judicial, as remedies available to the creditor in the event of default by the debtor, are directed at ensuring expeditious and economical execution.

3.14 It should be noted that a special insolvency regime is created, to apply only if the contracting State which is the main insolvency jurisdiction declared it when ratifying, accepting, approving or adhering to the international instrument. In the absence of such declaration, the insolvency regime of the respective State will apply.

3.15 Even in the new form of the Combined Text, the outright recovery of the subject matter of the security interest should not be admitted without the prior intervention of the court. Otherwise, such provisions might be inconsistent with the provisions of national insolvency law and jeopardize the continuation of transport services inherent in the operation of the aircraft. The debtor should continue to be in possession of the aircraft precisely to avoid that risk.

3.16 This principle should be distinguished from the principle of “prompt ratification” which, in respect of articles 62 and 63, could be construed as a mechanism intended to secure rapid effectiveness of the Convention.

3.17 The international instrument would go into effect according to a device which is unusual in this type of document. A brief three-month period as from the date of deposit, or from the third or fifth ratification, acceptance, approval or adhesion instrument is taken as a reference (included between square brackets as an option for the Diplomatic Conference), greatly facilitating the effect of the Convention involved. This is due to the need to create an international registry, requiring a significant number of adhering or ratifying States to make it viable and economical, since only a few States could not generate the high level of activity required to support the Registry.

3.18 The last principle of the Combined Text of the Convention to be discussed is that of “application of insolvency law”.

3.19 What is the scope of this principle? It assures financial creditors or lessors that the principles of transparency and prompt execution in the event of insolvency of the debtor will be fully respected in insolvency or bankruptcy proceedings. On this issue, particular care should be taken to avoid inconsistency with domestic insolvency legislation.

3.20 The registered international interest should be valid as against any other interest of the trustee or debtor in the insolvency or bankruptcy proceedings; however, as already noted, it should not affect special provisions laid down in insolvency legislation.

4. ECONOMIC IMPACT OF THE UNIDROIT-ICAO DRAFT CONVENTION

4.1 It should be noted that leases, the core of the international instrument, represent, under current economic circumstances, a system whereby airlines can finance the acquisition of aircraft, thus improving production technology, allowing for the replacement of equipment before it becomes obsolete, inefficient or less profitable, competing in more favorable terms as a result of lower costs.

4.2 Leases are actually financial transactions consisting of agreements between the leasing company, the aircraft manufacturer and the user, that is, the airline, which needs to finance the acquisition of the aircraft through a mechanism other than a normal loan.

4.3 The international document undoubtedly has a specific purpose, laid down in article 5 relating to Interpretation and Governing Law and which, in turn, refers to the recitals.

4.4 What would be the purpose of adopting the complex system of regulations represented by the UNIDROIT-ICAO Project? The need to acquire and use aircraft and aircraft equipment of high value or particular economic significance and to facilitate financing for the acquisition and efficient use of such equipment.

4.5 Such purpose is of interest both to air carriers and to the State, which wants to have a network of services using a fleet of modern aircraft for the service to users. This requires sizeable investments which, in developing countries, can only be made by resorting to external financing.

4.6 The decisive element, which would lead to the ratification of or adhesion to the Convention, lies in determining whether this is a genuinely attractive alternative for such purpose.

4.7 This leads us to consider possible sources of financing available to the air transport system, particularly for fleet renewal. One such source are internally generated funds, when such funds are available. Such funds could be generated by the same operations, which is a desirable but unlikely scenario due to the critical economic condition of airlines. The other possibility is resorting to external financing. This could be a Government subsidy, an internationally questionable practice, or bank financing, either through financial leases or equity interests, involving the whole or part of the corporate capital, with the participation of the public, private, domestic or international sector.

4.8 But actually, the main sources of financing in the air transport sector are long-term financial alternatives from the banking sector, or private-sector financing through mortgage loans, placements of bonds through agencies with the ensuing securitization (denoting the conversion of a rigid or illiquid loan into a liquid one) and operating or financial leases. We are thus recognizing the strong dependence on outside financing, particularly in Latin America.

4.9 Theoretically, if adopted, the Convention could give airlines of developing countries cheaper access to financing, which would not be as burdensome as in transactions in which the country-risk has a direct impact, resulting in higher interest rates. This results from comparing secured and unsecured loans and mutually-agreed securitizations.

4.10 These advantages stem, *inter alia*, from a potential cost reduction, particularly in legal and other professional fees, as well as lower interest rates. The cost will naturally vary depending on the market, efficiency in the use of legal resources, the complexity of negotiation structures and the lack of reliable information; the estimated savings can thus be speculative.

4.11 It is extremely important to bear in mind the seasonal character of the operation of air transport services, where there are times when a larger fleet than that normally available is required, diluting the risks of aircraft acquisition or leasing over time.

4.12 The same can apply to existing spare parts and aircraft engines and it can thus be held that adopting the Convention will result in favorable conditions for cost reduction and better access to re-equipment for a modern fleet, thus ultimately benefiting users of air transport services.

4.13 Concurrently with these potential advantages, there is the indirect impact on the economy of the country where the airline using this type of facility operates, with the natural result of an increased level of employment, trade, taxes and profits, among other elements. These advantages are not easy to assess "a priori", but the development of the air transport industry will undoubtedly act as a catalyzer on the national economy. These implications are both direct and indirect; the latter stem from the necessary interaction between air transport and other supplementary services such as service vendors, manufacturers of additional elements, etc.

4.14 Particularly important among such elements is fuel consumption, due to its impact on the operation of air transport services. International fuel consumption of air transport services stands at about 3.4 million of barrels of JP 1 a day.

4.15 Ramp services and the supply of on-board meals should be added to the above. Worldwide, the following figures are of interest: a) the four largest ramp service companies in 1996 employed 25,000 persons, with profits of 1 billion dollars in 1996; b) in 1996, catering companies employed 96,000 people and showed profits of 6 billion dollars. Such figure does not include those working for airlines with their own catering (ICAO, WW/IMP/WP dated March 19, 1998 submitted to the CNS/ATM World Conference held in Rio de Janeiro on the economic and financial elements of such services).

4.16 The tourist business in certain regions is growing exponentially. We must therefore contemplate the impact of travel agencies, even though their business has been suffering the negative effect of information technology tools such as the Internet.

4.17 The activities of leasing companies, dedicated to giving the air transport community access to equipment on competitive terms, should also be taken into account. Such companies employ some 3,000 persons worldwide, with profits of about 7 billion dollars in 1996.

4.18 ICAO has statistically identified this type in effect in studies conducted after the Montreal World Air Transport Conference (November 1994) had been convened. But it must be admitted that the beneficial effects of availability and lower costs in the operation of air transport services on the regional economy are difficult to quantify.

4.19 One of the parameters used in this case is Gross Domestic Product, measured by the increase in production value in the market, the level of salaries, interest and dividends, yields from the air transport industry and related activities. In markets where prices of financial services and production factors are determined by the free play of supply and demand, this is a sensible way of measuring economic contribution.

4.20 Unfortunately, models to measure the cost-benefit ratio are relatively undeveloped in Latin America, thus making it impossible to determine with any degree of certainty the impact that the adoption of the Convention would have on the air transport industry in the region.

4.21 The creation of jobs is extremely important in Latin American economies needing a strong revival and, given the repercussion of air transport and related activities worldwide, the catalyzing role of air transport on domestic economies should be borne in mind.

4.22 The other advantage to be measured is the generation of tax revenues as a critical element to maintain and enhance the social and economic infrastructure, which are indicative of the standard of life of a country.

4.23 Another point to be kept in mind is the desire of many developing countries to increase international financing so as to reduce their external debt. Such debt could be affected by Government financing guarantees or loans granted to national air carriers.

4.24 The contribution of air transport and of civil aviation activities generally to economic growth, employment and profits is worthy of note, particularly given its multiplier effect on other supplementary and related non-aeronautical activities.

4.25 If this type of international regulatory instrument, with the adjustments required to bring it into line with the basic and non-waivable principles of domestic legislation, is directed at facilitating access to upgrading of airline flight equipment, creating favorable conditions for the development of one of the mechanisms more widely used in the market, operating and financial leases, the efforts put forward by both international institutions for over a decade in the service of the international air transport community will have been useful.

5. COURSES OF ACTION SUGGESTED BY ALADA

The review of the key points of this project which are the subject matter of this Working Paper should lead ICAO Members participating in the Diplomatic Conference to be held in Capetown (South Africa) from October 29 to November, 2001, to analyze, in the light of their own domestic legislation and needs, and on the basis of the economic advantages to be shared by airlines, service providers, employees, users and the domestic economy, to decide on the advisability of adopting the Consolidated UNIDROIT-ICAO text, with such amendments or reservations as may be imposed by these two important elements.

DCME Doc No. 9

21/09/01

English and French only

COMMENTS ON DRAFT CONVENTION

(Presented by the International Bar Association Sub-Committee E8 on
International Financial Law Reform)

Reference is made to your joint letter dated 24 May 2001 addressed to Marcello Gioscia and inviting the International Bar Association to designate one or more representatives as observers to the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol and to formulate comments on the current drafts of such documents. In response to such letter, Sub-Committee E8 of the International Bar Association is pleased to submit the following comments on the text of the draft UNIDROIT Convention on International Interests in Mobile Equipment dated 6 April 2001 (DCME Doc No. 3).

As a preliminary and general comment, the Sub-Committee would like to indicate its support for and approval of the multi-equipment approach of the draft Convention. We believe that this approach has allowed for the development of a suitably coherent body of rules applying to the three very important types of equipment dealt with under the Convention, all of which have become the focus of particular forms of financing techniques which depend crucially on the validity and enforceability of rights of security. Moreover, the view of our members participating from various jurisdictions is that the multi-equipment approach will assist the Convention in overcoming resistance which may be present in various national legal systems if there is a perception that a certain category of economic operators is being singled out for preferential treatment based merely on the type of business in which they engage. The multi-equipment approach, by contrast, underlines the need for a particular set of internationally recognised rules to apply to a broader category of equipment which, due to its highly mobile nature, cannot be adequately dealt with under any system of purely domestic law.

The Sub-Committee has seen that the Convention/Protocol structure has been extremely helpful in allowing specialist practitioners to participate in the highly technical discussions necessary to tailor the application of the international interest to the specific needs of single types of mobile equipment. Moreover, the Sub-Committee has found the Convention/Protocol structure to be impressively workable and, most importantly, extremely precise in the interpretation of the rules being introduced.

As comments relating to the Aircraft Protocol have already been made during the relevant working sessions through members of the IBA's Aviation Law Committee, Sub-Committee E8 has limited its drafting comments as set forth below to the provisions of the Convention itself.

1. *Preamble to the draft Convention*

The second declaration of the preamble to the draft Convention highlights the importance of asset-based financing and leasing and the need to facilitate these types of transaction. The provisions of Article 5 of the draft Convention reinforce the importance of the preamble in the interpretation of the Convention.

The Sub-Committee is aware that the most recent trend in the satellites market has been to recognise the importance of project financing, employing specifically financing techniques which are based more on projected revenues than on the value of space property as a class of fungible asset. At least once such property has been launched into outer space. The financing techniques involved for such property do not therefore rely as heavily on traditional asset-based financing as would be the case for aircraft and the Sub-Committee would support the inclusion of reference to project financing in the second declaration under the preamble to the draft Convention.

2. Article 11

The Sub-Committee would suggest the inclusion of the words “whether before or after default” following the words “including any remedies agreed upon by the parties,”.

3. Article 12

The Sub-Committee would suggest the inclusion of the words “within the meaning of Article 14” following the words “evidence of default” as they appear in the first line of paragraph 1, in order to mirror the provisions of Article 7 and ensure that the creditor’s rights apply also in the case of occurrence of events which otherwise give rise to the rights and remedies specified in Articles 7 to 9 and 12.

4. Article 14

The Sub-Committee would suggest inclusion of the words “whether before or after default” following the words “the parties may,” as they appear in the first line of this Article.

5. Article 31

The Sub-Committee has taken due note of the debate surrounding adoption of the provision currently set forth in the draft Convention in connection with the effect of an assignment of an international interest. While the Sub-Committee is sensitive to the argument that it is widely recognised in most legal systems that security follows a claim, whereas Article 31(1)(b) could be read as implying that the secured obligation is accessory to the international interest, we support the current drafting of Article 31. We believe that the current approach not only avoids conflict with the draft UNCITRAL Convention on Assignment in Receivables Financing, but is also the most effective means for ensuring the necessary degree of legal certainty which an assignment of an international interest requires.

6. Article 32

The Sub-Committee would support adoption of the second phrase in square brackets in the current draft of Article 32 of the Convention since the first alternative would not appear to provide a sufficient level of protection to a debtor in cases where consent was provided pursuant to a generic provision set forth in a financing agreement in advance of the assignment without identifying the assignee, and the debtor subsequently receives notice in writing of more than one assignment. Moreover, when acting for a potential assignee, the second alternative would allow practitioners a more practical means of ensuring the enforceability of the assignment by seeking from the debtor an acknowledgment that it has not received notice of any prior assignment, and the obligation of the debtor to provide such acknowledgement upon the creditor’s reasonable request may easily be inserted in the financing agreement.

7. Article 35

The Sub-Committee understands that the intention of this Article is to restrict an assignee’s priority to purchase-money advances related to the charged equipment. The Sub-Committee is uncertain as to why this restriction is felt necessary and notes that modern international financing practice relies heavily on cross-collateralisation among a number of assets belonging to a debtor, which would remain completely without protection under the Convention if Article 35 is adopted as currently drafted. The Sub-Committee does not feel that this is an issue which can be adequately dealt with under the proposed UNCITRAL Convention on Assignment in Receivables Financing and would encourage the Diplomatic Conference to remove this limitation on the priority of an assignment under the Convention.

DCME Doc No. 10
24/09/01
English and French only

COMMENTS ON DRAFT CONVENTION AND DRAFT PROTOCOL

(Presented by the Government of the Czech Republic)

Following an internal debate on both instruments, the Czech side considers it useful to make the following changes to the *draft Convention*:

- (a) In Article 30, add the following paragraph 3

“Any assignment of transfer pursuant this Article 30 shall be subject to the condition that any liability, obligation or responsibility (including, but not limited to, tax obligations) of the debtor shall not, as a consequence of such assignment or transfer be greater than it would have been in the absence of such assignment or transfer. Such assignment or transfer can be made only to the person, who:

- (i) fulfils the criteria agreed in advance in the agreement between the creditor and debtor,
(ii) is not a competitor of debtor.”

- (b) In Article 14, specify the meaning of the term “parties”. In the light of the Convention, the term “parties” in this Article presumably includes parties to contractual relations and does not cover Member States of the Convention.

- (c) In Article 10 of the Convention, specify the basic forms of default affecting the exercise of the right and the adoption of measures mentioned in Articles 7 to 9 and 12.

The Czech side also suggests that a reference to “international Organisations (collecting charges) be included in Articles 38 and 39, and the necessary related modifications be made to other Articles and to the Definitions.

As regards the *draft Protocol*, the Czech side recommends:

In Article XI, to adopt the procedure according to Alternative B.

DCME Doc No. 11
24/09/01
English and French only

COMMENTS ON DRAFT CONVENTION AND DRAFT PROTOCOL

(Presented by the International Coordinating Committee of Aerospace Industries Associations (ICCAIA))

The International Coordinating Committee of Aerospace Industries Associations (ICCAIA) endorses the joint IATA/AWG comments (DCME Doc No. 7).

DCME Doc No. 12
3/10/01
English and French only

COMMENTS ON DRAFT CONVENTION

(Presented by the Intergovernmental Organisation for International Carriage by Rail (OTIF))

First of all, the Intergovernmental Organisation for International Carriage by Rail (OTIF) wishes to congratulate the Secretariats of UNIDROIT and ICAO for the excellent work they have accomplished, which has enabled the preparation of the draft Convention on International Interests in Mobile Equipment and the draft Protocol thereto on Matters specific to Aircraft Equipment.

On the basis of the aforementioned draft Convention, a Rail Working Group, chaired by Mr H. Rosen, expert consultant on international rail finance matters to the UNIDROIT Study Group for the preparation of uniform rules on international interests in mobile equipment, prepared a preliminary draft Protocol to the draft Convention on Matters specific to Railway Rolling Stock. This preliminary draft Rail Protocol (a copy of which is enclosed herewith) was submitted to a first session of governmental experts, organised jointly by UNIDROIT and OTIF in Berne on 15 and 16 March 2001. As emerges from the report on this session, the preliminary draft Protocol was very favourably received by the large majority of the governmental experts, even though a certain number of amendments or additions will still be necessary, in particular in the light of the results to come out of the Cape Town diplomatic Conference. A second session of governmental experts, to be organised jointly by UNIDROIT and OTIF, is already fixed for May 2002. OTIF accordingly attaches great importance to the maintenance of the dual structure approved by both the third UNIDROIT/ICAO joint session and the 31st Session of the ICAO Legal Committee. It would in fact seem extremely useful to have a framework Convention drawn up without reference to any one particular category of equipment, on the one hand, and specific Protocols taking account of the needs of the business sector concerned by the category of equipment covered by each such Protocol, on the other hand.

Such an approach is particularly called for in the rail sector in order to permit the determination of the criteria for the identification of the object while taking account of the specific structure of the rail industry. A dual approach also enables different legal cultures to be better accommodated as well as guaranteeing a balance between the traditions of continental legal systems and Common law systems. Finally, the structure of a framework Convention and equipment-specific Protocols makes it easier to deal with the delicate questions concerning public service in the rail sector.

Consequently, the OTIF Secretariat would invite the diplomatic Convention kindly to maintain the dual structure as currently embodied in the basic documents to be discussed at the diplomatic Conference.

The OTIF Secretariat wishes every success to the work of the Conference and takes this opportunity already to thank the Secretariats of UNIDROIT and ICAO for their efforts to this end.

Appendix

**DRAFT UNIDROIT CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT**

(as submitted by the UNIDROIT Governing Council for adoption to a
diplomatic Conference, to be held in Cape Town from 29 October to 16 November 2001):

**PRELIMINARY DRAFT PROTOCOL
ON MATTERS SPECIFIC TO RAILWAY ROLLING STOCK**

(as established by a working group, organised, at the invitation of the President of UNIDROIT, by
Mr H. Rosen, expert consultant on international rail finance matters to the UNIDROIT Study
Group for the preparation of uniform rules on international interests in mobile equipment and
co-ordinator of the Rail Working Group and submitted to the first joint session of a
UNIDROIT/OTIF Committee of governmental experts, held in Berne on 15 and 16 March 2001)

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Article III	<i>Sphere of application</i>
Article IV	<i>Description of railway rolling stock</i>
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CHAPTER II	DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS
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PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC TO RAILWAY ROLLING STOCK

THE STATES PARTIES TO THIS PROTOCOL

CONSIDERING it necessary to implement the Convention on International Interests in Mobile Equipment, as it relates to railway rolling stock, 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 railway rolling stock and their finance,

HAVE AGREED upon the following provisions relating to railway rolling stock:

CHAPTER I – 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) [“autonomous transnational registry authority” means a transnational registry authority which has been designated as an autonomous transnational registry authority pursuant to Article XIV herein];

(b) “local personal property register” means a registry in a Contracting State, whether national or local in a jurisdiction forming part of a state, in which an interest in railway rolling stock governed by the Convention may be registered;

(c) “primary jurisdiction” means the Contracting State in which the centre of the debtor's main interests is situated, which for this purpose shall be the place of the debtor's seat or domicile unless proved otherwise;

(d) “railway rolling stock” means vehicles moveable on or confined to movement on or directly above a fixed railway track or guideway, or superstructures or racks installed or designed to be installed on such vehicles, including all traction systems, engines, brakes, axles, bogies, and pantographs, and in each case including accessories and other components equipment and parts installed or incorporated therein or attached thereto and all operating and technical data manuals, notebooks and other records relating to all or part of any of the foregoing;

(e) “transnational registry authority” means the authority, or authorities acting collectively, maintaining a local personal property register (or a number of such registers acting collectively) designated pursuant to Article 17(4) of the Convention and as provided for in Article[s] XIII (2) [and XIV] herein;

(f) “transnational rail network” means a geographical area out of which it is not possible for railway rolling stock to move on, or directly above, rails;

(g) “unique identification criteria” means any of the following namely

(i) the manufacturer's serial number or works number and its manufacturer's model designation;

(ii) a description of railway rolling stock that includes reporting marks, road numbers or similar identification conforming to the description of railway rolling stock in the transnational rail network in which the relevant railway rolling stock is located, approved or accepted by a transnational registry authority as sufficient to enable railway rolling stock to be uniquely identified; or

(iii) such other identification criteria as the Supervisory Authority may prescribe or approve from time to time in regulations which identification marks in each case are embossed or otherwise affixed to the relevant railway rolling stock.

Article II – Application of Convention as regards railway rolling stock

1. The Convention shall apply in relation to railway rolling stock as provided by the terms of this Protocol.

2. The Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as the Convention on International Interests in Mobile Equipment as applied to railway rolling stock.

Article III – Sphere of application

In their relations with each other, the parties may by agreement in writing, derogate from or vary any of the provisions of this Protocol except, Articles IV and VI – VIII.¹

Article IV – Description of railway rolling stock

1. A description of railway rolling stock that includes the unique identification criteria is necessary and sufficient to identify the object for purposes of Articles 6 (c) and 30 (2) (b) of the Convention.

2. Any change to such description shall be notified by debtor to the Registrar on or before such change takes place but any claim of a creditor in relation to railway rolling stock where its description has been changed, shall be subject to any prior right registered in favour of a creditor in relation to the previous description or descriptions. In the event that railway rolling stock moves out of a transnational rail network such relocation shall be notified by debtor to the Registrar immediately such change takes place, specifying the unique identification criteria appropriate to the new location.

3. Any modification, renewal or alteration to railway rolling stock shall not affect the rights of creditors.

Article V – Representative capacities

A person may enter into an agreement and register an international interest in railway rolling stock created or provided for by the agreement in an agency, trust or other representative capacity. In such case, that person is entitled to assert rights and interests under the Convention to the exclusion of the person or persons represented.²

CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article VI – Modification of default remedies

1. In addition to the remedies specified in paragraph 1 of Article 7 and in Article 9 and 12 (1) of the Convention, the creditor may obtain an order from the court in the jurisdiction in which the

¹ May require further consideration.

² May be moved into the Convention.

railway rolling stock is physically located, directing immediate delivery of the railway rolling stock to a location within or outside of such jurisdiction where thereafter the creditor can move the railway rolling stock into the relevant transnational rail network where the railway rolling stock is then located without the need of traction to be provided by the defaulting debtor or any party related to or acting in concert with it.

2. The creditor may 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. For the purposes of Article 7(2) of the Convention an agreement between a debtor and a creditor as to what is commercially reasonable shall be conclusive.

4. For the purposes of Article 7(3) of the Convention, the chargor and chargee may agree in writing a notice period which shall be deemed to be reasonable if not less than 14 calendar days.¹

Article VII – Choice of Law

1. The parties to an agreement may agree on the law to govern their contractual rights and obligations, wholly or in part. The agreement and transaction referred to therein need not bear a relationship to the selected body of national law.

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.

Article VIII – Speedy judicial relief

1. Notwithstanding the provisions of Article 12(1) of the Convention, relief shall not be dependent upon the agreement of the debtor.

2. Relief given under Article 12(1) (a) of the Convention may specifically include directions as to normal maintenance and other necessary repair or modification of the object.

3. Judicial relief under Article 12(1) of the Convention may be granted in a Contracting State notwithstanding the commencement of insolvency proceedings in another [Contracting] State unless its application would contravene an international instrument binding on either Contracting State.

Article IX – Remedies on Insolvency

1. For the purposes of this Article, “insolvency date” means the earliest date on which one of the events specified in paragraph 2 shall have occurred.

2. This Article applies where:

- (a) any insolvency proceedings against the debtor have been commenced by the debtor or another person in a Contracting State which is the primary insolvency jurisdiction of the debtor; or
- (b) the debtor is located in a Contracting State and has declared its intention to suspend, or has actually suspended, payment to creditors generally.

3. Within a period not exceeding sixty days from the insolvency date (the “cure period”) the debtor or an insolvency administrator, shall:

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

¹ The AWG has suggested 10 days but the rail working group considers this as being too short.

(b) give possession of the railway rolling stock to the creditor save where otherwise previously agreed in writing and otherwise in accordance with, and in the condition specified in the agreement and related transaction documents.

4. Unless and until the creditor is given possession under paragraph 3:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the railway rolling stock 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.

5. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the railway rolling stock under arrangements designed to preserve and maintain it and its value.

6. The insolvency administrator or the debtor, as applicable, may retain possession of the railway rolling stock where, during the cure period, it has cured all defaults and has agreed to perform all future obligations under the agreement. A second cure period shall not apply in respect of a default in the performance of such future obligations.

7. No exercise of remedies permitted by the Convention may be prevented or delayed after the cure period.

8. No obligations of the debtor under the agreement and related transactions may be modified in the insolvency proceedings without the consent of the creditor.

9. 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].

10. No rights or interests, except for preferred non-consensual rights or interests listed in an instrument deposited under Article 38 of the Convention, shall have priority in the insolvency over registered interests¹ [and no doctrine of reputed ownership shall defeat registered interests].

11. Nothing in this Article shall operate to modify Article 29(3) of the Convention to which this Article shall be subject.

12. Article VI of this Protocol and Article 7 of the Convention as modified by Article VI of this Protocol, shall apply to the exercise of any remedies under this Article.

Article X – Insolvency assistance

The courts of a Contracting State in which railway rolling stock 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 IX.

CHAPTER III – RAILWAY ROLLING STOCK REGISTRY PROVISIONS

Article XI – Supervisory Authority and the Registrar

1. The initial Supervisory Authority shall be [the Intergovernmental Organisation of Carriage by Rail or such successor organisation or other body as it may appoint]. [Subject to paragraph 2 below,] the Supervisory Authority shall appoint a Registrar.

2. [The initial Registrar hereby designated to operate the International Registry shall be Eurofima European Company for the Financing of Railroad Rolling Stock]. The Registrar shall subject to paragraph 4 below, create an independent special purpose affiliate or division for the purpose of operating the International Registry to be known as the Registry Operating Entity.

¹ See also comment below on Article XXV.

3. The Registry Operating Entity shall be organised in consultation with the Supervisory Authority. Its constitutive documents shall contain provisions which:

- (a) restrict it to acting as Registrar and performing ancillary functions;
- (b) ensure that it has no greater duties (fiduciary or otherwise) to its members than to any other person or entity in the performance of its functions as Registrar.¹

4. In relation to the initial Registrar or any successor Registrar, the appointment shall be subject to regulations made by the Supervisory Authority from time to time and to an operations agreement entered into with the Supervisory Authority setting out the basis on which the registry should function.

5. The initial Registrar shall operate the International Registry for a period [of ten years from the date of entry into force of this Protocol][that the Supervisory Authority considers appropriate but in any event not exceeding ten years]. Thereafter, the Registrar shall be appointed or re-appointed for such period that the Supervisory Authority considers appropriate (but in any event not exceeding ten years).²

6. Notwithstanding the foregoing, the Supervisory Authority (a) shall, as soon as is reasonably possible, appoint a replacement Registrar in the event that the Registrar (i) shall resign (ii) shall become insolvent or generally be unable to pay its debts (iii) shall be dissolved and (b) shall be entitled to appoint a replacement Registrar in the event that the Registrar does not [materially] comply with its obligations herein, under the operations agreement or under regulations set out by the Supervisory Authority.

7. The Registrar shall be entitled to contract out its duties to a third party “service provider” subject to the identity of the service provider [and to the conditions under which the service provider carries out duties on behalf of the Registrar] being accepted by the Supervisory Authority by a declaration in writing prior to such contracting out. Contracting out of its duties shall not relieve the Registrar of its obligations hereunder or under the regulations but the service provider shall become an additional party to the operations agreement entered into between the Supervisory Authority and the Registrar.

Article XII – First Regulations

The initial regulations shall be issued no later than the date that is [three months] prior to the entry into force of this Protocol. Prior to issuing regulations, the Supervisory Authority shall publish draft regulations in good time for review and comment and thereafter consult with representatives of manufacturers, operators and financiers thereon.

Article XIII – Access to Registry

1. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis.

2. All states in the area covered by a transnational rail network, provided that they act jointly and are all Contracting States, may designate one or more (acting jointly) local personal property registers as a transnational registry authority for the entire relevant transnational rail network subject to the terms of this Protocol. Any designation, to be effective, shall be subject to written notice, given to the Supervisory Authority by the relevant Contracting States advising it thereof; and [unless a designation is made pursuant to Article XIV,] a written undertaking, given to the Supervisory

¹ In the operations agreement with the Registrar there should be a requirement that it operates under a general duty of fairness and impartiality.

² This allows some discretion bearing in mind the investment in training and software which will be required by the Registrar.

Authority from the transnational registry authority, agreeing to comply with the obligations of a transnational registry authority as set out herein. The registration facilities provided by a transnational registry authority shall be operated and administered during working hours in its territory.

3. [Except where it has been designated as an autonomous transnational registry authority pursuant to Article XIV below,] any transnational registry authority designated pursuant to this paragraph 2 shall

(a) be the exclusive access (for the purposes of registration of an international security interest) to the International Registry in relation to the transnational rail network covered by it and

(b) ensure that registration through it shall automatically result in delivery of information to the International Registry as the Registrar shall reasonably require. If it comprises more than one registry facility, the transnational registry authority shall provide equal access and full co-ordination between the respective facilities but, subject to paragraph 5 below, shall otherwise conduct its affairs and shall be free to set such requirements as to form and nature of filings made through it as it as it considers appropriate.

4. For the purposes of Article IV (2) herein, notification shall [also] be given to any relevant transnational registry authority which is effectively designated hereunder where the railway rolling stock is located in the transnational rail network.

5. The Supervisory Authority shall by regulations accept the unique identification criteria proposed by the transnational registry authority [where they comply with the rules of a uniform and unique system of identification of railway rolling stock in the relevant transnational rail network, apply exclusively within such network and are sufficient to comply with the basic informational requirements of the Registrar in operating the International Registry].¹

Article XIV – [Autonomous Transnational Registries]

1. Notwithstanding Article XIII above, all states in the area covered by a transnational rail network, provided that they act jointly and are all Contracting States, may declare that a designated transnational registry authority shall be autonomous from the International Registry and accordingly shall not be subject to the jurisdiction, rules and regulations of the Supervisory Authority, Registry Operating Entity or the Registrar provided that such declaration is included in the written notice required under in Article XIII paragraph 2.

2. In the event a transnational registry authority is designated pursuant to paragraph 1 above, the undertaking to the Supervisory Authority set out in Article XIII paragraph 2 shall not be required and in respect of railway rolling stock located in the transnational rail network relating thereto, registration of an international security interest shall only be at such authority.

3. At the request of the Supervisory Authority, registration information at an autonomous transnational registry authority may be obtained by the International Registry. In such instance, the Supervisory Authority shall have the obligation of ensuring that such registration information at an autonomous transnational registry authority shall be received by and be available for search at the International Registry either directly or through an internet or other similar electronic link. Said obligation shall include, but not be limited to, ensuring that, if and where appropriate, the Registrar establish and fund all systems necessary to transmit registration information by the autonomous transnational registry authority and to receive, at the International Registry, registration information transmitted from such an autonomous transnational registry authority in the form required by the

¹ It is suggested that if Article XIV is accepted, the words in square brackets should be removed. But this is not an automatic corollary and this modification would effectively not just grant autonomy to a transnational registry in operational issues but also remove the oversight obligation of the Supervisory Authority.

Registrar. The autonomous transnational registry authority shall be required to finance its operation [as required by this Protocol] but shall not be required to incur any investment or operating costs or expenses relating to the transmission of registration information to the International Registry.]

Article XV – Additional Modifications to Registry provisions

1. For purposes of Article 18 (5) of the Convention, the identification criterion for railway rolling stock shall be the description required to identify the equipment set forth in Article IV (1) herein and the search criterion at the International Registry shall be established by the Supervisory Authority. In the event that railway rolling stock has different unique identification criteria depending on which transnational rail network it is located in, the Registrar [shall] [may], at its expense, maintain a lexicon showing the equivalent descriptions, which shall be open to inspection.

2. For purposes of Article 22 of the Convention, the categories of preferred non-consensual creditors shall be searchable by the name of the declaring Contracting State.

3. For the purposes of Article 24 (2) of the Convention, and in the circumstances there described, the holder of a registered prospective international security interest or a registered prospective assignment of an international security interest shall take such steps as are within its power to procure the discharge of the registration no later than ten calendar days after the receipt of the demand described in such paragraph.

4. For purposes of Article 20 of the Convention, registration of an international security interest shall, unless discharged or unless otherwise agreed, remain effective for an indefinite period of time.

5. Article 24 (1) of the Convention shall also apply in respect of a subordinating party *mutatis mutandis* as if it was a debtor and the registration related to the subordination of an interest.

6. The regulations shall prescribe the manner in which the following provisions of the Convention shall apply:

Article 16 (2) (e);
[Article 17;
Article 20;]¹
Article 21 (1) and (2);
Article 22; and
Article 23.

7. Notwithstanding Article 27 (1), [there shall be no liability of the Registrar for consequential loss]² and in respect of any loss arising from an error or omission by a transnational rail registry, the transnational registry authority shall assume the liability of the Registrar thereunder.

8. The insurance referred to in Article 27 (2) shall be [full insurance].³

Article XVI – International Registry Fee

1. By way of modification of Article 16 2 (h) of the Convention, the Registrar shall, subject to the approval of the Supervisory Authority, set and may from time to time amend:

(a) the fees to be paid on filing of an international security interest with the International Registry directly [or through a transnational registry authority];

¹ To review if these are needed.

² This should remain open for discussion although it may be difficult to insure for loss if consequential loss is included.

³ The term “full insurance» will need to be defined more precisely.

(b) the fee schedule to be paid by the users of the International Registry; and
 [(c) the annual fees to be paid as compensation for the operation and administration of the International Registry and the registration facilities.]

2. The fee schedule referred to in sub-paragraph (a) of the preceding paragraph shall be determined so as to recover the costs of establishing and implementing (amortised over ten years), operating [and regulating] the International Registry,] as well as the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 16(2) of the Convention provided that nothing herein shall preclude the service provider operating for profit.¹ [Except where it is an autonomous transnational registry authority] if filings are made through a transnational registry authority, such authority shall collect such fees and shall account to the Registrar therefor].²

3. The fees and amounts referred to in paragraph 1 of this Article XVI may be amended by the Registrar taking into account changed economic conditions provided that any increase of the fees and amounts by more than [ten] per cent shall require the approval of the Supervisory Authority. Amounts payable relating to the Supervisory Authority's costs shall be amended on the same basis when required by the Supervisory Authority. Amounts collected relating to the Supervisory Authority's costs shall be remitted by the Registrar to the Supervisory Authority after collection thereof as agreed between them.

Article XVII – Modification of assignment provisions

[Article 32(1) of the Convention applies with the omission of sub-paragraph (c)].

CHAPTER IV – JURISDICTION

Article XVIII – 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 railway rolling stock 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[n authenticated] written form that contains a description of the railway rolling stock in the terms as specified in Article IV of this Protocol.

CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS

Article XIX – Relationship with other Conventions

The Convention shall, for Contracting States which are parties to it, in the event of any conflict, take precedence over

(a) the Rome Convention on the Law Applicable to Contractual Obligations 1980;

¹ If the duties are outsourced, it is unrealistic to stipulate that the service is provided without profit. The charges will however be monitored by the Supervisory Authority and we leave it open for Contracting States to decide as a policy issue as to whether the Registrar should be permitted to offer its services at a profit.

² This will not be appropriate if Article XIV applies since in that case the transnational registry authority will only need to recover its own costs [but *quare* if the Supervisory Authority's costs need to be recovered by them].

(b) the Brussels Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters 1968 (as amended from time to time);

(c) the Lugano Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters 1988;

(d) the Inter-American Convention on the Law Applicable to International Contracts 1994;

(e) the Convention Concerning International Carriage by Rail 1980 as modified by the Protocol of modification of 3 June 1999; [and]

(f) the UNIDROIT Convention on International Factoring and International Financial Leasing of 1988; and

(g) the Hague Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters of 2001]

as they relate to railway rolling stock, to the extent that convention is in force among them and that convention's terms are inconsistent with the provisions of the Convention.¹

CHAPTER VI – [OTHER] FINAL PROVISIONS

Article XX – Adoption of Protocol

1. Procedures for the adoption of this Protocol shall be determined in accordance with Article 49 of the Convention.

2. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the depositary.

Article XXI – Entry into force

1. This Protocol enters into force on the first day of the month following the expiration of six months after the date of deposit of the third 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] instrument of ratification, acceptance, approval or accession, this Protocol enters into force in respect of that Contracting State on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article XXII – 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.

¹ Generally subject to review by UNIDROIT secretariat. Each convention will be reviewed to ensure that under their respective terms, Contracting States which are parties or subject thereto may agree to this Article. Possible conflicts with EU Regulations should also be reviewed.

Article XXIII – Temporal application

This Protocol applies in a Contracting State to rights and interests in railway rolling stock created or arising on or after the date on which this Protocol enters into force in that Contracting State.¹

Article XXIV – Declarations and reservations

No declarations or reservations are permitted except those expressly authorised in this Protocol.

Article XXV – Declarations modifying the Protocol or certain provisions thereof²

1. A Contracting State at the time of ratification, acceptance, approval of, or accession to this Protocol

(a) may declare that this Protocol shall not apply in the case of a purely internal transaction, namely in relation to railway rolling stock so long as it is only capable, in its normal course of use, of being operated on a single railway system within that Contracting State because of track gauge, other elements of the design of such railway rolling stock, or lack of connection to other railway systems;

(b) may declare that it will impose other conditions on the application of Articles VII to IX as specified in its declaration.

2. The courts of Contracting States shall apply Article IX in conformity with the declaration made by the State which is the primary jurisdiction.

Article XXVI – Subsequent declarations

1. A Contracting State may make a subsequent declaration at any time after the date on which the Protocol 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] 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.

4. Declarations made pursuant to Article 38 of the Convention shall be subject to this Article XXVI.

¹ Subject to rules outstanding regarding the priority of security interests in equipment created prior to the Protocol entering into force in a Contracting State (unregistered prior interests). The RWG favours a system whereby there is a significant transition period (e.g. 10 years) during which unregistered prior interests are accorded priority under the Protocol of the date of creation of the interest.

² There remains an open question as to whether the overreaching powers and rights of persons or entities appointed under statute and acting under public law (e.g. Franchising Director in the UK) will need to be specifically acknowledged in the Protocol (and Convention) or whether this is the case anyway under general principles concerning application of a private law convention.

Article XXVII – 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 six months after the date of the receipt of the notification by the depositary.

Article XXVIII – 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 [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.

Article XXIX – Review of the Protocol

[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.] [A standing conference of Contracting States shall be established pursuant to this Protocol] to consider:

- (a) the practical operation of this Protocol and its effectiveness in facilitating the asset-based financing and leasing of railway rolling stock;
- (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

and shall, after expiry of [ten] years after this Protocol is first adopted by a Contracting State, be entitled to replace the Supervisory Authority by resolution [agreed to by two thirds of the Contracting States at that time], such resolution giving not less than one year notice of replacement to the Supervisory Authority.

Article XXX – Depositary arrangements

- 1. This Protocol shall be deposited with the [UNIDROIT] [Supervisory Authority].
- 2. The [Supervisory Authority] [UNIDROIT] shall:
 - (a) inform all Contracting States which have signed or acceded to 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 Contracting States, to all Contracting States adopting the Protocol in accordance with Article 49 of the Convention and to [....];

(c) provide the Registrar with the contents of each instrument of ratification, acceptance, approval, accession, declaration or withdrawal of a declaration so that the information contained therein may be made publicly accessible; and

(d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised, have signed this Protocol.

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3/10/01

English and French only

COMMENTS ON DRAFT CONVENTION

(Presented by the Government of the United Kingdom)

1. The United Kingdom has identified a transitional problem with Article 39 of the Convention which deals with non-registrable non-consensual rights and interests. We regard it as essential that this problem be resolved in the text of the Convention and propose a draft to deal with the point.

2. Article 39(1) enables a State to make a declaration, either general or specific, as to categories of non-consensual rights and interests which are under the State's law to have priority over interests equivalent to international interests and over registered international interests. Article 39(3) provides that an international interest has priority over non-consensual rights or interests of a category not covered by a declaration deposited prior to the registration of the international interest. This means that a State is unable to use a declaration to protect the priority of non-consensual rights and interests over international interests which have already been entered on the register by virtue of the earlier ratification of the Convention by other States.

3. Upon its ratification the United Kingdom would intend to make a declaration including, for example, the rights to detain aircraft for non-payment of landing fees and the rights of aircraft repairers to retain possession of an aircraft as security for payment of the costs of repair. In such cases the person with the right to retain possession or to detain the aircraft has the right to sell the aircraft if the debt secured by the right is not paid. However, such rights would not have priority over interests which were already on the register by virtue of another Contracting State having ratified the Convention earlier. The problem will be increasingly acute for States which ratify the Convention late and may be a disincentive for them to ratify at all.

4. Two examples will illustrate the operation of Article 39(3):

(a) Airline A buys an aircraft and an international interest is registered against it after the U.K. has ratified and made its declaration. When the aircraft lands in the U.K. the right to unpaid landing fees secured by detaining the aircraft has priority over the international interest.

(b) An aircraft of Airline A is registered in State A which has ratified the Convention. An international interest is registered against the aircraft. The U.K. subsequently ratifies the Convention making a declaration that a non-consensual right to detain aircraft to secure payment of landing fees has priority.

When the aircraft lands in the U.K. the right to unpaid landing fees secured by detaining the aircraft does not have priority over the existing registered interest. This is because the interest was registered before the U.K.'s declaration (but the declaration could not have been earlier than the U.K.'s ratification).

For any given aircraft the person with the right to retain possession or to detain the aircraft would not know without consulting the international registry whether or not their right had priority over a registered international interest.

The United Kingdom proposes that Article 55 of the Convention be amended as set out in the *Annex* to these comments. This straightforward amendment would have the effect that a declaration made at the time a State ratified the Convention would give the declared non-consensual rights or interests priority over existing registered international interests.

Annex

Revised texts of Article 55

Alternative A

1. 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.
2. Notwithstanding Article 39(3) a State may declare time of ratification of the protocol that a non-consensual right or interest of a category covered by a declaration deposited at the time of ratification shall have priority over an international interest registered prior to the date of such ratification.

Alternative B

1. [Except as provided by paragraphs 2 and 3, the Convention does not apply to a pre-existing right or interest.
2. Unchanged.
3. Notwithstanding Article 39(3) a State may declare time of ratification of the protocol that a non-consensual right or interest of a category covered by a declaration deposited at the time of ratification shall have priority over an international interest registered prior to the date of such ratification and declaration.
4. Paragraph 2 does not apply to any right or interest in an object created or existing under the law of a State which has not become a Contracting State.]

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4/10/01

English and French only

COMMENTS ON DRAFT CONVENTION

(Presented by the Space Working Group)

I. INTRODUCTORY REMARKS

1. At its 76th session, held in Rome from 7 to 12 April 1997, the UNIDROIT Governing Council approved the scission of the future UNIDROIT Convention on International Interests in Mobile Equipment into a base Convention containing the general rules common to all the categories of equipment covered by its sphere of application and separate equipment-specific Protocols containing those additional rules necessary to adapt – and in effect amend – such general rules to the special financing patterns of each such category of equipment.¹

2. Pursuant to this decision, the President of UNIDROIT on 8 August 1997 invited Mr Peter D. Nesgos,² expert consultant on international space finance matters to the UNIDROIT study group that prepared the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment – that was subsequently transmitted to Governments by decision of the Governing Council, taken at its 77th session, held in Rome from 16 to 20 February 1998 – to organise and chair a working group (hereinafter referred to as the *Space Working Group*) to prepare a preliminary draft Protocol to the future UNIDROIT Convention on Matters specific to Space Property capable of being submitted to UNIDROIT as early as possible.

3. After extensive consultations and several meetings, which involved not only representatives of the manufacturers, users, financiers and insurers of space assets³ but also representatives of the interested international Organisations⁴ and international space law jurists, on 30 June 2001 Mr Nesgos, on behalf of the Space Working Group, communicated to the President of UNIDROIT the text of a preliminary draft Protocol on Matters specific to Space Property (hereinafter referred to as the *preliminary draft Protocol*) which it considered ripe for transmission to Governments. The text of this preliminary draft Protocol is enclosed herewith as an Appendix to these comments.

¹ The immediate reason for this decision was “to accommodate the aviation industry’s desire to be able to enjoy the economic benefits of the new international regimen without having to wait for the formulation of the equipment-specific provisions relating to categories of equipment other than aircraft equipment” (cf. Martin J. Stanford: “A broader or a narrower band of beneficiaries for the proposed new international regimen?: Some reflections on the merits of the Convention/Protocol structure in facilitating the former” in *Uniform Law Review* 1999/2, 242 at 244). Thus “[t]he introduction of the Convention/Protocol structure was felt to accommodate the short-term desire of one equipment sector whilst at the same time adequately to safeguard the long-term benefits of uniformity for all the other categories of equipment encompassed by the future Convention’s sphere of application” (*idem*).

² Mr Nesgos is a partner in Milbank, Tweed, Hadley & McCloy, New York and the author of numerous works on international space finance, including “Satellites and Transponders” in *Equipment Leasing* (ed. Jeffrey J. Wong), 1998, Vol. 3, Chapter 30.

³ The expertise tapped by the Space Working Group has included such majors players in the world aerospace industry and finance and insurance communities as Alcatel, ANZ Investment Bank, Arianespace, Assicurazioni Generali, Astrium, BNP Paribas, the Boeing Company, Crédit Lyonnais, European Aeronautic Defence & Space Company (EADS), La Réunion Spatiale and Lockheed Martin as well as space financing experts from major international law firms.

⁴ The expertise tapped by the Space Working Group has also included representatives of the United Nations Office for Outer Space Affairs, the European Centre for Space Law of the European Space Agency, the International Bar Association, the International Institute of Space Law and the Aviation Working Group.

4. At its 80th session, held in Rome from 17 to 19 September 2001, the UNIDROIT Governing Council authorised the transmission of the preliminary draft Protocol to Governments, including member Governments of the United Nations Committee on the Peaceful Uses of Outer Space (U.N./COPUOS) – which are already considering the draft Convention and the preliminary draft Protocol, in particular in their relationship to international space law and with a view to the possibility of the Secretary-General of the United Nations acting as Supervisory Authority of the future international registration system for space property – with a view to the convening of a first session of a UNIDROIT Committee of governmental experts to prepare a draft Protocol capable of submission for adoption. It is planned to hold this first session of governmental experts in Rome at the seat of UNIDROIT in either June or September 2002.

5. At its most recent session, held in Evry Courcouronnes on 3 and 4 September 2001, the Space Working Group, considering in particular the preliminary draft Protocol in relation to existing international space law with a view to the first Working Meeting of the *ad hoc* consultative mechanism of U.N./COPUOS held in Paris on 10 and 11 September 2001, noted a number of areas in which the text of the draft [UNIDROIT] Convention on International Interests in Mobile Equipment (hereinafter referred to as the *draft UNIDROIT Convention*) to be considered by the diplomatic Conference to adopt a Mobile Equipment Convention and an Aircraft Protocol (hereinafter referred to as the *diplomatic Conference*) as it relates to space property might be improved. The diplomatic Conference is invited to consider the points raised by the Space Working Group, set forth below as comments on the draft UNIDROIT Convention.

II. COMMENTS ON THE DRAFT UNIDROIT CONVENTION

General comments

6. The Space Working Group strongly urges the diplomatic Conference to uphold the dual Convention/Protocol structure endorsed by both the three UNIDROIT/ICAO Joint Sessions and the ICAO Legal Committee at its 31st Session. The decisive virtue of this structure, in the opinion of the Space Working Group, is that it will permit the economic benefits of the draft UNIDROIT Convention, essentially those benefits resulting from the greater access to asset-based financing facilities that it is specifically designed to provide, to be extended *within a reasonable time frame* to those space assets, in particular commercial communications satellites, for which such financing opportunities are at present urgently required,¹ as they are all too rarely available. The present-day customer for asset-based satellite financing will typically be a start-up company with little other than its satellite to offer by way of collateral. Only well-established satellite companies using market-proven applications such as television broadcast services are able to obtain financing on the strength of their balance-sheets.

¹ “Total revenue for the global satellite industry is expected to reach over U.S.\$ 97 billion in 2001 alone, an increase of over 15% from 2000. The manufacture of satellites, satellite-related ground equipment and payments made to the worldwide launch services industry accounted for almost U.S.\$ 50 billion of the U.S.\$ 81 billion industry total for 2000. It is expected that more than 500 commercial communications satellites, valued at an average price of U.S.\$ 85 million each, will be launched over the next 10 years. Commercial, broadcast, broadband and telecommunications satellite services should witness 30% annual growth (including manufacturing – growth projections are 17% annually) over the next decade. In the same period, approximately 40 launches of commercial satellites are expected *per year*, representing more than U.S.\$20 billion in revenues.” (cf. Dara A. Panahy, “The prospective UNIDROIT Convention on international interests in mobile equipment as applied to space assets,” *International Bar Association 2001 Conference (Cancun, Mexico) papers (Committee Z: UNIDROIT’s draft Convention on International Interests in Mobile Equipment)*, at p. 1).

7. The particular commercial significance of these considerations is that the benefits of the future Convention and Space Assets¹ Protocol should be made available to the international community at the earliest possible opportunity. The unique opportunity for asset-based financing to make a difference to the quality of life of countless human beings in the emerging and developing worlds through the enhanced access to satellite services (for such life-and-death matters as disaster forecasting) and broader diversity of satellite operators that the future Convention and Space Assets Protocol may foster is an opportunity that needs to be seized now. This is particularly true in the light of all the major setbacks that have been suffered by the telecommunications sector in recent times, a major contributory factor in which has been precisely the absence of a suitable international legal framework for those called upon to meet the financing needs of this sector.²

8. This invaluable opportunity will be simply wasted if the present structure of the draft Convention is altered: whereas it is reasonable to estimate that it should be possible to complete adoption of the preliminary draft Protocol at the intergovernmental level within three years of the end of the diplomatic Conference, it is wholly impossible to imagine how many more years might be necessary to complete the work should it become necessary to renegotiate from scratch all the basic asset-based financing provisions at present embodied in the draft UNIDROIT Convention and the preliminary draft Protocol for an instrument solely covering space assets.

9. It is clear moreover that the extraordinary efforts of all those from the space industry and the space finance community who have played such a pioneering role in the development of the preliminary draft Protocol to date have been predicated on the basis of the completion of this work within the reasonable time-frame mentioned above. This calculation has reflected the fact that the benefits expected to accrue under the preliminary draft Protocol are ones that are needed urgently. The time that so many parties from the space industry and the space finance community have seen fit to devote to this project to date must necessarily be seen in terms of the commercial opportunity it currently represents. It is not however as though present-day market needs will necessarily remain the same indefinitely. The Space Working Group accordingly believes it to be vital that the diplomatic Conference maintain the Convention/Protocol structure as the best guarantee of achieving completion of the preliminary draft Protocol within the time-frame recognised by the space industry and the space finance community as best responding to market needs.

10. The Space Working Group would also invite the diplomatic Conference to take special care when preparing the final text of the draft UNIDROIT Convention to ensure that the maximum degree of flexibility be left to those whose task it will be to negotiate the preliminary draft Protocol at the intergovernmental level, in particular given the specificity of all activities carried out in outer space and the uniqueness of the law relating thereto.

11. The Space Working Group would also invite the diplomatic Conference in framing the provisions of the draft UNIDROIT Convention governing the Supervisory Authority not to do anything that might prejudice the ability of the United Nations to act as Supervisory Authority of the future

¹ Although the preliminary draft Protocol submitted to the UNIDROIT Governing Council in September 2001 and featuring as an Appendix to these comments refers to “space property”, it is to be noted that, at its most recent session, the Space Working Group decided to replace this term by the term “space assets” and to recommend the making of a similar change in Article 2(3)(c) of the draft UNIDROIT Convention (cf. § 12, *infra*).

² Cf. comments made by Mrs Lyndall Shope-Mafole, Minister Plenipotentiary, Communications, South African Embassy, Paris on the occasion of the first Working Meeting of the *ad hoc* consultative mechanism of the United Nations Committee on the Peaceful Uses of Outer Space (U.N./COPUOS), held in Paris on 10 and 11 September 2001.

international registration system for space property.¹ Consideration of the United Nations exercising such functions is currently under consideration within U.N./COPUOS.

Comments relating to specific provisions of the draft UNIDROIT Convention

Re: Article 2(3)(c)

12. The Space Working Group, after lengthy consideration of the issues involved, and in particular the need to avoid any potential confusion with the terminology used in the United Nations space law treaties, has decided to replace the term “space property”, at present featuring in Article 2(3)(c) of the draft UNIDROIT Convention, by the term “space assets”² and would invite the diplomatic Conference accordingly to make the same change in Article 2(3)(c).

Re Article 17(1)(c)

13. The Space Working Group, noting that the proposed international registration system is designed to be an “open” system, would invite the diplomatic Conference to review whether the term “confidentiality” employed in Article 17(1)(c) is the most apt term to be used in this context and, if not, to consider its deletion.

Re Article 35

14. The Space Working Group expressed concern that, as at present worded, Article 35 would not permit the use of the additional types of monetary and non-monetary associated right proposed in the preliminary draft Protocol (cf. Article I(2)(a) thereof), which may be integral to the inherent value of the space assets to which they relate. The commercial significance for space financing of this point is to be seen especially in the importance for a satellite operator who is already operating other satellites in space of being able to pledge such rights as the revenue stream derived from the leasing of transponders on those satellites as collateral for the financing of a third satellite that he needs to procure. The Space Working Group would therefore invite the diplomatic Conference to review the wording of this Article with a view to ensuring the elimination of this undesirable result.

Re Article 47

15. The Space Working Group has noted that this provision, whilst intended originally to regulate the relationship between the draft UNIDROIT Convention and each Protocol *in a general manner*, in particular to affirm the controlling nature of each Protocol in relation to the category of equipment covered thereby, has, by virtue of its present location, namely as a final provision dealing with “Entry into force”, inadvertently forfeited its original general purpose. It would nevertheless suggest that a general provision spelling out the nature of the relationship between the future Convention and each Protocol thereto is still very much needed, not least in respect of space assets.

16. The Space Working Group would accordingly suggest that, whilst a rule along the lines of the provisions of Article 47(1) dealing with the *specific* question of the *entry into force* of the draft

¹ Both UNIDROIT and the Space Working Group believe in principle that the United Nations may be considered the most appropriate body to exercise such functions (cf. Draft Convention of the International Institute for the Unification of Private Law on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property: report of the Secretariat of the United Nations Office for Outer Space Affairs and the Secretariat of the International Institute for the Unification of Private Law (A/AC.105/C.2/L.225, § 41)).

² The Space Working Group has decided to employ the term “biens spatiaux” in the French text of the preliminary draft Protocol instead of the term “matériel d’équipement spatial” and would accordingly invite the diplomatic Conference to make a similar change in the French text of Article 2(3)(c).

UNIDROIT Convention clearly needs to be retained, a new Article should also be included amongst its general provisions dealing *generally* with the *relationship between the draft UNIDROIT Convention and each of its Protocols*. The essential purpose of such a general provision would be to reaffirm the primacy of the Protocol over the Convention as regards a specific category of equipment. This is a matter that will be of fundamental importance for each judge called upon to apply the future Convention and Protocols.

17. It is suggested that such a provision should enshrine, first of all, the principle that each Protocol may amend any or all terms of the Convention, secondly, the consequential principle that, where on a given issue the particular Protocol is silent or refers to the Convention only (as in Article VI of the draft Aircraft Protocol), then the Convention alone applies and, thirdly, the rule at present contained in Article 47(2), dealing with the interpretation of the Convention and each Protocol as a single instrument.

18. Moreover, the Space Working Group, while noting that the draft UNIDROIT Convention is intentionally still missing a full set of draft final provisions,¹ would imagine from the preliminary negotiations thereon² that the final provisions to be adopted at the diplomatic Conference, both for the draft UNIDROIT Convention and the draft Aircraft Protocol, will include provisions dealing with the procedure to be put in place for future amendments. It would in this case invite the diplomatic Conference to take especial care when drafting these provisions to deal with the relationship between the procedure for amending the future Convention and that for amendments to each Protocol.

Re Chapter XIV

19. Whilst aware, as already noted, that a comprehensive set of draft final provisions for the draft UNIDROIT Convention has still to be prepared, the Space Working Group would nevertheless commend those responsible for this exercise to make every effort to ensure that such draft final provisions conform in every way with the 1969 Vienna Convention on the Law of Treaties. In particular, it would note that the term “Contracting State” is regularly employed in the draft Aircraft Protocol when the correct term should be “State Party.”

¹ Cf. Draft [UNIDROIT] ~~[UNIDROIT]~~ Convention on International Interests in Mobile Equipment and draft Protocol thereto on Matters specific to Aircraft Equipment: Explanatory Report and Commentary (DCME-IP/2), p. 9, § 32.

² Cf. Discussion paper on the legal relationship between the draft Convention and its equipment-specific Protocols (prepared by Ms C.Chinkin (Professor of Public International Law; London School of Economics) and Ms C. Kessedjian (Professor of Law; Deputy Secretary-General, Hague Conference on Private International Law) at the request of the Steering and Revisions Committee (UNIDROIT CGE/Int. Int/2 ICAO LSC/ME/2 WP/2).

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English and French only

COMMENTS ON DRAFT CONVENTION
(Presented by the Rail Working Group (RWG))

The Rail Working Group represents companies and organisations in various parts of the rail industry with important interests in the area of financing of rolling stock. (*) We have been working for a number of years to prepare a draft protocol to the draft Convention relating to Railway Rolling Stock (the "Rail Protocol"). We are convinced that, as with the proposed Aircraft Equipment Protocol (the "Aviation Protocol"), the provision of an international security system to banks and other parties financing railway rolling stock will deliver substantial economic benefits to the rail sector by:

- Reducing the risk that financiers are currently required to take when lending against railway rolling stock, thereby reducing the cost;
- Facilitating an increasing willingness of financiers to lend against railway rolling stock, thereby permitting more funds to be made available for the rail sector, thereby reducing the costs of funds due to increased supply thereof to the market;
- Eliminating many time-consuming and costly security documents and legal opinions as well as permitting borrower and lender to choose an applicable law for the security created;
- Reducing the scope for (costly) disputes in connection with financing of, or title to, railway rolling stock where at present, in contrast to the position for Aircraft, in most parts of the world there is no mechanism for recording title or security interests in such equipment;
- Permitting even state owned railways to borrow (directly or through leasing) in the private capital markets without the need for state guarantees (actual or implied); and
- Creating a mechanism for the private sector to finance rolling stock in developing parts of the world and therefore obviating the need for this to be funded through Government aid budgets

The working draft of the Rail Protocol is at an advanced stage and the first meeting of Government Experts to review the draft Protocol took place on March 15/16, 2001 in Berne. We expect a second meeting to take place in the first half of 2002. We respectfully submit the comments set out below to the Conference specified above.

1. Text of the Convention

We support the current draft text subject to the following qualification:

certain minor suggestions have been forwarded to Professor Sir Roy Goode QC, as Rapporteur to the

(*) Members of the Rail Working Group: AAE Ahaus Alstatter Eisenbahn • ABB Asset Finance • ADtranz (Deutschland) GmbH • Angel Train Contracts Ltd. • Ansaldo Trasporti s.p.a. • Association of American Railroads • Bombardier Rail • Bruckhaus Westrick Heller Löber • Community of European Railways • Costaferroviaria • debis Financial Engineering GmbH • Ermewa International • Eurofima • European Investment Bank • Ferroviaria • FIAT • Firema • Freshfields • GE Capital • Howard Rosen Solicitor • HSBC Rail (UK) Ltd. • KfW Kreditanstalt für Wiederaufbau • Landesbank Schleswig-Holstein • Lenz & Staehelin • McCarthy Tétrault • SNCB SG • Theodore Goddard • Transnet Ltd. • Trinity Industries, Inc. • UIC International Union of Railways • Union of European Railway Industries • Wiersholm Mellbye & Bech.

joint UNIDROIT/OTIF Committee of governmental experts, in the past months, based on our experience in preparing the preliminary draft Rail Protocol with a view to these being taken into account in the redrafting process;

We comment below further on the fast track procedure for adoption of, inter alia, the Rail Protocol.

2. Structure of the Convention

We fully support the proposed structure implementing the concept of a Convention setting out certain basic rules and then industry protocols, initially for the Aviation, Space Property and Rail sectors. Moreover, although at the Conference, delegates will be reviewing only the basic Convention and the Aviation Protocol, we reject any idea of an “Aviation only Convention” or, on the other hand waiting for both the Space Property and Rail Protocols to be approved and incorporated into a single Convention. Either course of action would, in our respectful submission, be wrong for a number of key reasons:

(a) The current concept has accurately reflected the fact that financing and other economic conditions vary for the different industries. In the rail sector for example, the dominance of state-owned or state-guaranteed operators in Europe and other parts of the world has meant that independent, non state-backed finance will only become essential as the sector opens out to competition in the coming years. In the aviation sector this process has advanced considerably further. It is right therefore to focus on this sector first where the need is most urgent (and not to slow down the consideration because of the need to review the Convention’s applicability in other sectors);

(b) On the other hand, an Aviation only Convention would not only throw away years of work of the Rail Working Group and our colleagues in the Space Property Working Group, but delay, probably for many years, the introduction of parallel international rules for the excluded sectors and accordingly will severely constrain plans of governments across the world to encourage more transportation of goods and people by rail for good economic, social and environmental reasons. This is because, in the rail sector at least, the Protocol is not just responding to a current demand but also will be instrumental in creating the conditions for expansion of the rail network without state support (which will always be limited by other political or economic priorities). In other words, there is a “push” and a “pull” effect, whereas the proposed Aviation Protocol appears to be responding (i.e. “pushed”) primarily to an existing demand. The Rail Protocol needs to be operative as soon as possible as the private sector is required increasingly to take over the burden of financing the modernization and development of the rail sector and we anticipate this need in the coming 5-10 years. A delay of perhaps 10 years in introducing these international security rules within the rail sector – an inevitable consequence of excluding the possibility of the rail sector being covered by the Convention – will be a significant drag on the sector’s development. Moreover, at a time where the Rail and Aviation Sectors do compete over certain distances, by reducing its comparative costs of funding for a material period it will also give the aviation sector a huge competitive advantage, which surely is not in the overall interests or the stated policy of many States. It should be noted in particular that in areas of the world where state financial support is not automatically available are often the very regions where investment into the rail industry is most urgently needed. Delay will restrict the quantity and quality of the funding available for the rail sector and therefore the benefits described in the first section of this letter. Specifically, it will limit financing through securitisations, of interest both to the private and public sector and a mechanism of growing importance in the way the capital markets are accessed. With less funding and less security available, the costs of funds will remain too high and restrict the competitiveness of the industry and discourage new entrants and healthy competition;

(c) The Convention “architecture” must be correct in that different industries clearly have different legal and practical considerations. For example, it is usually impossible to restrict the operation of an aircraft to domestic operations whereas this can be the case in relation to certain types of rolling stock or general equipment on a closed rail system. There are about 30,000 aircraft that

could be covered by the Convention with only a small number of clearly recognizable manufacturers; in the rail sector there are hundreds of manufacturers and millions of items of rolling stock. Inevitably this results in differing treatment of issues arising from the operation of an international registry. But there are also common issues, which affect all sectors, e.g. bankruptcy considerations and interim relief, where each sector has already benefited from input from experts from other sectors. We anticipate that the considerable sharing of ideas, that has characterized the last eight years as the Convention has been drafted and reviewed, will continue;

(d) Not only will industry specific Conventions squander the considerable synergies currently operating between the three key sectors currently under consideration but it will also prevent future co-operation – for example in relation to the mechanics, protocols and software required for the operation of the respective industry international registries; and

(e) An “Aviation only Convention” would be highly inefficient. The considerable costs of arranging another two full scale Diplomatic Conferences can be avoided if the current architecture is adopted but the efficiencies do not stop there. Governments and their experts will be able to focus on the industry specific issues rather than being obliged to rework an entire convention. Practitioners in the future, interpreting and implementing the new systems for the different sectors, will be able to refer to a common base position and common jurisprudence.

We have no objection to non-legally binding consolidations of the Convention and any industry protocol and indeed would envisage preparing such a consolidation for the Convention and the Rail Protocol once both are finalised.

3. In favour of the Fast Track procedure

An important discussion for delegates will be whether subsequent industry sector protocols will need to be approved through a diplomatic conference of some type or whether a fast track approval system can be accepted as is tentatively proposed in Article 49 of the draft Convention. There is scope for debate on how the fast track system should be operated and we do not wish here to provide detailed proposals, merely to comment that it is desirable to have a system, which allows sufficient scope for governments’ supervision of the terms of any Protocol, without creating a cumbersome and expensive approval system. But we strongly support the principle that a fast track procedure is appropriate for the following reasons:

(a) It is considerably more cost effective than waiting for a detailed approval through a diplomatic conference;

(b) It permits the reference to discussions and conclusions at the Conference and avoids unnecessary repetition;

(c) Governments are able to exercise sufficient control through the meetings of government experts reviewing the draft protocol since the basic applicable principles have already been considered and approved;

(d) It will facilitate speedy implementation with the consequent cost savings for the public and private sectors alike (see above).

Lastly, we wish to thank UNIDROIT and ICAO for granting the Rail Working Group observer status at the Conference and for kindly allowing us to submit our views to the Conference. Further we recognise, and much appreciate, the hard work behind the scenes by the staff of both organisations. We also wish to thank the Aviation Working Group for the extensive input that they have given to this project and wish to acknowledge the extraordinary contributions to international jurisprudence in this area made by Professor Sir Roy Goode QC and Mr Jeffrey Wool, the Chairman of the Aviation Working Group.

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**DRAFT FINAL PROVISIONS
CAPABLE OF EMBODIMENT IN THE DRAFT [UNIDROIT]
CONVENTION ON INTERNATIONAL INTERESTS
IN MOBILE EQUIPMENT
WITH EXPLANATORY NOTES
(drawn up by the UNIDROIT Secretariat)**

I. INTRODUCTION

1. The Final Provisions set out in Chapter XIV of the draft [UNIDROIT] Convention on International Interests in Mobile Equipment (hereinafter referred to as the *draft Convention*) submitted for adoption to the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol (hereinafter referred to as the *diplomatic Conference*) are not intended to be “comprehensive” but rather to enunciate “only those provisions needed to show the relationship between the Convention and the Protocol and to address the special issues arising in relation to interests in mobile equipment.”¹

2. As indicated at various stages of the intergovernmental negotiations on the draft Convention and the draft Protocol thereto on Matters specific to Aircraft Equipment (hereinafter referred to as the *draft Aircraft Protocol*),² it is not UNIDROIT practice to prepare draft final provisions, except in respect of such special matters as those dealt with in Chapter XIV, until such time as a draft Convention is ready for transmission to a diplomatic Conference. This reflects the fact that the preparation of final provisions is traditionally the prerogative of the plenipotentiaries gathered at a diplomatic Conference, and in the first place of the Final Clauses Committee of such a Conference. The reason for this practice is self-evident: it is not possible to see which final provisions will be necessary until such time as the relevant intergovernmental negotiations have reached their final stage.

3. In the case of the draft Aircraft Protocol, it is true that this practice has not been followed. UNIDROIT was not, however, involved in the preparation of the draft Final Provisions set out in Chapter VI of the draft Aircraft Protocol: these were prepared by a working group external to UNIDROIT, invited by the President of UNIDROIT in February 1997 to prepare a preliminary draft Protocol – to the then preliminary draft Convention in the final stages of preparation by a UNIDROIT study group – on Matters specific to Aircraft Equipment³ and were transmitted by the UNIDROIT Governing Council to Governments in 1998 as an *addendum* only to the text of the then preliminary draft Aircraft Protocol, specifically with a view to signalling that they were not “intended to prejudge”⁴ the draft Final Provisions to be prepared at the appropriate time by those whose prerogative it was to prepare such provisions “but simply to indicate the suggestions of the Aircraft Protocol Group on this matter as developed by the Joint Session.”⁵ It was in this form that the draft Aircraft Protocol was approved as ready for transmission to a diplomatic Conference by the UNIDROIT Governing Council at its 79th session, held in Lisbon from 10 to 14 April 2000.

¹ Cf. Explanatory Report and Commentary on the draft Convention and the draft Aircraft Protocol, § 32.

² Cf. UNIDROIT CGE/Int.Int./3-WP/3 ICAO Ref. LSC/ME/3-WP/3, § 58, footnote 5.

³ The members of this working group, known as the *Aircraft Protocol Group*, were ICAO, the International Air Transport Association (I.A.T.A.) and the Aviation Working Group.

⁴ Cf. UNIDROIT CGE/Int.Int./3-Report ICAO Ref. LSC/ME/3-Report, Appendix II, Addendum, footnote 8.

⁵ *Idem*.

4. Subsequently, however, the status of the draft Final Provisions set out in Chapter VI of the draft Aircraft Protocol was changed, during the 31st Session of the ICAO Legal Committee, held in Montreal from 28 August to 8 September 2000. As a result, these draft Final Provisions no longer appear as an Addendum to the draft Aircraft Protocol but as an integral part thereof. In so far as no authority for this change of status is however to be gleaned from the Report on that session (Doc 9765-LC/191), it is submitted, therefore, that, at least as far as these draft Final Provisions as approved by the UNIDROIT Governing Council are concerned, they are to be understood as indicating simply “the suggestions of the Aircraft Protocol Group ... as developed by the Joint Session”.

5. They have nevertheless provided the main source of inspiration for the companion draft Final Provisions capable of embodiment in the draft Convention, which, as drafted by the UNIDROIT Secretariat, are set out hereunder with summary explanatory notes. The Final Provisions set out in Chapter XIV of the draft Convention have been incorporated in these draft Final Provisions.

6. In accordance with the specific request addressed to it by the Space Working Group at its most recent session, held in Evry Courcouronnes on 3 and 4 September 2001, the UNIDROIT Secretariat has however also sought, where borrowing ideas from the draft Final Provisions featuring in the draft Aircraft Protocol, to make the appropriate amendments necessary to bring them into line with the 1969 Vienna Convention on the Law of Treaties (hereinafter referred to as the *Vienna Convention*).

**UNIDROIT SECRETARIAT PROPOSALS
FOR THE FINAL PROVISIONS
TO BE EMBODIED IN
THE DRAFT [UNIDROIT] CONVENTION
ON INTERNATIONAL INTERESTS
IN MOBILE EQUIPMENT**

Article A – Adoption, signature and ratification, acceptance, approval or accession of the Convention

1. This Convention is open for signature at the concluding meeting of the diplomatic Conference to adopt a Mobile Equipment Convention and an Aircraft Protocol and will remain open for signature by all negotiating States at [...] until [...].

2. This Convention is subject to ratification, acceptance or approval of those States which have signed it.

3. This Convention is open for accession by all States which have not signed it, at any time 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.⁶

Notes

1. The provisions of this Article are modelled on those of Article XXV of the draft Aircraft Protocol, which themselves followed precedents to be found in recent UNIDROIT Conventions, namely the 1988 UNIDROIT Convention on International Financial Leasing (hereinafter referred to as the *UNIDROIT Leasing Convention*), the 1988 UNIDROIT Convention on International Factoring

⁶ It is recommended that a resolution be adopted by, and contained in the Acts and Proceedings of the diplomatic Conference, contemplating the use by negotiating States of a model instrument for ratification, acceptance, approval or accession that would standardise *inter alia* the format for the making and/or withdrawal of declarations and reservations.

(hereinafter referred to as the *UNIDROIT Factoring Convention*), and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (hereinafter referred to as the *UNIDROIT Cultural Objects Convention*).

2. In the interest of bringing the language of Article XXV of the draft Aircraft Protocol into line with the Vienna Convention, the term “negotiating States”⁷ has been substituted for the term “Contracting States”⁸ in paragraph 1, although, should the diplomatic Conference choose to broaden the category of States that may sign the future Convention, then it is submitted that a formula along the lines of that employed in Article 81 of the Vienna Convention⁹ might be considered. With the same concern in mind, the term “Contracting States” employed in Article XXV(2) of the draft Aircraft Protocol has been replaced in paragraph 2 by the term “those States.” In order to bring Article XXV(3) into line with Article XXV(2), the words “not signatory States” have been replaced in paragraph 3 by the words “States which have not signed it.” Finally, it should be noted that the heading of this Article is somewhat broader than that of Article XXV of the draft Aircraft Protocol in order to highlight the fact that it indeed covers more than just “adoption.”

3. It is submitted that the future Convention should be subject to ratification, acceptance, approval or accession independently from a given Protocol and notwithstanding the controlling nature of each Protocol in relation to the Convention.¹⁰ First, the draft Convention is designed to apply to at least three different categories of equipment (cf. Article 2(3) of the draft Convention) and, later, potentially to other categories of equipment (cf. Article 50(1) of the draft Convention). The fact that its application with regard to a particular category of equipment is only to be triggered by entry into force of the Protocol covering that category of equipment does not alter the fact that it at the same time both provides the infrastructure for the extension of the application of the Convention to other categories of equipment via Protocols, in particular by enunciating the procedure to be complied with for their completion and adoption (cf. Article 49 of the draft Convention), and embodies the authority for UNIDROIT’s preparation, completion and adoption of Protocols on matters other than those encompassed by Article 2(3) of the draft Convention (cf. Article 50(1) of the draft Convention).¹¹ Secondly, whilst it is clear that the basic principle informing the relationship between the draft Convention and each of its Protocols is that a Protocol can amend any or all terms of the future Convention in relation to the category of equipment covered by such Protocol (cf. Article 47(1)(b) of the draft Convention), the converse of this rule must be that, wherever on a given issue the relevant Protocol is silent or refers to the Convention alone (as in Article VI of the draft Aircraft Protocol), then the Convention’s provisions alone apply. Thirdly, and flowing from, as well as closely related to this first consideration, given that it is envisaged that any State Party to the future Aircraft Protocol is to be free to denounce the Protocol (cf. Article XXXI(1) thereof), it would seem reasonable to deduce therefrom that such a State would nevertheless still need to continue to be bound by the Convention,

⁷ “[N]egotiating State” is defined in Article 2(1)(e) of the Vienna Convention to mean “a State which took part in the drawing up and adoption of the text of the treaty.”

⁸ “[C]ontracting State” is defined in Article 2(1)(f) of the Vienna Convention to mean “a State which has consented to be bound by the treaty, whether or not the treaty has entered into force.”

⁹ Article 81 of the Vienna Convention provides that: “The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or of the International Atomic Energy Agency or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party to the Convention...”

¹⁰ This is a matter that has been expressly left open by the intergovernmental negotiations that preceded the submission of the draft Convention and the draft Aircraft Protocol to the diplomatic Conference (cf. UNIDROIT CGE/Int.Int./3–Report ICAO Ref. LSC/ME/3–Report, § 38).

¹¹ It is worthy of note that representatives of the oil industry in different parts of the world have already communicated to UNIDROIT their interest in participating in the early preparation of a preliminary draft Protocol on Matters specific to Mobile Oil Rigs and that the UNIDROIT Secretariat already has plans in hand for the creation of an appropriate working group to begin such work just as soon as the diplomatic Conference has completed its work.

were it only for the purpose of acknowledging the continuing operation of the international registration system and in particular the International Registry established under its terms or of the Convention's application with regard to categories of equipment governed by other Protocols to which such a State subsequently becomes a Party.

Article B – 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 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 States Parties to this Convention and that Protocol.

2. For each State that ratifies, accepts, approves or accedes to this Convention after the deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that Contracting State on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession, but only as regards a category of objects to which a Protocol applies and subject, in relation to such Protocol, to the requirements of sub-paragraphs (a), (b) and (c) of the preceding paragraph.

3. This Convention and the Protocol shall be read and interpreted together as one single instrument.

Notes

1. Paragraphs 1 and 3 of this Article reproduce the provisions of Article 47 of the draft Convention, with two small changes in sub-paragraph 1(c), namely the replacement of the term “Contracting States Parties” by the term “States Parties,”¹² to bring its terminology into line with that of the Vienna Convention, and, from the moment that the future Convention is to be subject to independent ratification, acceptance, approval or accession, the addition of the requirement that such States must be Parties to both the Convention and the relevant Protocol, and one small change in paragraph 3, involving the replacement of the word “a” by the word “one,” in order to emphasise the intention of this provision.

2. Subject to two minor amendments, paragraph 2 of this Article is, on the other hand, modelled on the provisions of Article XXVI(2) of the draft Aircraft Protocol, which themselves followed precedents to be found in recent UNIDROIT Conventions, namely the UNIDROIT Leasing Convention, the UNIDROIT Factoring Convention and the UNIDROIT Cultural Objects Convention. The two minor amendments involve the omission of the word “Contracting” in the first line before the word “State” and the addition of the proviso at the end of the paragraph necessary to bring it into line with the preceding paragraph.

3. It is submitted that the principle enunciated in paragraph 3, in so far as its provisions are not limited to the entry into force of the draft Convention, is not one that should feature among the Final Provisions of the draft Convention but rather among the General Provisions thereof.¹³

¹² “[P]arty” is defined by Article 2(1)(g) of the Vienna Convention to mean “a State which has consented to be bound by the treaty and for which the treaty is in force”.

¹³ Cf. Comments presented to the diplomatic Conference by the Space Working Group (DCME Doc No. 14, pp. 4/5).

Article C – Internal transactions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that this Convention shall not apply to a transaction which is an internal transaction in relation to that State.
2. Such declarations are to be notified in writing to the depositary.
3. Notwithstanding paragraph 1, 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.

Notes

1. This Article reproduces the text of Article 48 of the draft Convention, amended, first, by the relocation of the parenthetical phrase now placed between the words “may” and “declare” – made as part of a general co-ordination of the language featuring in the draft Final Provisions – and, secondly, by the addition of a new paragraph 2, designed to bring this Article into line with Articles F(2) and L and for the purposes of clarification.
2. It is submitted that, in so far as the provisions of this Article go beyond the normal scope of final provisions and also concern substance, the elements of the Article that touch on substance might usefully be moved from the Final Provisions of the draft Convention to the General Provisions thereof.

[Article D – 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 falling within Article 2(3)(b) or (c) and prepared by a working group convened by UNIDROIT, to all States Parties to this Convention, all Member States of UNIDROIT and all Member States of any intergovernmental Organisation represented in that working group. Such States shall be invited by UNIDROIT 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.]

Notes

1. This Article reproduces Article 49 of the draft Convention, amended in paragraph 1, first, by the replacement of the term “Contracting States Parties” by “States Parties” – designed to bring it into line with the Vienna Convention – secondly, by the deletion of the words “through their adherence to any existing Protocol,” which could lend themselves to confusion and which may, in any case, be considered superfluous in view of Article B(1), and, thirdly, by the addition of the words “by

UNIDROIT” – which would seem to be a logical consequence of the first sentence of this paragraph – in the penultimate line.

2. Its placing in square brackets goes back to the Third UNIDROIT/ICAO Joint Session, held in Rome from 20 to 31 March 2000, when one delegation queried its place in the draft Convention but the Secretary-General of UNIDROIT indicated its importance in the context of the work underway on the preliminary draft Protocols to the draft Convention on Matters specific to Railway Rolling Stock and Space Property.¹⁴

3. Since that time, however, work has proceeded apace on such preliminary draft Protocols. Indeed, the preliminary stage, that consisted in the preparation of preliminary draft Protocols by industry working groups created at the invitation of the President of UNIDROIT, has already been completed in respect of both preliminary draft Protocols.

4. Following consideration by the UNIDROIT Governing Council at its 79th session, held in Lisbon from 10 to 13 April 2000, the preliminary draft Protocol on Matters specific to Railway Rolling Stock prepared by the Rail Working Group organised, at the invitation of the President of UNIDROIT, by Mr H. Rosen, has been transmitted to Governments and a first session of a UNIDROIT/OTIF Committee of governmental experts – open to member Governments of both UNIDROIT and the Intergovernmental Organisation for International Carriage by Rail (OTIF) – to finalise a draft Protocol on the basis of the preliminary draft Rail Protocol has already taken place – in Berne on 15 and 16 March 2001 – and a second session of that Committee is due to be held in Rome next May. It is anticipated that a draft Rail Protocol will be ready for adoption in 2003.

5. Following consideration by the UNIDROIT Governing Council at its 80th session, held in Rome from 17 to 19 September 2001, the preliminary draft Protocol on Matters specific to Space Property prepared by the Space Working Group organised, at the invitation of the President of UNIDROIT, by Mr P. D. Nesgos, is shortly to be transmitted to UNIDROIT member Governments – it is already before member Governments of the United Nations Committee on the Peaceful Uses of Outer Space (U.N./COPUOS), pursuant to the decision taken by U.N./COPUOS at its 43rd session, held in Vienna from 7 to 16 June 2000 – and a first session of a UNIDROIT Committee of governmental experts to finalise a draft Protocol on the basis of the preliminary draft Space Protocol will take place in Rome next June or September. Pursuant to the decision taken by the UNIDROIT Governing Council at its 80th session, member Governments of U.N./COPUOS that are not member Governments of UNIDROIT will also be invited to participate in this Committee, as well as the United Nations Office for Outer Space Affairs.

6. In these circumstances, it behoves the diplomatic Conference to consider not only the implications of these developments for the drafting of paragraphs 1 and 2 of this Article but also the most appropriate procedure to be put in place, under paragraphs 3 and 4, for the approval and adoption of the two preliminary draft Protocols.

7. Regarding the development of Protocols other than the draft Aircraft Protocol, it will be recalled that the Public International Law Working Group set up by the Second UNIDROIT/ICAO Joint Session, held in Montreal from 24 August to 3 September 1999, was agreed that UNIDROIT, in view of its central role in the inception of the overall multi-equipment project and in the development of the preliminary draft Rail and Space Protocols, should play a co-ordinating role and be intimately involved in the development of future Protocols, in conjunction with the relevant intergovernmental Organisations and the non-governmental Organisations representing the professional interests concerned.¹⁵ It was suggested by the Public International Law Working Group that such a policy statement might usefully form the subject of a resolution to be adopted at the diplomatic Conference.¹⁶

¹⁴ Cf. UNIDROIT CGE/Int.Int./3-Report ICAO Ref. LSC/ME/3-Report, § 263.

¹⁵ Cf. UNIDROIT CGE/Int.Int./3-WP/3 – ICAO Ref. LSC/ME/3-WP/3, § 12.

¹⁶ *Idem.*

8. Regarding the approval and adoption of Protocols other than the draft Aircraft Protocol, the Public International Law Working Group considered different options. In addition to the traditional diplomatic Conference procedure, it also looked at both a fast-track opting-in procedure and an expedited form of the traditional diplomatic Conference procedure. Whilst one delegation supported the fast-track approach for the future draft Rail and Space Protocols, others recorded their reservations, indicating their preference for the traditional diplomatic Conference procedure.¹⁷

Article E – 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 49.

Notes

1. This Article reproduces Article 50 of the draft Convention.
2. In relation to this Article, it is important to bear in mind the conclusions reached by the Public International Law Working Group regarding additional future Protocols referred to above.¹⁸
3. As has been indicated above,¹⁹ plans are already in hand for the creation of an industry working group for the preparation of a fourth Protocol and it accordingly behoves the diplomatic Conference to consider the most appropriate procedures to be put in place for the approval and adoption of such a Protocol.
4. In this connection, it will be recalled that there was general agreement among those participating in the work of the aforementioned Public International Law Working Group, when discussing the merits of a fast-track opting-in procedure or an expedited diplomatic Conference procedure – as opposed to the traditional diplomatic Conference procedure – as regards the need to draw a distinction between the preliminary draft Rail and Space Protocols, on which work was already at quite an advanced stage, and such an additional new future Protocol.²⁰

Article F – Territorial units

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention 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. Such declarations are to be notified in writing to the depositary and are to state expressly the territorial units to which this Convention extends.

3. If a State Party to this Convention has not made any declaration under paragraph 1, this Convention is to extend to all territorial units of that State.

¹⁷ Cf. UNIDROIT CGE/Int.Int./3-Report ICAO Ref. LSC/ME/3-Report, §§ 30-32.

¹⁸ Cf. Note 7 *sub* Article D, *supra*.

¹⁹ Cf. Footnote 11, *supra*.

²⁰ Cf. UNIDROIT CGE/Int.Int./3-Report ICAO Ref. LSC/ME/3-Report, § 31.

Notes

1. In so far as the draft Convention provides for its ratification, acceptance, approval or accession, it seemed opportune to introduce a provision, along the lines of the corresponding provision of the draft Aircraft Protocol, to deal with the difficulties sometimes experienced by States with federal systems of Government involving a constitutionally guaranteed division of powers among the constituent units of the federation.

2. Subject to four minor amendments, the provisions of this Article are modelled on the provisions of Article XXVII of the draft Aircraft Protocol, which themselves followed precedents to be found in recent UNIDROIT Conventions, namely the UNIDROIT Leasing Convention, the UNIDROIT Factoring Convention and the UNIDROIT Cultural Objects Convention. The four minor amendments involve the omission of the word “Contracting” before the word “State” in the first line of paragraph 1, the replacement of the word “[t]hese” by the word “[s]uch” at the beginning of paragraph 2, the addition of the words “in writing” in the same paragraph – to bring this provision into line with the requirement of writing specified in Article L – and the replacement of the term “Contracting State” by the term “State Party” in paragraph 3 and some minor consequential redrafting in order to bring it into line with the Vienna Convention.

3. It will be noted that, as at present drafted, this Article sets forth only those typical elements of the federal State *extension* clause to be found in the aforementioned precedents. Thus it does not set forth a federal State *interpretation* clause of the type contained, for instance, in the UNIDROIT Cultural Objects Convention.²¹ It will be recalled that the aforementioned Public International Law Working Group expressed concern at the scale of the federal State interpretation clause proposed by Canada and noted that most States had not experienced particular problems in practice with the more concise federal State clauses that had to date featured in international private commercial law Conventions.²² It further took the view that unnecessary disparity between one such instrument and another of the same kind should be avoided.²³ It was therefore suggested that greater consistency should be sought between the federal State clauses to be included in the draft Convention and the draft Aircraft Protocol and the more concise formula employed in Article 35 of the draft Convention on the Assignment of Receivables in International Trade prepared under the auspices of the United Nations Commission on International Trade Law.²⁴ While recognising that such clauses would clearly be subject to negotiation at the

²¹ Article 14(3) of the UNIDROIT Cultural Objects Convention reads as follows:

“If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, the reference to:

(a) the territory of a Contracting State in Article 1 shall be construed as referring to the territory of a territorial unit of that State;

(b) a court or other competent authority of the Contracting State or of the State addressed shall be construed as referring to the court or other competent authority of a territorial unit of that State;

(c) the Contracting State where the cultural object is located in Article 8 (1) shall be construed as referring to the territorial unit of that State where the object is located;

(d) the law of the Contracting State where the object is located in Article 8 (3) shall be construed as referring to the law of the territorial unit of that State where the object is located; and

(e) a Contracting State in Article 9 shall be construed as referring to a territorial unit of that State.”

²² Cf. UNIDROIT CGE/Int.Int./3-WP/18 – ICAO Ref. LSC/ME/3-WP/18, § 37.

²³ *Idem.*

²⁴ Article 35 of said draft Convention reads as follows:

“1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may at any time declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.

2. Such declarations are to state expressly the territorial units to which this Convention extends.

diplomatic Conference, the Public International Law Working Group suggested that those States for which they will be necessary should start discussing with one another the minimum number of provisions that would absolutely need to be included in the federal State interpretation clauses to be included in the draft Convention and the draft Aircraft Protocol.²⁵ Finally, it should be noted that one member of the Public International Law Working Group expressed his concern that the operation of the federal State clauses to be incorporated in the draft Convention and the draft Aircraft Protocol should not give federal States an advantage over unitary States.²⁶

Article G – Determination of courts

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

2. Such declarations are to be notified in writing to the depositary.

Notes

Apart from the same small drafting change made to Article C and the addition of a new paragraph 2, along the lines of the new paragraph 2 introduced in Article C, this Article reproduces Article 51 of the draft Convention.

Article H – Declarations regarding remedies

1. A Contracting State may, at the time of signature, ratification, acceptance, approval of, or accession to the Protocol, declare 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.

3. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the assignor or the debtor is located in a territorial unit to which this Convention does not extend, this location is considered not to be in a Contracting State.

4. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the law governing the original contract is the law in force in a territorial unit to which this Convention does not extend, the law governing the original contract is considered not to be the law of a Contracting State.

5. If a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.”

However, Articles 36 and 37 of the same draft Convention, as they emerged from the 34th session of the United Nations Commission on International Trade Law, held in Vienna from 25 June to 13 July 2001, provide as follows:

“Article 36

If a person is located in a State which has two or more territorial units, that person is located in the territorial unit in which it has its place of business. If the assignor or the assignee has a place of business in more than one territorial unit, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one territorial unit, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person. A State with two or more territorial units may specify by declaration at any time other rules for determining the location of a person within that State.

Article 37

Any reference in this Convention to the law of a State means, in the case of a State which has two or more territorial units, the law in force in the territorial unit. Such a State may specify by declaration at any time other rules for determining the applicable law, including rules that render applicable the law of another territorial unit of that State.”

²⁵ Cf. UNIDROIT CGE/Int.Int./3-WP/18 – ICAO Ref. LSC/ME/3-WP/18, § 37.

²⁶ Cf. UNIDROIT CGE/Int.Int./3-WP/18 – ICAO Ref. LSC/ME/3-WP/18, § 38.

2. A Contracting State shall, at the time of signature, ratification, acceptance, approval of, or accession to the Protocol, 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.

3. Such declarations are to be notified in writing to the depositary.

Notes

Apart from the same small drafting change – in paragraph 1 – made to Articles C and G and the addition of a new paragraph 3, along the lines of the new paragraph 2 introduced in Articles C and G, this Article reproduces Article 52 of the draft Convention.

Article I – Declarations regarding relief pending final determination

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

2. Such declarations are to be notified in writing to the depositary.

Notes

Apart from the same small drafting change made to Articles C, G and H and the addition of a new paragraph 2, along the lines of the new paragraph 2 introduced in Articles C, G and H, this Article reproduces Article 53 of the draft Convention.

Article J – 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 validly made shall be binding on the States Parties that do not make such reservations or declarations in their relations vis-à-vis the reserving or declaring State Party.

Notes

With two amendments to paragraph 3, involving the replacement of the terms “Contracting States” and “Contracting State” by “States Parties” and “State Party” respectively – designed to bring this paragraph into line with the Vienna Convention – and the addition of the words “validly made,” which would seem logical in view of the enunciation of the principle stated in paragraphs 1 and 2, this Article reproduces Article 54 of the draft Convention.

Article K – Subsequent declarations

1. A State Party may make a subsequent declaration at any time after the date on which this Convention has entered into force for it, 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 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 Convention shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Notes

1. In so far as the draft Convention provides for the making of a certain number of declarations, it seemed opportune to introduce a provision, along the lines of the corresponding provision of the draft Aircraft Protocol, on subsequent declarations.

2. Subject to the replacement of the term “Contracting State” by “State Party” in paragraph 1 – in order to bring it into line with the Vienna Convention – some minor drafting changes in paragraph 3 – involving the replacement of the word “declaration” by “declarations” in line 2 and the replacement of the word “that” by the words “any such” in line 3, this Article reproduces the provisions of Article XXIX of the draft Aircraft Protocol, which themselves are loosely modelled on precedents to be found in recent UNIDROIT Conventions, namely the UNIDROIT Leasing Convention, the UNIDROIT Factoring Convention and the UNIDROIT Cultural Objects Convention.

3. It is submitted that the diplomatic Conference may care to consider the case for extending the application of this Article, dealing with *subsequent declarations*, to both the Convention and each Protocol, in the same way as has been done in Article J, given in particular that that Article deals with the question of *declarations*.

Article L – Withdrawal of declarations and reservations

Any State Party having made a declaration under, or a reservation to this Convention 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 six months after the date of the receipt of the notification by the depositary.

Notes

1. In so far as the draft Convention provides for the making of a certain number of declarations and addresses the question of reservations, it seemed opportune to introduce a provision, along the lines of the corresponding provision of the draft Aircraft Protocol, on the withdrawal of such declarations and reservations.

2. Subject to the replacement of the term “Contracting State” by “State Party,” in order to bring it into line with the Vienna Convention, this Article essentially reproduces the provisions of Article XXX of the draft Aircraft Protocol, which themselves are modelled on precedents to be found in recent UNIDROIT Conventions, namely the UNIDROIT Leasing Convention, the UNIDROIT Factoring Convention and the UNIDROIT Cultural Objects Convention.

3. It is submitted that the diplomatic Conference may care to consider the case for extending the application of this Article, dealing *inter alia* with *withdrawal of reservations*, to both the Convention and each Protocol, in the same way as has been done in Article J, given in particular that that Article deals with the question of *reservations*.

Article M – Denunciations

1. This Convention may be denounced by any State Party at any time after the date on which it has entered into force for it, 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 Convention shall continue to apply, as if no such denunciations had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

Notes

1. In so far as the draft Convention provides for its ratification, acceptance, approval or accession, it seemed opportune to introduce a provision, along the lines of the corresponding provision of the draft Aircraft Protocol, on denunciation.

2. Subject to the replacement of the term “Contracting State” by “State Party” in paragraph 1, in order to bring it into line with the Vienna Convention, and some minor drafting changes in paragraph 3 – involving the replacement of the word “denunciation” by “denunciations” in line 2 and the replacement of the word “that” by the words “any such” in line 3 – this Article essentially reproduces the provisions of Article XXXI of the draft Aircraft Protocol, which themselves are basically modelled on the precedent to be found in the UNIDROIT Cultural Objects Convention.

Article N – 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*²⁷

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 [10 years] after the entering into force of this Convention in the State Party 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 Party to this Convention.]

Notes

1. With two amendments – involving the replacement in paragraph 2 of Alternative B of the term “Contracting State” by “State Party” and the replacement of the words “Contracting State” by “Party to this Convention” in paragraph 3 – designed to bring these paragraphs into line with the Vienna Convention, this Article reproduces Article 55 of the draft Convention.

2. It should be noted that, as at present drafted, neither Alternative A nor Alternative B apply to a Protocol, which would thus require its own transitional provisions, unless the diplomatic Conference should decide to bring it under the scope of this Article by amending the same.

²⁷ The ICAO Legal Committee, while maintaining both Alternatives A and B, expressed the view that in the event that Alternative B were selected, the fees charged with respect to these transactions should be nominal.

Article O – Review Board and Review Conferences

1. A five-member Review Board shall promptly be appointed by ..., in order to prepare yearly reports for the States Parties, Contracting States and negotiating States, addressing the matters specified in sub-paragraphs (a)-(d) of paragraph 2. The composition of the Review Board, its terms of reference and its organisation and administration shall be determined, in consultation with other relevant interests, by

2. At the request of not less than twenty-five per cent of the States specified in the preceding paragraph, Review Conferences of those States shall be convened from time to time to consider:

(a) the practical operation of this Convention and the Protocol and their effectiveness in facilitating the asset-based financing and leasing of the objects covered by their terms;

(b) the judicial interpretation given to, and the application made of the terms of this Convention, the Protocol and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority; and

(d) whether any modifications to this Convention and the Protocol or the arrangements relating to the International Registry are desirable.

Notes

1. This Article essentially reproduces the provisions of Article XXXII of the draft Aircraft Protocol, amended, first, to bring it into line with the Vienna Convention – as seen in the replacement of the term “Contracting States” in paragraph 1 by the terms “States Parties, Contracting States and negotiating States” – secondly, to reflect the application of the draft Convention to different categories of equipment – as seen in the concluding words of sub-paragraph 2(a) – thirdly, to reflect the fact that it contemplates not only a Review Board but also Review Conferences – as seen in its heading – and, fourthly, by the addition of the words “by ..., in order” after the word “appointed” in the first sentence of paragraph 1 and of a second sentence in that paragraph, designed to raise the important question of by whom, how and with what terms of reference the Review Board should be set up.

2. It is designed to give the diplomatic Conference cause to reflect on the desirability of the establishment of a review procedure not only for each Protocol but also for the future Convention itself. The aforementioned Public International Law Working Group was agreed that, in recognition of the controlling nature of Protocols under the Convention/Protocol system, the fundamental and only binding review mechanism for the future Convention/ Protocol in relation to a particular category of equipment should be via the Protocol relating to that category of equipment so that only a Review Conference of States Parties, Contracting States and negotiating States in respect of a given Protocol should have the power to propose amendments binding on such States.^{28 29}

3. It will be recalled however that the Public International Law Working Group was also agreed as to the desirability of States Parties, Contracting States and negotiating States in respect of the future Convention having the power periodically to call general Review Conferences, although with any amendments that might be proposed by such Conferences only being able to be implemented in relation to a particular category of equipment following confirmation by the States Parties, Contracting States and negotiating States in respect of the Protocol concerned.³⁰ It was agreed that it would not be desirable to give States Parties, Contracting States and negotiating States in respect of the future Convention – which might well include States that were not States Parties to a particular

²⁸ Cf. UNIDROIT CGE/Int.Int./3-WP/3 – ICAO Ref. LSC/ME/3-WP/3, § 14.

²⁹ Such amendments would not therefore affect the rights and obligations of States Parties, Contracting States and negotiating States in respect of other Protocols (cf. UNIDROIT CGE/Int.Int./3-WP/3 – ICAO Ref. LSC/ME/3-WP/3, § 14.

³⁰ Cf. UNIDROIT CGE/Int.Int./3-WP/3 – ICAO Ref. LSC/ME/3-WP/3, § 15.

Protocol – the power to determine on their own the review of such a Protocol without such States being given an opportunity to confirm whether such an amendment was satisfactory for the particular category of equipment concerned.³¹ This also reflected the fact that the future Convention/Protocol were to be read as a single instrument in respect of any given category of equipment.³² The Public International Law Working Group nevertheless recognised that such general Review Conferences, whilst in practice only having an advisory function, could play an important part in filtering the latest developments regarding international commercial finance through the Convention/Protocol system.³³

4. It is submitted that the rightful place of this Article would not be among the Final Provisions but rather in a separate substantive Chapter of its own that might usefully appear just before the Chapter containing the Final Provisions.

Article P – Functions of the depositary

1. This Convention shall be deposited with the [...].
2. The [depositary] shall:
 - (a) inform all negotiating States and [...] of the adoption of this Convention and of :
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Convention;
 - (iii) each declaration made in accordance with this Convention;
 - (iv) the withdrawal of any declaration; and
 - (v) the deposit of an instrument of denunciation of this Convention together with the date of its deposit and the date on which it takes effect;
 - (b) transmit certified true copies of this Convention to all those States specified in sub-paragraph (a) and to [...];
 - (c) provide the Registrar with a copy of each instrument of ratification, acceptance, approval or accession and of each declaration or withdrawal of a declaration, so that the information contained therein is easily and fully available; and
 - (d) perform such other functions customary for depositaries.

Notes

1. This Article reproduces the substance of Article XXXIII of the draft Aircraft Protocol, which was in turn modelled on precedents to be found in recent UNIDROIT Conventions, namely the UNIDROIT Leasing Convention, the UNIDROIT Factoring Convention and the UNIDROIT Cultural Objects Convention. It has however been found opportune slightly to amend certain parts of its drafting.

2. As elsewhere in these draft Final Provisions, some of these amendments are designed to bring Article P into line with the Vienna Convention. This is the case with the substitution of the term “Contracting States” by “negotiating States” in sub-paragraph 2(a). In this connection, it is worth recalling what was stated above *sub* note 2 to Article A, namely that, should the diplomatic Conference choose to broaden the category of States that may sign the future Convention beyond negotiating States, then it is submitted that it might be considered worthwhile replacing this term by a formula along the lines of that employed in Article 81 of the Vienna Convention.

3. In other places, amendments have been introduced to make the language of this Article correspond more accurately to what would seem to be its purpose. Thus, the words “Depositary arrangements” in the heading of the Article have been replaced by the words “Functions of the

³¹ *Idem.*

³² *Idem.*

³³ *Idem.*

depository,” since it is precisely this with which the Article is concerned. Again, in sub-paragraph 2(a) the words “and [...] of the adoption of this Convention” have been added, since it is legitimate to expect that the States that are to receive certified true copies of the Convention under sub-paragraph 2(b) should, in the event that the diplomatic Conference should decide to broaden the scope of sub-paragraph 2(a), also be informed of its adoption. Thirdly, in sub-paragraph 2(b) the words “signatory States, to all States acceding to the Convention” have been replaced by the words “those States specified in sub-paragraph 2(a),” in order to reflect the fact that the purpose of transmitting certified true copies to States is to enable them to start the internal procedure for them to become Parties to the future Convention and that it is therefore important for them to receive such certified true copies as early as possible, and certainly well before their acceding thereto. Fourthly, the words “the contents” have been replaced in sub-paragraph 2(c) by the words “a copy,” since if the information contained in each instrument is to be made “publicly accessible” it would seem preferable for the Registrar to be acquainted with the exact contents of such instruments. Fifthly, with a view to reinforcing this idea, the words “publicly accessible” in the same sub-paragraph have been replaced by the words “easily and fully.” In another place, finally, one of the sub-clauses of sub-paragraph 2(a), that dealing with “the date of entry into force of this Convention,” has been moved up to a position that appears more logical in the context of the order of the items covered in these sub-clauses.

4. It has always been the custom with UNIDROIT Conventions in the past for the member State on the territory of which the diplomatic Conference for their adoption has been convened to exercise the functions of depository. Thus the Government of Canada agreed to exercise the functions of depository under the UNIDROIT Leasing Convention and the UNIDROIT Factoring Convention, adopted at a diplomatic Conference held in Ottawa, and the Government of Italy the functions of depository under the UNIDROIT Cultural Objects Convention, adopted at a diplomatic Conference held in Rome. In the case of the draft Convention and the draft Aircraft Protocol the Government of South Africa has however already made it known that it has no particular desire to exercise the functions of depository under the future Convention and the future Aircraft Protocol. In these circumstances, the UNIDROIT Secretariat judged it opportune to consult the UNIDROIT Governing Council at its aforementioned 80th session. On that occasion the Governing Council authorised the Secretary-General of UNIDROIT to exercise such functions of depository under the future Convention and Aircraft Protocol as it might be called upon to exercise by the diplomatic Conference. The UNIDROIT Secretariat has in the meantime had the opportunity to discuss the matter with the ICAO Secretariat and would, in the light of these discussions, like to serve notice of its willingness to exercise the functions of depository under the future Convention and, with the ICAO Secretariat, jointly to exercise such functions under the future Aircraft Protocol, should such a course of action commend itself to the diplomatic Conference. It believes that what has been stated above regarding the desirability of UNIDROIT playing a co-ordinating role in the development of additional future Protocols³⁴ only serves to reinforce the case for its serving as depository under the future Convention, whereas ICAO’s experience as depository under international civil aviation Conventions is only too well-known. The UNIDROIT Secretariat believes moreover that the joint exercising by UNIDROIT and ICAO of depository functions under the draft Aircraft Protocol would provide an excellent institutional model to be considered in the context of additional future Protocols.

³⁴ Cf. Note 7 *sub* Article D, *supra*.

DCME Doc No. 17
17/10/01

**PRELIMINARY COMMENTS ON THE DRAFT CONVENTION,
DRAFT PROTOCOL AND CONSOLIDATED TEXT**

(Presented by Canada)

I PRELIMINARY GENERAL COMMENTS

Canada has been and remains a strong proponent of this project.

The Canadian authorities would like to extend their congratulations to ICAO and UNIDROIT for their time and effort in preparing materials of high quality.

II PRELIMINARY SPECIFIC COMMENTS IN RELATION TO FEDERAL STATE CLAUSES

A – Applicable Law for States with a non-unified Legal System

Article 5 of the Consolidated Text (Article 5 of the Draft Mobile Equipment Convention) *

Article 5 defines the applicable law for States with a non-unified legal system. Unfortunately that provision does not make reference to a federal State interpretation clause settling, in the absence of a law of that State, which territorial unit's rules shall govern. The relevant provisions of the Convention now read as follows:

[...]

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.

It is for consideration whether those provisions defining the applicable law for States with a non-unified legal system (federal State extension clause) should make reference to a federal State interpretation clause which could be included to Chapter XIII. A formulation based on the more recent precedents adopted by the international community is suggested for inclusion in Article 5 or perhaps in Chapter XIII. It reads:

For the purpose of identifying the applicable law under the Convention, in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply –

- a) if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;
- b) in the absence of such rules, the law of the relevant territorial unit as defined in Article Z (j) and (k) [federal State interpretation clause suggested below] applies.

* Unless otherwise specified, references hereunder are to the Consolidated Text known as the *Draft Convention on International Interests in Aircraft Equipment* set out in DCME Doc No. 5; the term Draft Mobile Equipment Convention refers to the text set out in DCME Doc No. 3.

B – Federal State Interpretation Clause

It is for consideration whether to include a federal State interpretation clause. Such clauses are interpretative or definitional in nature and essential to a clear understanding of the manner in which the instrument will apply in a federal State. These clauses interpret or define terms or further refine certain provisions. They are useful in respect of both federal States and those unitary States having more than one legal system. An interpretative clause is particularly relevant in the context of private international law conventions since connecting factors in private international law are usually more relevant to the territorial units of the State than to the national State.

The scope of a number of terms and provisions would have to be better circumscribed to ensure a proper application of the instruments in States that have a non-unified legal system. Some of those terms and provisions are listed below together with an indication of where they are used:

– **“court”**

The term “court” is found in Articles 1, 12(2), 13(2) and (3), 19(1), 55 and 66 of the Consolidated Text (Articles 1, 7(5), 8(2) and (3), 12(2), 43 and 51 of the Draft Mobile Equipment Convention).

– **“court of a Contracting State”**

The term “court of a Contracting State” is found in Articles 53, 54 and 56 of the Consolidated Text (Articles 41, 42 and 44 of the Draft Mobile Equipment Convention).

– **“the debtor is situated in a Contracting State”**

The expression “the debtor is situated in a Contracting State” is found in Article 3 of the Consolidated Text (Article 3 of the Draft Mobile Equipment 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.”**

This provision is found in Article 4 of the Consolidated Text (Article 4 of the Draft Mobile Equipment Convention).

– **“habitual residence” of the debtor**

The term “habitual residence” of the debtor is found in Article 4 of the Consolidated Text (Article 4 of the Draft Mobile Equipment Convention).

– **“procedure prescribed by the law of the place where the remedy is to be exercised”**

This expression is found in Article 20 of the Consolidated Text (Article 13 of the Draft Mobile Equipment Convention).

– **“that State’s law”**

The term “that State’s law” is found in Article 52(1) of the Consolidated Text (Article 39(1) of the Draft Mobile Equipment Convention).

– **the place where the object is situated**

The concept of the place where the object is situated is found in Article 54(1) of the Consolidated Text (Article 42(1) of the Draft Mobile Equipment Convention).

– **the place where the debtor is situated**

The concept of the place where the debtor is situated is found in Article 54(2) of the Consolidated Text (Article 42(2) of the Draft Mobile Equipment Convention).

– **“administrative authorities” in a Contracting State**

The concept of “administrative authorities” in a Contracting State is found in Article 19(8) of the Consolidated Text (Article X(6)(a) of the Draft Protocol).

– **“the courts of a Contracting State in which an aircraft object is situated”**

The term “the courts of a Contracting State in which an aircraft object is situated” is found in Article 23 of the Consolidated Text (Article XII of the Draft Protocol).

– **“the domestic rules of law of the designated State”**

The expression “the domestic rules of law of the designated State” is found in Article 9 of the Consolidated Text (Article VIII of the Draft Protocol). It is for consideration whether the expression should read “the law of the designated State” instead of “the domestic rules of law of the designated State”.

A federal State interpretation clause interpreting or defining such terms and provisions reading as follows could be inserted in the Consolidated Text:

Article Z

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units –

- (a) any reference to the court or courts of that Contracting State shall be construed as referring to the court or courts having jurisdiction in a territorial unit;
- (b) any reference to Contracting State in Articles 3 and 19(8) shall be construed as referring to a territorial unit;
- (c) any reference to the law of incorporation or formation in that Contracting State shall be construed as referring to the law of incorporation or formation in force in a territorial unit where the debtor was incorporated or formed;
- (d) any reference to a registered office or statutory seat in that Contracting State shall be construed as referring to the registered office or statutory seat in a territorial unit;
- (e) any reference to the centre of administration in that Contracting State shall be construed as referring to the centre of administration in a territorial unit;
- (f) any reference to the place of business in that Contracting State shall be construed as referring to the place of business in a territorial unit;
- (g) any reference to habitual residence in that Contracting State shall be construed as referring to habitual residence in a territorial unit;
- (h) any reference to the location of the object in that Contracting State shall be construed as referring to the location of the object in a territorial unit;
- (i) any reference to the situation of the debtor in that Contracting State shall be construed as referring to the situation of the debtor in a territorial unit;
- (j) any reference to the law chosen by the parties of the designated State shall be construed as referring to the law in force in the designated territorial unit;
- (k) any reference to the law or procedure of the Contracting State in which a remedy is to be exercised shall be construed as referring to the law or procedure in force in such territorial unit in which such remedy is to be exercised;
- (l) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities in a territorial unit;
- (m) [...].

III PRELIMINARY SPECIFIC COMMENTS ON FINAL PROVISIONS

Article 63 of the Consolidated Text

Article 63 reads quite clearly as follows:

1. This Convention 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.

[...].

Article 47 of the Draft Mobile Equipment Convention should more logically read:

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 or approval of or accession to a Protocol but only as regards a category of objects to which that Protocol applies:

[...].

Both provisions should use the same delay period.

Bracketed Article 49 of the Draft Mobile Equipment Convention (no equivalent provision in the Consolidated Text)

There is no need to maintain bracketed Article 49 of the Draft Mobile Equipment Convention. It appears to constitute an undue and premature constraint on the sovereignty of States.

Article 50 of the Draft Mobile Equipment Convention (no equivalent provision in the Consolidated Text)

In the light of the comment on bracketed Article 49 of the Draft Mobile Equipment Convention, Article 50 should at the very least be streamlined to read along the following lines:

UNIDROIT may create working groups in cooperation with other organisations 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, including a category referred to in Article 2(3)(b) and (c), each member of which is uniquely identifiable, and associated rights relating to such objects.

Article 66 of the Consolidated Text

Article 66 reads:

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

Article 51 of the Draft Mobile Equipment Convention should read:

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

Articles 67, 68, 69, 70 and 71 of the Consolidated Text (Articles 52, 53 and 54 of the Draft Mobile Equipment Convention and Articles XXVIII, XXIX and XXX of the Draft Protocol)

It is for consideration whether all declarations could be linked to the federal extension clause in order to afford the State the possibility to make these declarations for territorial units to which the instrument will be extended.

Article 65 of the Consolidated Text (Article XXVII of the Draft Protocol)

It is for consideration whether a period of three months should be specified for the coming into force of substitute declarations made under this Article as it is done in the general entry into force rule found in Article 63 of the Consolidated Text (Article XXVI of the Draft Protocol).

Articles 70 and 71 of the Consolidated Text (Articles XXIX and XXX of the Draft Protocol)

It is for consideration whether the six month delay for the coming into force of declarations and withdrawals of declarations under Articles 70 and 71 respectively of the Consolidated Text (Articles XXIX and XXX of the Draft Protocol) should be in line with the delay of three months suggested above for the coming into force of the instrument for territorial units that are the object of a substitute declaration under Article 65 of the Consolidated Text (Article XXVII of the Draft Protocol).

DCME Doc No. 18
17/10/01

COMMENTS ON DRAFT CONVENTION AND DRAFT PROTOCOL
(Presented by Jordan)

1. We do not favour the idea of a dual instrument (Convention and Protocol); we would rather prefer that a consolidated text be presented to the Diplomatic Conference. The dual approach is needlessly complicated.
2. Emphasis should be placed on the need to take into account the difference equipment categories to be covered by the principal Convention.
3. The Protocol should provide explicitly that the buyer may register the sale by a written approval to the vendor and that the domestic regulations for aircraft registration should include a provision to this effect.
4. The tribunal should be selected from among the State parties to the Convention; this should prevent any excessive spread of this legal regime.
5. National airlines in developing countries should be given preferential treatment; the same treatment should also be given to aircraft and aviation training institutes.
6. States shall draft new regulations and instructions, based on civil aviation laws of each State, to facilitate the registration of aircraft therein and to afford adequate flexibility in the transfer of aircraft ownership, and registration of sales, purchases and collateralized leases.
7. State aircraft should be exempted from requirements of registration in the international register. An optional annex may be drafted leaving this to the State itself, to avoid cases involving collateral and insolvency administration procedures.
8. A single title should be developed for both Convention and the Protocol.
9. The matter of aircraft seizures should be dealt with to guarantee rights to air navigation charges outstanding on the parties to the Convention.
10. Disclosure of contents of the international register should be restricted to the direct stake holders. Immunity from administrative suits should be established.
11. The functions, privileges and duties of the supervisory authority of the international register should be determined on the basis of the Vienna Convention on International Relations.
12. The relationship between the Convention and Protocol on one hand and the 1948 Geneva Convention on the other, should be clarified.

DCME Doc No. 19
17/10/01

COMMENTS ON DRAFT CONVENTION AND DRAFT PROTOCOL
(Presented by Uruguay)

The general comments on the text of the draft Convention and Draft Protocol in question are in general terms the following:

- The texts suffer from legal imprecisions which break American and European continental domestic law, as a result of the Spanish translations being defective in many cases.
- Excessive autonomy of the parties is noted. This may affect public order in certain cases.
- The very small number of ratifications foreseen for entry into force is surprising in view of the fact that there are over 180 ICAO Contracting States.
- The references to articles to interpret other articles makes it difficult to read the articles.

DCME Doc No. 20
19/10/01

COMMENTS ON DRAFT CONVENTION
(Presented by Kuwait)

1. ARTICLE 1 – DEFINITIONS

(d) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;

It is suggested to add the term: “or bankruptcy”, the reason being that certain legal regimes differentiate between the two cases of insolvency and bankruptcy. Insolvency is a situation that is applicable to civil dealings, while bankruptcy is a failure to fulfill obligations (failure to pay) in commercial dealings. Both regimes are governed by different rules. Some states do not have an insolvency regime, including the Kuwaiti legislation that regulates cases of bankruptcy rather than insolvency. Accordingly, it is suggested that the definition be amended as follows:

["commencement of the insolvency or bankruptcy proceedings” means the time at which the insolvency or bankruptcy proceedings are deemed to commence under the applicable insolvency or bankruptcy law”].

(h) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;

[Note by C/AR: Kuwait here suggests to use the Arabic word "قضاء" to qualify the arbitral tribunal while maintaining the word "محاكم" for administrative tribunal, as the word "محاكم" is used in the text to qualify both the administrative and arbitral tribunals. The Arabic text will be amended accordingly].

(q) “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 of a rental

It is suggested to add the words: “for the purpose of using it” after the words “a right to possession”. This will give a clearer meaning of leasing.

2. ARTICLE 2: – THE INTERNATIONAL INTEREST

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

The term “effects” here has no significance; the reason for its introduction here is unknown. It is suggested to delete this word from the text altogether. The text will be clearer without it.

3. ARTICLE 5: – INTERPRETATION AND APPLICABLE LAW

Paragraph (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.

We are of the opinion that the accurate legal term in Arabic for the shaded sentence should be “the rules of ascription of the forum State”. We therefore suggest that the text as amended should read:

“References to the applicable law are to the rules of ascription of the forum State.”

4. ARTICLE 6: – FORMAL REQUIREMENTS

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

We are of the opinion that the phrase “as an international interest” is an inappropriate formulation. We suggest that the sentence should start off with “the international interest” as this is defined in the definitions article. Accordingly it will read as follows:

“An international interest is constituted under this Convention...”.

5. ARTICLE 7: – REMEDIES OF CHARGE

Paragraph (2): the phrase “in a commercially reasonable manner” is somewhat loose and needs to be further tightened.

The last sentence: “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,” is ambiguous; it may require redrafting to make it clearer.

6. ARTICLE 8: – VESTING OF OBJECT IN SATISFACTION; REDEMPTION

Paragraph (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 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.”

It is our understanding that the purpose of the text is that the court will not grant an application under paragraph (2) if the chargor has fulfilled most of his obligations, as it is unreasonable to expect a situation where the court would rule for the transfer of an object’s ownership when the chargor has fulfilled most of his obligations. Accordingly, we suggest that the text be amended to read as follows:

“The court shall not grant an application under the preceding paragraph if it is satisfied that the chargor or any other interested person has fulfilled a significant portion of his obligations, after taking into account any amount paid by the chargor to any of the interested persons”.

7. ARTICLE 15: – THE INTERNATIONAL REGISTRY

Paragraph (1) (c) “acquisitions of international interests by legal or contractual subrogation;”

We suggest that the word “contractual” be replaced with the word “consensual”.

DCME Doc No. 21

17/10/01

**COMMENTS ON DRAFT CONVENTION, DRAFT PROTOCOL
AND CONSOLIDATED TEXT ***

(Presented by China)

1. “A Convention on international interests in mobile equipment”, by virtue of its very nature, should cover the respective rights and interests of both the creditor and the debtor. In reality, the latter also has certain rights that require legal protection. For instance, the creditor should not be allowed to abuse the remedies provided in the proposed Convention/Protocol, and the debtor should have the right to use the aircraft object lawfully and without interference. Based on the above view, we offer three options to amend the draft texts. Option 1: redefine international interests by adding “recognition of the debtor’s right to use the aircraft object lawfully and without interference”; Option 2: add a clause in the proposed Convention/Protocol, specifying that the creditor shall not abuse the remedies provided in the Convention/Protocol, and that liability shall occur where a violation of such rule causes losses to the debtor; or Option 3: rename the proposed Convention to read “the Convention on Creditors’ International Interests in Mobile Equipment”.
2. It is suggested that a new clause be added to the text to the effect that “when the debtor vests the aircraft object as guarantee or security in satisfaction, the creditor shall discharge gradually the guarantee in favor of the debtor provided by a bank (banks) or another enterprise (other enterprises).”
3. With respect to Article 12(2) of the “Draft Convention on International Interests in Aircraft Equipment”, on the obligation of the chargee to give prior notice to interested persons, whereas the present text reads “interested persons specified in Article 1(cc)(i) and (ii); and ... in Article 1(cc)(iii),” we believe after verification that reference should probably be to “Article 1(z)(i), (ii) and (iii) respectively.
4. In reference to Article 64(2) of the same “Draft Convention” which stipulates that notwithstanding a declaration by a Contracting State that the Convention/Protocol shall not apply to an internal transaction, “the provisions of Articles 12(2) and 13(1), Chapter V, Article 41, and any provisions of this Convention relating to registered interests shall apply to an internal transaction”, we suggest that the phrase “any provisions of this Convention relating to registered interests” be deleted because this provision is too broad and may give rise to difficulties when applying the Convention/Protocol in practice.
5. To facilitate its operation, it is suggested that the “Draft Convention on International Interests in Aircraft Equipment” be adopted as an official legal instrument at the forthcoming Diplomatic Conference.
6. It is further suggested that the authentic Chinese version be adopted as the official legal text at the said Diplomatic Conference.

* *Draft Convention on International Interests in Aircraft Equipment* set out in DCME Doc No. 5 and Corrigendum.

DCME Doc No. 22
17/10/01

**COMMENTS ON DRAFT CONVENTION,
DRAFT PROTOCOL AND CONSOLIDATED TEXT ***
(Presented by Thailand)

Thailand has agreed with the consolidated text of both Draft Convention and draft Protocol as endorsed by the Council. However, there are some amendments which we would like to mention. In Article 12.2(a) is referred to Article 1(cc)(i) and (ii); and (b) is referred to Article 1(cc)(iii). In fact, Article 12.2(a) should be referred to Article 1(z)(i) and (ii); and (b) should be referred to Article 1(z)(iii).

DCME Doc No. 23
17/10/01
English and French only

COMMENTS ON DRAFT CONVENTION AND DRAFT PROTOCOL
(Presented by the Kingdom of the Netherlands)

General

1. The Kingdom of The Netherlands greatly appreciates the opportunity to formulate comments on the Draft [UNIDROIT] Convention on International Interests in Mobile Equipment (hereinafter referred to as: the Convention) and the Draft Protocol thereto on Matters Specific to Aircraft Equipment (hereinafter referred to as: the Protocol), with a view to the Diplomatic Conference for the adoption of these draft instruments, to be held in Cape Town from 29 October to 16 November 2001. The comments formulated hereinafter concern the Convention and the Protocol as communicated to the Embassy of The Kingdom of The Netherlands in Italy under cover of the Note Verbale of UNIDROIT of 6 April 2001 (DCME Doc. No. 3 of 6 April 2001 and DCME Doc. No. 4 of 6 April 2001), and the Explanatory Report and Commentary to the Convention and the Protocol as communicated to the Embassy of The Kingdom of The Netherlands in Italy under cover of the Note Verbale of UNIDROIT of 11 May 2001 (DCME –IP/2 of 11 May 2001, hereinafter referred to as: Commentary). With respect to aspects of private international law the comments are based on an advice of 16 July 2001 of the Dutch Government Commission on Private International Law, given at the request of the Minister of Justice.

2. The Kingdom of The Netherlands is convinced of the importance of the establishment of an international instrument aiming to facilitate the financing of the acquisition and the use of high value mobile equipment that is likely to move across State borders, by creating a legal regime for leases, conditional sales and security interests. The financing of aircraft equipment, of railway rolling stock and of space property are good examples of practices that need a uniform international legal regime that fits to the needs of different parties (e.g. manufacturers, users and financiers of aircraft) that are situated in different States.

* *Draft Convention on International Interests in Aircraft Equipment* set out in DCME Doc No. 5 and Corrigendum.

3. This does not alter the fact that it remains to be seen how far the financing of the acquisition and the use of high value mobile equipment, e.g. aircraft equipment, indeed will be facilitated by the creation of an international interest associated with a range of sweeping, equipment-specific default remedies as embodied in the Convention and the Protocol. This depends on the ability of the new regime to grant intending creditors the confidence to extend credit (where, otherwise, unavailable) to debtors in developing countries or to (substantially) reduce financing costs for such debtors. It is worth noting that the efficiency, and even more so the integrity, of the International Registry are fundamental to the collateral value to be assigned to an international interest. Moreover the equipment repossession risk, which is reduced by the Convention, is only one key element of risk management. The other key element can not be influenced by the Convention. This element is the debtor's (in)ability to generate sufficient cash flow in order to service its financial obligations as they fall due. Particularly so as inherent to developing economies certain factors like the foreign exchange mismatch between local currency revenues and dollar denominated carrying costs (fuel, finance, insurance etc.) would subsist, as well as factors like the airline's competitive environment and equipment maintenance standards and the monitoring of the latter.

4. Furthermore a critical success factor is the question if those certain Contracting States for which the Convention aims specifically to lower the thresholds to grant credit and / or to reduce finance costs will opt in (i.e. will refrain from making declarations to exclude or modify the exercise of certain key remedy provisions drafted into the Convention). In order for developing countries to fully benefit from the Convention it is crucial that they accept the creditor-focussed nature of the Convention, even if the some principles which underscore the Convention are incompatible with their respective legal cultures and traditions. Countries where the pre-eminence of the various default remedies provided for in the Convention is of a lesser concern in the context of their respective national commercial and bankruptcy laws and judicial systems could readily opt out.

5. It should be noted that by the various possibilities for Contracting States to make declarations (not) to apply certain rules of the Convention and the Protocol (e.g. Articles 52 and 53 of the Convention and Article XXVIII of the Protocol) the uniformity and thus the predictability and certainty, established by the legal regime of the Convention, can decrease. In each case the parties expecting protection under the Convention shall have to determine what kind of declarations have been made by the relevant Contracting State and what the implications thereof may be. Furthermore it seems obvious that the need to offer to Contracting States the possibility to make declarations in order to make the Convention and the Protocol acceptable for these States would be less if the Convention and the Protocol would have a less creditor-focussed nature than they have in their present version (e.g. the provisions of Chapter III of the Convention and Chapter II of the Protocol concerning default remedies).

6. It would be preferable if the present structure of the instruments (two-instrument approach existing of a base Convention which is to be applied with separate equipment-specific Protocols) would be maintained. This would enhance the uniformity the Convention seeks to achieve.

Articles

Convention

Article 1 Definitions

(nn) It should be noted that the word "indicates" is less strong than the word "identifies", that was used in an earlier draft.

Article 3 Sphere of application

Article 3 does not appear to deal with the typical leveraged lease scenario, where there is an investor/lessor, a lender and a lessee. If the lessee is situated in a Contracting State whilst investor/lessor is not situated in a Contracting State, one of the key elements of the entire transaction,

being the lender's exposure on the lessor (in most cases secured by a security right in respect of the equipment), would fall outside the scope of the Convention. In that scenario, the lessor would, of course, still benefit from the Convention, in particular where it concerns repossession of the equipment following the occurrence of a default under the lease.

Article 5 Interpretation and applicable law

The more the Convention refers to the law that is applicable according to the private international law of the – occasionally – competent forum, the more the interpretation of the Convention in the way provided for in Article 5 will become illusory, and the greater the danger of “forum shopping” will be. References to the applicable law (as determined by the *lex fori*) as meant in Article 5 sometimes are inevitable to offer a solution in case negotiators cannot reach agreement about a rule of substantive law. Nevertheless the number of such references should be limited as much as possible.

An example can illustrate the above. The Convention acknowledges the distinction among various legal systems in respect of title reservation, security agreements and leasing agreements; the solution adopted in the Convention is to leave this matter to be dealt with under the applicable law as determined by the *lex fori*. Such approach, however, does not provide a satisfactory solution if under circumstances the equipment is leased (by the conditional buyer) or sub-leased (by the lessee) to, or if remedies are sought against the equipment at the time of its *situs* by chance in, another (third) jurisdiction, in case such *lex fori* rule would force upon the contracting parties to the head agreement an unexpected, and most certainly undesired, re-characterisation.

Article 6 Formal requirements

The Commentary concerning Article 6, under 2, says: “The constitution of the international interest derives from the Convention, not from national law. It follows that an international interest comes into existence where the conditions of Article 6 are satisfied even if these would not be sufficient to create a security interest under the otherwise applicable law and even if the international interest is of a kind not known to that law”. For reasons of clarity a provision to this effect should be inserted into the Convention.

Article 17 Registration requirements

The absence of a requirement actually to provide for evidence that the consent of the party in whose favour a registration was made to discharge the same was given (Article 17, paragraph 2) makes the system unduly passive and fraud-sensitive. It is imperative that any such consent will be properly verified; there is an instrumental role to be played by the respective national entry points (if any). Without a decent verification system the procedure for the discharge of a registration should only be initiated by the party in whose favour it was made (and not merely with the consent of that party).

Article 23 Evidentiary value of certificates

A certificate issued by the International Registry is *prima facie* evidence of the facts recited in it, including the date and time of registration, but evidence is admissible to show that the certificate does not correctly state the facts. This rule of evidence makes the registration system for international interests a system with hardly any checks, the benefits of which are clearly outweighed by the quasi “positive system” presently entertained in The Kingdom of The Netherlands. It is suggested that a certificate issued by the International Registry shall be, absent manifest error, evidence of the facts recited in it, including the date and time of registration.

Whether the preferred “positive system” of some sort is attainable at all depends on factors like (a) the warranties for the completeness, accuracy and validity of the registration of international interests vis-à-vis interested parties, (b) the pro-active registration policy of the Registrar or any national entry points, (c) the registration of property rights (along with any international interests) and (d) the financial warranties provided by the Registrar (see under Article 27).

Article 27 Liability and insurance

The Registrar will, in principle, be strictly liable for compensatory damages for loss suffered from errors, omissions or system malfunction; reference should also be made to loss suffered from any delays in the registration or, as the case may be, de-registration of an international interest.

Article 31 Effects of assignment

According to paragraph 1 (b) of this Article the effect of the assignment of an international interest is inter alia the transfer to the assignee of all associated rights, being all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object (e.g. an airframe) (Article 1(c) of the Convention). As explained in footnote 2 to Chapter IX of the Convention, during the third Joint Session a proposal was discussed which was 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. As also explained in the mentioned footnote, although substantial support was expressed for the approach taken in the proposal, it was agreed that the proposal required further careful study by experts.

The Kingdom of The Netherlands wishes to state its preference for the approach taken in the proposal meant above. The intention of Article 31, paragraph 1(b), is to ensure that an assignment of an international interest and a transfer of the associated rights go together, so that the associated rights cannot be assigned under the Convention independently of the international interest (Commentary under 1). This intention is right, but the solution should be the opposite: the international interest should be linked to the “secured obligations” as is the case in most civil law jurisdictions. This is also the solution chosen in Article 10 of the Draft Convention on the Assignment of Receivables in International Trade of UNCITRAL, which was adopted at the session of UNCITRAL from 25 June until 13 July 2001.

*Article 52 Declarations regarding remedies**Article 53 Declarations regarding relief pending final determination*

It should be noted that Article 52, paragraph 1, reads like it conditions the declaration (“while the charged object is situated within, or controlled from its territory”), whereas Articles 52, paragraph 2, and 53 do not. Furthermore, it is unclear whether the respective opt-out declarations relate to any aircraft object while at the time situated in the ‘declared’ Contracting State, even if the Contracting State in which the relevant debtor is situated has not made the same declaration. Conversely, the aircraft object of a debtor situated in a ‘declared’ Contracting State would be at risk of being subjected to certain default remedies if for the time being that object happens to be situated in a Contracting State which has not made the same declaration. The enforcement of default remedies would thus become a matter of ‘forum-shopping’.

Article 55 Transitional provisions

Alternative A would have the consequence that, possibly for many years, a pre-Convention right or interest that has not been registered in the International Registry would have priority over an international interest that has been registered in the International Registry. This would have a very negative effect on the predictability and certainty that the Convention and the Protocol seek to achieve. Moreover, if one considers the new priority regime of the Convention as an important improvement, it would only be consistent to apply this improvement also to transitional cases, the more so, since the registration in the International Registry has been presented as a wholly electronic “notice-based” registry system which will not be expensive to use. Furthermore the period of ten years, mentioned in Alternative B, is more than long enough (perhaps even too long) to give holders of pre-Convention rights or interests the opportunity to register this right or interest in the

International Registry. It should be noted that a certain number of the pre-Convention rights or interests will end before the expiry of the ten year period; in these cases it will even not be necessary at all to register the right or interest in order to preserve its priority. For all these reasons the Kingdom of The Netherlands favours Alternative B.

Protocol

Article III Application of Convention to sales

It seems that the references in this provision to the debtor and the creditor should be references to the buyer and the seller respectively (and not vice versa as in the text of Article III).

Article VIII Choice of law

The words “Unless otherwise agreed” in paragraph 2 should be deleted, to prevent unnecessary discussions.

Article XXII Relationship with the Convention on the International Recognition of Rights in Aircraft

The ranking among any national interests and international interests upon enforcement at the time of the aircraft's *situs* by chance in a country which is not a “Cape Town Contracting State” but is a Geneva Contracting State is not solved and would inevitably result in disputes as to enforcement rights and / or priority rights in relation to any proceeds. The more Geneva Contracting States ratify the Convention and the Protocol, the less important this objection will be.

Article XXIII Relationship with the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft

Article XXIII provides that 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 (Rome Convention), supersede that Convention as it relates to aircraft, as defined in the Protocol, unless a Contracting State declares that it will not apply this Article. Article 9, paragraph 1, of the Rome Convention reads: *La présente Convention s'applique sur le territoire de chacune des Hautes Parties Contractantes à tout aéronef immatriculé dans le territoire d'une autre Haute Partie Contractante*. Contracting States will have to make such a declaration as far as necessary to act properly, as far as it concerns the law of nations, with respect to countries that are party to the Rome Convention but not (yet) to the Convention and the Protocol.

Article XXVI Entry into force

The Kingdom of The Netherlands feels that the number of ratifications should be congruous to the funds needed to establish a register. While finalising this provision the Conference should ensure that no undue financial burden falls on the registrar or supervisory authority. Thus the Kingdom of The Netherlands contemplates a possibility where 5 to 10 ratifications will suffice for entry into force.

Engines

According to the regime of the Convention and the Protocol the aircraft and its engines can be subject of separate international interests. If for example an engine lessor leases an engine to an airline and the engine is attached to the aircraft, the engine can, according to the Convention/Protocol regime, be subject to a separate international interest, e.g. an engine mortgage for the benefit of a lender (engine mortgagee). If the engine lessor defaults under the loan agreement with the engine mortgagee, the engine mortgagee can to the extent that the engine lessor has so agreed, take possession of the engine and sell or lease the engine without leave of the court (Article 7, paragraph 1, of the Convention), provided that the relevant Contracting State did not make the declaration meant in Article 52, paragraph 2. Thus the engine mortgagee will arrest the aircraft in order to take the engine off-wing. Whether the airline as engine lessee is in default or not is not relevant. The arrest could nevertheless trigger a default under the aircraft lease agreement. It should be noted that the Convention is silent as to whether or not default remedies could be sought against an engine while installed on, and

independent of any such remedies at the same time being sought against, the airframe. It seems that because of this kind of problems a form of engine agreement will remain necessary in order to avoid controversies between engine lessors and – mortgagees on the one hand and aircraft lessees, aircraft lessors and aircraft mortgagees on the other hand.

Registration of lessee's rights

According to Dutch law purchase options and rights of use of an aircraft under leases in excess of six months can have effect against third parties. This result can be reached by laying down such a right in a notarial deed, which must be entered into the public registers for registered property. Thus (e.g. in a three party relationship of lender/mortgagee (bank), mortgagor/lessor (leasing company) and lessee (airline)) a quiet enjoyment covenant given by a mortgagee of an aircraft is strengthened to the effect that the lessee, as long as the lessee would not cause a default under the lease, will be protected against foreclosure under the mortgage following a default under the lessor's credit facility agreement.

It is not clear if on the basis of the Convention and the Protocol, registered purchase options and registered rights of lessees to use an aircraft can also have effect against the holder of an international interest. Dutch practice needs a clarification (perhaps in Article 40 of the Convention?) in order to be sure that the purchase options and rights of lessees to use an aircraft that have been registered earlier than (other?) international interests have effect against the holders of those (other) international interests. This would prevent unnecessary academic discussions and court proceedings.

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18/10/01

English and French only

PRELIMINARY COMMENTS ON DRAFT CONVENTION AND DRAFT PROTOCOL

(Presented by the United States)

The United States submits these observations in order to convey its general views concerning the draft multilateral Convention and the first specialized Protocol expected to be completed and adopted at the forthcoming diplomatic Conference hosted by the Government of South Africa and to be convened at Cape Town.

1. The Convention offers the opportunity to enable the benefits of asset-based financing to enhance credit and to lower the cost of that financing to all states. Asset-based finance laws allow for credit to be based on the mobile assets themselves, which in turn makes feasible significantly greater financing, especially in developing and emerging states in all regions. In this manner, the resources of the capital markets can be extended to countries for whom that financing has up to now been in limited supply. Sustaining the basic financing and optional remedies provisions are fundamental to that purpose.
2. In addition, the Convention opens the pathway for additional protocols on equipment, including rail, which will be of considerable importance for many markets. This multi-equipment Convention has been a vital part of this process from its origin. Again, the primary benefit would inure to developing countries. We agree that a consolidated text should be prepared, which will serve an important role in practice, but not as a substitute for a multi-equipment treaty. For these reasons, we would not support efforts to restrict this process to any particular type of equipment, and thus to limit its value for developing countries, as has been sought by some.
3. With regard to the Aircraft Protocol, based on projections of end-user airlines and the expected role of international air transportation in the world economy, the importance of rapid implementation

of the convention system and its first protocol on aircraft finance has been stressed. The events of recent times however have made this of even greater importance, so that capital markets assistance can be made available to those in need who are willing to adopt and implement this convention.

We will therefore support any appropriate result of the Conference that can ensure implementation of the convention system without delay, since it is now clear that from a technological, funding and legal point of view, that can in fact be accomplished and can be accomplished quickly. This calls for the convention system to be able to be initiated quickly with only three to five ratifications to start with, and by eliminating impediments to rapid implementation that have been sought by some. Interim arrangements for a registry system should begin promptly after the Convention even before the requisite ratifications are deposited so as to avoid delay.

The United States are prepared to fully support a final text of the basic Convention and its first Protocol, assuming however that it achieves the above goals. We would be pleased to work with others at the forthcoming Conference in order to achieve those purposes.

The following is an explanation of U.S. views on certain key issues for the diplomatic Conference. The issues relate to implementation of the new convention system on an expedited basis.

(A) Establishment and composition of Council functions as Supervisory Authority

Assuming the possibility that the diplomatic Conference may offer to ICAO the role of Supervisory Authority, we need to seek assurances at the Conference that that would in fact be carried out so as to enhance financing for air transport. The Supervisory role, which would be a limited one, should include both major manufacturing and airline user states, which might be drawn from within or outside the Council, and which could be expanded to include signatory or ratifying states consistent with geographic representation.

The proposed structure anticipates that the actual registry, intended to be a very small, high-technology facility, would be contracted out and be responsive to airline users, financing parties and manufacturers. The process could be managed by the Supervisory Authority through a technical advisory group, as has been done for certain other current ICAO projects, to which states could appoint technical experts. We anticipate that such a technical advisory group would do the primary work, which largely reduces to a minimum the need for additional resources for the Secretariat, which under current circumstances is an important budgetary issue. A technical group could be started with the framework already built up by the IRTF (International Registry Task Force), which, since it now has approximately 12 states, is already well known by participants in this process, and would enhance acceptability of the process as well as ratifications.

We should express caution about, but not reject the possibility that the Secretariat itself could be invested with the authority and resources necessary to perform the actual functions of a commercial registry. Aside from resource implications, however, which are important, it would be necessary to waive immunities and open the Secretariat and ICAO to substantial liability exposure, since it is unlikely that the air transportation industry would be willing to accept a registry to which they would have no recourse or only limited recourse. Thus, a proposal of this nature would need to be carefully thought out before it could be considered further.

(B) Expedited implementation of the convention system

While long pressed by airlines and the industry for early action on the whole convention system, rapid implementation has now become even more important, since recent events have placed enormous pressure on the availability of financing for acquisition of newer stage aircraft, which in turn upgrades safety and navigation factors.

Given the recent actual development and prototype testing of an international computer-based registry system by SITA in Geneva, as well as the stated readiness of some other possible service providers,

plus the now apparent availability of start up and operational funding from at least several sources, it is now clearly within our ability to achieve rapid implementation, once a small (three to five) number of ratifying states are on board. In fact, an early start up of the registry system would itself be likely to lead to earlier ratification by states.

Under these circumstances, neither we nor ICAO should accept any solution that allows substantial delay. It has become clear that in order to avoid unneeded delay, injurious to airline users, the process for the registry start-up should be initiated shortly after the Conference concludes. We need also to assure that the process will work closely with and be fully compatible with both the airline users and transportation finance participants, without whose full support the system cannot work.

Given these concerns, we will support any workable solution, but we and others also have to be prepared for the possibility that an appropriate solution is not concluded by the Conference, or cannot be set in motion without significant delay, or whose acceptability by the industry is seriously in doubt.

Under those circumstances, we would be prepared to work with others to come up with an interim stop-gap system that could be activated, possibly through an additional protocol, until such time as a full system contemplated by the Convention could be set up.

Additional technical comments

The United States expects to circulate technical comments on specific provisions at the Conference, which could improve but would not alter the direction of substantive provision now set out in the draft Convention and Protocol. These provisions taken together can meet the requisites for financing mobile equipment, and have been the subject of a long and detailed examination in joint sessions of the two international bodies, by the Legal Committee, and endorsed in principle by the governing bodies both of UNIDROIT and ICAO. It is very important to maintain the purpose and effect of those provisions if the new Convention and Protocol are to be able to generate actual benefits. It is also critical to maintain the multi-equipment approach of the basic Convention and separate Protocols for types of equipment.

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19/10/01

English & French only

**AFRICAN STATES' POSITION ON
THE DRAFT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT AND THE DRAFT PROTOCOL ON MATTERS SPECIFIC TO AIRCRAFT
(Presented by the African States)**

SUMMARY:

This paper provides this Diplomatic Conference with an African States' common position on the draft Convention on International Interests in Mobile Equipment and the draft Protocol to the Convention on Matters specific to aircraft equipment for consideration before their adoption.

References: DCME Doc No. 3
DCME Doc No. 4

1. INTRODUCTION

1.1 Based mainly on the draft Convention on International interests in Mobile Equipment and the draft Protocol to the Convention on Matters specific to aircraft equipment made available well in advance by ICAO to all Contracting States, African States are of the view that their common position

illustrated in this paper should be taken into consideration during the discussion which will lead to the adoption of these two legal Instruments.

2. NECESSITY OF THE TREATY IN CIVIL AVIATION

Importance and Benefits of the Treaty

2.1 All developing countries air carriers in general and African air carriers in particular are in need of obtaining financing to acquire modern aircraft. However, such financing is either not readily available or if available the cost of financing is too high in order to cover associated risks.

2.2 The high cost of aircraft acquisition needs financing in one form or another. Airlines in African countries have limited range of options to finance aircraft acquisitions and often resort to export credit facilities coupled with sovereign guarantees to reduce the cost of borrowing.

2.3 African countries legal frameworks are not uniform and are often inconsistent with the general principles underlying asset based financing often resulting in high cost of financing as financing is comparatively more costly where there is risk. Where the perceived risk is excessive, the financing can be non-available. It is therefore useful that the UNIDROIT Convention and Protocol establishes a **uniform, commercially oriented and comprehensive international legal framework** relating to the creation, priority and enforcement of security and leasing interests in aircraft equipment. The treaty further contains bankruptcy rules that protect rights in the context of insolvency.

2.4 By providing a commercially oriented uniform, transparent and predictable system for priority, creation and enforcement of rights, the Treaty relatively reduces the financial risks associated with the financing which can be directly passed on African carriers by way of availability and reduced cost of aircraft financing: lower interest rates, longer or shorter repayment terms, increased level of financing, lower premiums or other fees, modifications, reductions or elimination of credit enhancements such as personal, bank or sovereign guarantees, security deposits or letter of credits, etc.

2.5 The benefit ensuing from availability and reduced cost of financing to African carriers has synergistic effect; improved safety of African carriers which comes with acquisition of modern aircraft, enhanced contribution to the national economies as a result of improved air transport, reduced fare to customers as a result of operation of modern and operationally efficient aircraft, higher dividend to the shareholders including to the government which often is the shareholder, etc. The treaty will also play a role in reducing the pressure on African governments to provide financing support to their airlines allowing them to divert scarce public fund to other sectors.

2.6 Through a series of optional provisions, the treaty attempts to balance economic needs with other policy interest of the States.

2.7 The treaty also provides for electronic registry of interest in aircraft thereby introducing element of efficiency in the registration system.

2.8 By setting up this international focal framework, the treaty reduces overall risk to the creditor and broadens the spectrum of financing alternatives available to African carriers.

3. COMMENTS AND RECOMMENDATIONS ON THE DRAFT CONVENTION AND PROTOCOL

Preamble (4th paragraph of the draft Convention)

3.1 While appreciating the importance that the Convention will enhance economic benefit to all interested parties, in order to emphasize that the benefit is mutual, the following is recommended:

The phrase 'and mutual' be added after the phrase 'to provide broad.'

Default Remedies

- **Default by the Creditor/Lessor**

3.2 It is worth while noting that the Convention does not address default by the creditor or the lessor. The prominent defaults which may be committed by a creditor can be, breach of quiet enjoyment clauses, non-return of maintenance reserve in the event of lease, breach of tax obligations, non delivery of aircraft, failure to take redelivery of aircraft, etc. Hence, it is recommended that:

a statement the Annex be included to address the issue.

- **Commercial reasonableness (Art.7 of the Convention and Art. IX (3) (b) (ii) of the Protocol)**

3.3 It is recommended to delete Article IX (3)(b)(ii) of the Protocol because courts should be able to intervene if the unreasonableness is manifest despite the stipulations of the security agreement. It is recommended to either:

- a. *Endeavor to have the provision deleted; or*
- b. *Make the provision an optional clause*

- **Substantial default (Art. 10 (2) of the Convention)**

3.4 It is important that the phrase “substantial default” be defined in the 2nd line of art. 10 (2) of the Convention. In this regard the following definition is recommended:

“Substantial default means a default which deprives materially the non-defaulting party the expected economic benefits it would obtain had performance been carried out by the defaulting party”.

- **Remedies on insolvency (Art. XI of the Protocol)**

3.5 Under Article XI of the Protocol, two alternatives are given by way of remedy for the creditor in the event of the debtor’s insolvency. Under Alternative A, the insolvency administrator is obliged to give the aircraft back at the end of the waiting period (such period to be declared by each contracting state). In addition under Alternative A, the insolvency administrator has duties of preserving the aircraft, the creditor may apply interim relief, the insolvency administrator may retain the use of the aircraft if the default is cured, etc.

3.6 Alternative B gives room to cure defaults and provides that the aircraft will not be sold pending decision by the court. Under Alternative B the insolvency administrator is required to give notice to the creditor that it will cure all defaults or give back the aircraft to the creditor. With the incorporation of paragraphs 5 and 6 of Alternative A in Alternative B, it is recommended,

that Alternative B is adopted as it prevents the aircraft from being sold pending decision by Court, requires the creditor to produce proof of its claim and gives flexibility to the insolvency administrator to perform or not to perform during the waiting period by giving the notice to the creditor. It is also much more simplified. However, the time within which the insolvency administrator has to give notice to the creditor has to be stated in the Protocol (and not to be left to states declaration per Article XXVIII (3) of the Protocol) to bring about uniformity.

Prior interest (Art. 55 of the Convention)

3.7 It is recommended that Alternative “B” be adopted instead of Alternative “A” because it provides better overall advantage in bringing all interests on aircraft into one registry thereby making it easier for search purposes. This overall benefit outweighs very much the cost of re-registration in the International Register of existing interest which cost is believed to be nominal.

The Supervisory Authority and the Registrar (Art.16 of the Convention and Art. XVI of the Protocol)

3.8 It is preferable if ICAO becomes the Supervisory Authority. This is because:

- a. ICAO has a general objective of promoting development of international civil aviation;
- b. ICAO has also the objective of encouraging the development of airlines globally;
- c. The creation of the International Registry Authority may take time;
- d. Both financiers and carriers may feel more comfortable if ICAO conducts the registration and regulation functions than the situation where regulation of important financial interest is entrusted to a newly created institution.

Liability of the Registrar (Art.27 of the Convention)

3.9 The Convention provides under Article 27 two alternatives regarding liability of the Registrar. Under alternative A, the Registrar is responsible 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. Under Alternative B, the Registrar is liable for loss suffered by a person directly arising from the failure of the Registrar to exercise reasonable care and skill in the performance of its duty. In both instances, the Registrar is expected to provide insurance or financial guarantee covering its liability. It is recommended:

that Alternative A be adopted, as it requires the claimant not to prove negligence, which can be difficult. Further, Alternative A introduces elements of strict liability without prove of negligence. Further, for the purpose of clarity the phrase “malfunction of international registration system” should be defined by way of enumeration.

Ratification (Art. 47 of the Convention and Art. XXVI of the Protocol)

3.10 African States support minimum number of ratification (3-5) for the coming into force of the Instruments.

Technical Matter

3.11 During the consideration of technical subjects related to “Electronic Registry”, African States recommend that Plenipotentiaries to this Diplomatic Conference should bear in mind the lack of proper facility in developing States to take advantage of this procedure. Therefore, the Conference should discuss thoroughly this issue before adopting any decision

4. OPTIONAL CLAUSES

4.1 While African States recognize the benefit of consolidating all optional clauses into one Annex, they however questioned the need (appropriateness) of such Annex being an Opt-in Annex only. It is therefore recommended that the Annex would include both Opt-in and Opt-out provisions which becomes effective by affirmative action of the States.

5. STRUCTURE

5.1 African States are of the opinion that the two Treaty approach has made the instrument difficult to understand and cumbersome to use. It is therefore recommended that consolidated text of the Convention/Protocol be officially sanctioned by the Diplomatic Conference.

6. ACTION BY THE DIPLOMATIC CONFERENCE

6.1 African States request all Plenipotentiaries to this Diplomatic Conference to consider comments and recommendations provided in paragraphs 3, 4 and 5 above before the adoption of the concerned legal instrument.

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Addendum
English & French only

**AFRICAN STATES' POSITION ON
THE DRAFT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT AND THE DRAFT PROTOCOL ON MATTERS SPECIFIC TO AIRCRAFT**
(Presented by the African States)

With reference to paragraph 5.1, the African States would like to further clarify their position with regard to the structure of the instruments. The African States strongly support:

- a) above Convention covering all the categories of mobile equipment described in Article 2(3) of the Convention with a possibility of future extension of the Convention to other mobile equipment of high value and supplemented by equipment specific protocols;
- b) the adoption of a protocol on matters specific to aircraft equipment; and
- c) a consolidated text of the Convention and the Protocol as a working document which may be sanctioned by this Diplomatic Conference or referred to ICAO/UNIDROIT Secretariats.

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23/10/01

COMMENTS ON DRAFT CONVENTION AND DRAFT PROTOCOL
(Presented by China)

PROPOSAL 1: FINAL PROVISIONS

Where Article 47, Chapter XIV of the Draft Convention stipulates: "This Convention...after ...the [third/fifth] instrument of ratification, acceptance,..."

China proposes to amend the relevant portion to read "This Convention...after ...the thirtieth instrument of ratification, acceptance,..."

Reason: ICAO conventions generally require 30 or more ratifications before they enter into force. Examples include the Montreal Convention of 1999 and the Guatemala Protocol of 1971.

For the same reason, it is proposed that Article 26 of the Draft Protocol where it reads "This Protocol...after...the [third/fifth] instrument of ratification, acceptance,..." be reworded to read "This Protocol...after...the thirtieth instrument of ratification, acceptance,..."

PROPOSAL 2: MULTIPLE GUARANTEES

It is proposed that a new article be added after Article 47 of the proposed Convention:

Article 48 Multiple Guarantees

"After entry into force of this Convention, creditors shall gradually relieve debtors bound by this Convention of their obligation to provide guarantees other than those provided for in this Convention."

Reason: The purpose of the proposed Convention is to provide uniform international validation and protection for international interests. As compared with other forms of guarantees, such validation and protection enjoy a higher status and are more reliable in effect. It would therefore be unnecessary to require additional guarantees on the part of the debtor.

PROPOSAL 3: CONSOLIDATED TEXT

China supports the position of formulating a consolidated text in lieu of a convention and a protocol.

PROPOSAL 4: THE CHINESE VERSION

China proposes that the Chinese version be treated as one of the authentic versions of the proposed Convention because the Chinese language is one of the working languages of the UN as well as of ICAO.

PROPOSAL 5: PROTECTION OF DEBTORS' RIGHTS AND INTERESTS

It is proposed that an additional article be introduced to Chapter III of the proposed Convention as follows:

“Article 15 Debtors’ Protection

1. Where a debtor has performed its obligations, the creditor shall not infringe upon the debtor’s lawful rights and interests in the object.

2. Where a creditor's abuse of remedies has caused harm to a debtor, the creditor shall pay damages so caused.”

Reason: The Convention should provide protection for the lawful rights and interests of both the creditor and the debtor.

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24/10/01

COMMENTS ON (1) “DESIGNATED ENTRY POINTS” ARTICLE (2) “TERRITORIAL UNITS” ARTICLE (Presented by China)

1. “Designated entry points” article

1.1 Draft Protocol

It is proposed that Article XVIII(1) of the draft Protocol be amended as follows:

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 one or more entities in its territory as the entity/entities through which the information required for registration shall or may be transmitted to the International Registry.

2. [no change]

Note:

The purpose of the proposed amendments is to make clear that a Contracting State may designate different entry points for transmitting information to the International Registry. This proposal is particularly relevant to China and to any other States comprised of territorial units each with its own systems of law, administration and registration, and own systems of working hours and holidays. It would enable information to be transmitted to the International Registry directly from the designated entry point within each territorial unit, and would facilitate the prompt registration of International Interests.

1.2 **Draft Consolidated Text**

It is proposed that Article 28(1) of the draft Consolidated Text be amended as follows:

Article 28 – Designated entry points

1. At the time of ratification, acceptance, approval of, or accession to this Convention, a Contracting State may, subject to paragraph 2, designate one or more entities in its territory as the entity/entities through which the information required for registration shall or may be transmitted to the International Registry.

2. [no change]

Note:

The proposed amendments are consequential to the proposed amendments to the draft Protocol.

2. **“Territorial units” article**

2.1 Draft Convention

It is proposed that the following article be added after Article 53 of the draft Convention as new Article 53 *bis*:

Article 53 bis – 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 Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention 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 Convention extends.

3. If a Contracting State makes no declaration under paragraph 1, this Convention is to extend to all territorial units of that Contracting State.

4. Where a Contracting State extends this Convention to one or more of its territorial units, declarations and reservations permitted under this Convention may be made in respect of each such territorial unit, and the declarations and reservations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

Note:

A “territorial units” article is proposed for the Convention on the basis that the subject matter of such article (i.e. the application of a treaty to a State with different systems of law applying in different territorial units) is relevant not only to Contracting States to the Protocol but may also be

relevant to other Contracting States to the Convention. Therefore, the article should be included in the draft Convention itself and not only in the draft Protocol.

The proposed article is based on existing Article XXVII of the draft Protocol with modifications. A new paragraph (4) is added to make clear that a Contracting State may make different declarations and reservations in respect of different territorial units.

The proposal is of particular relevance to China because the Hong Kong and Macau Special Administrative Regions maintain their own systems in various aspects such as their own legal and judicial systems. The flexibility to apply different provisions of the Convention to different territorial units would facilitate the implementation of the Convention in China and also in any other States in which different systems of law exist.

2.2 **Draft Protocol**

It is proposed that Article XXVII of the draft Protocol be amended as follows:

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. In relation to a Contracting State that has two or more territorial units to which different systems of law apply in relation to the matters dealt with in this Protocol, references to “national register” and “registry authority” of a Contracting State shall be construed as referring to the relevant aircraft register and registry authority of the relevant territorial unit of that Contracting State.

4. If a Contracting State makes no declaration under paragraph 1, this Protocol is to extend to all territorial units of that Contracting State.

5. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations and reservations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations and reservations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

Note:

A new Paragraph (3) is added to clarify the meaning of certain terms as used in the Protocol so as to make the reference to those terms more appropriate in their application to a territorial unit. A new Paragraph (5) is added for the reasons as set out in the Note to proposed new Article 53 *bis* of the draft Convention.

2.3 **Draft Consolidated Text**

It is proposed that Article 65 of the draft Consolidated Text be amended as follows:

Article 65 – 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 Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention 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 Convention extends.

3. In relation to a Contracting State that has two or more territorial units to which different systems of law apply in relation to the matters dealt with in this Convention, references to “national register” and “registry authority” of a Contracting State shall be construed as referring to the relevant aircraft register and registry authority of the relevant territorial unit of that Contracting State.

4. If a Contracting State makes no declaration under paragraph 1, this Convention is to extend to all territorial units of that Contracting State.

5. Where a Contracting State extends this Convention to one or more of its territorial units, declarations and reservations permitted under this Convention may be made in respect of each such territorial unit, and the declarations and reservations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

Note:

The proposed amendments are consequential to the proposed amendments regarding the draft Convention and Protocol.

DCME Doc No. 28
26/10/01

COMMENTS ON THE DRAFT CONVENTION AND THE DRAFT PROTOCOL (Presented by the United States)

The United States submits the following proposals for technical revisions of the Convention and the Aircraft Protocol as well as additional observations. In some instances we have proposed revised text. In other cases we have identified policy concerns and issues for consideration by the diplomatic conference.

1. De-registration Request. The present text of the Aircraft Protocol contains some ambiguity as to two questions:

First, is a national aircraft registry required to honor a request for de-registration and export under Article XIII of the Protocol upon proper submission of a request by an authorised party (subject, of course, to applicable aviation safety laws and regulations)? Second, and related, must the national registry honor a request in the absence of consent or satisfaction of the holders of registered international interests that are junior to the interest of the holder on whose behalf the request for de-registration is made? We believe that the answers to these questions are not clear under the Protocol and we propose revisions that would provide clear answers.

Article IX(2) of the Aircraft Protocol provides:

2. The creditor shall not exercise the remedies specified in paragraph 1 [i.e., de-registration and export remedies] without the prior consent in writing of the holder of any registered interest *ranking in priority to that of the creditor*. (emphasis added)

Note that this provision contains no directions to a national registry. Arguably that obligation can be implied from its duty to cooperate and assist under Article XIII(3) of the Protocol. Or, that obligation might arise pursuant to a national registry’s “confirmation” made pursuant to paragraph (ii) of the form set out in the Annex referred to in Article XIII(1). But neither of these conclusions is required from the text of the Protocol itself. Our proposed revision would clearly impose this obligation on national registries.

Another ambiguity concerns the relationship of the Convention and the Protocol to the *Convention on the International Recognition of Rights in Aircraft*, opened for signature in Geneva on 19 June 1948 (“Geneva Convention”). Article IX of the Geneva Convention provides:

Except in the case of a sale in execution in conformity with the provisions of Article VII, no transfer of an aircraft from the nationality register or the record of a Contracting State to that of another Contracting State shall be made, unless *all holders of recorded rights* have been satisfied or consent to the transfer. (emphasis added)

Inasmuch as junior interests may be registered in the international registry, their validity and priority would not be prejudiced by a de-registration of the aircraft in the national registry. Under Article XXII of the Protocol the Geneva Convention is superseded, but only “with respect to matters not covered or affected by” the Convention. Because the duty of a national registry to honor a request for de-registration is not clearly spelled out in the Protocol, arguably that is not a “matter covered or affected” and Geneva would not be superseded in this context. Unless the Protocol clearly directs a national registry to honor a proper request for de-registration in the absence of consent or satisfaction of interests junior to the holder of the interest on whose behalf the request is made, a registry might insist on the consent or satisfaction of junior interests as a condition precedent to de-registration. That result would be unacceptable.

In view of the foregoing, we propose the addition of a new Article IX(4) to the Protocol to read as follows:

4. The registry authority in Contracting States shall, subject to applicable aviation safety laws and regulations, honour a request for de-registration and export if:

(a) the request is properly submitted by the authorised party under a recorded irrevocable de-registration and export request authorisation; and

(b) the authorised party certifies to the registry authority that all holders of registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been satisfied or consent to the de-registration and export.

2. Assignments: Convention Chapter IX and Protocol Article XV. We have reviewed a revised version of Chapter IX of the Convention prepared by the Rapporteur to the Joint Sessions, Sir Royston M. Goode. See Convention, footnote 2. The revised version is attached to this paper as Annex I. We believe that the revised Chapter IX is a substantial improvement and support its inclusion in the Convention. (References to Articles of Chapter IX below are to Articles of the *revised* version.) We have the following additional specific comments and proposals.

a. Article 32(3). We propose that the words “preceding paragraph” be replaced by the words “this article.” The relationship between paragraphs 1 and 2 suggests that it would be prudent to refer to the entire article.

b. Article 31. In general we agree with an informal proposal by the Government of Canada to add a new paragraph 2 to Article 31. We propose that the new paragraph should read as follows:

2. – An assignment of an international interest created pursuant to a security agreement is not valid unless some or all related associated rights also are assigned.

c. Definition of “associated rights”; Article 1(c). In order to achieve the result intended by the words “associated rights relate to” in Article 35, we propose the deletion of the reference to “and the reasonable costs under 7(5).” We also propose to redefine “associated rights” as follows:

(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 or the transaction, including finance charges, indemnification obligations, fees or other charges, and any

reasonable costs incurred in the exercise of a remedy relating to the agreement, the object, or the transaction;

This approach would eliminate the possibility that a court might erroneously limit the priority to the “principal” of a loan or the price or rentals for an object. The change to the definition would make the reference to costs under 7(5) unnecessary inasmuch as those costs would be picked up as associated rights.

d. Article 35 Limitation of Priority; Protocol Article XV. Article 35 is intended to limit the otherwise applicable priority afforded to assignments of associated rights. For a few years square brackets have appeared around Article XV(2) of the Protocol.¹ That provision, if retained, would eliminate the priority-limiting language of Article 35. We believe that Article XV(2) should be removed from the Protocol.

Resolving the policy question whether to retain the Article 35 limitation on priority for the Protocol depends, at least in part, on the answer to an empirical question. Would affording full priority to assignments of associated rights secured by, but otherwise unrelated to, an international interest in an aircraft object unreasonably impair general receivables financings and securitization transactions? We believe that a rule adopting full priority would unreasonably impair these financings and that Article 35 should be retained.

While we believe that the priority should be limited along the lines of Article 35, we also believe that Article 35 may be too limiting. We propose to expand the priority beyond the current limitation. We propose the revision of Article 35 to read as follows:

Where the assignment of an international interest in an object 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) a sum advanced and utilised for the purchase of another object in which the assignor held another international interest if:

(i) the assignor assigned the international interest to the assignee; and

(ii) the assignment has been registered.;

(c) the price payable for the object; or

(d) the rentals payable in respect of the object.

This formulation enhances the potential for cross-collateralization among registered “purchase-money” international interests held by the same assignee. But it also ensures that any potential assignee of associated rights will be made aware, from the “purchase-money” character of those rights, that an aircraft object is involved and that the international registry must be consulted. Note that it may be necessary for the drafting group to clarify in more explicit language the circumstances under which associated rights “relate to” the itemized obligations.

Finally, some who have read Article 35 have misunderstood its implications for so-called “cross-collateralization” of international interests. However, under the Convention a debtor and creditor are free to agree that an object will secure not only obligations relating to the debtor’s acquisition of, or use of, an object but also any other obligations of the debtor to the creditor. See Article 6(d). And if the international interest in the object is registered, it obtains full priority with respect all of the obligations secured. Consequently, if a debtor and creditor enter into a series of transactions, they may provide in each transaction that the relevant object secures obligations that have arisen or that will arise under the other transactions. Article 35, on the other hand, simply takes

¹ Article XV(2) of the Protocol provides:

[2. – Article 35 of the Convention applies as if the words following the phrase “not held with an international interest” were omitted.]

account of the situation of a creditor that assigns its various international interests and related associated rights to multiple assignees. Under Article 35, as revised, the assignee achieves priority in each set of associated rights with respect to the related international interest assigned to it and all other registered international interests assigned by the same creditor to that assignee. It avoids the unacceptable dilemma of the prospective assignee of associated rights that are unrelated to the acquisition of the object. Such an assignee would have no means of knowing that under an unrelated transaction an object secured the rights to be assigned.

3. Prospective International Interests and Prospective Assignments. Article 15(1) provides for the registration of “prospective international interests” and “prospective assignments.” We believe that the Convention and the Protocol should provide clearly that if an international interest is purportedly registered before the interest actually exists, the registration is effective, even though the registration does not indicate that it is a prospective international interest, upon the international interest coming into existence.

A simple example will illustrate this principle:

A Co. enters into a security agreement with Bank covering an aircraft already owned by A Co. The interest to be created by the security agreement is registered under the Convention and the Protocol. When Bank is satisfied with the registration and obtains a search indicating that no conflicting interest is of record, Bank loans funds to A Co. Immediately before the loan is made, no international interest actually exists because there are no obligations that can be secured. Before the loan is made, Bank has a “prospective international interest.” It does not choose to have the information submitted in connection with the registration to so indicate, however. Bank worries that there might be a subsequent step (e.g., another registration step) that must be taken after it makes the loan. If for any reason that step were not made (e.g., intervening court order, bankruptcy, etc.), it fears its interest may be compromised. If the registration system is going to be functional, the registration of Bank’s international interest must be effective, without any further step, immediately upon making the loan.

In order to effectuate this principle, we propose the addition of a new second sentence to Article 18(3). But the new sentence, alone, may not be sufficient. If a prospective international interest is identified as such, the question remains whether some sort of follow-up step may be implicitly required. Consequently, we propose the revision of Article 18(3) as follows:

3. If an interest registered as a prospective international interest becomes an international interest, that international interest shall, without any further action by any person, be a registered international interest from the time of registration of the prospective international interest. A prospective international interest may be registered whether or not the registration information submitted to the international registry indicates that the interest to be registered is prospective.

4. Participation by Intergovernmental Bodies as Parties to the Convention. The United States would consider a proposal for participation by intergovernmental organizations as parties to the Convention and the Protocol. However, our favorable consideration would require that participation be open to all similarly situated organizations and not solely to particular bodies. Satisfaction of three other conditions also would be necessary.

First, any such proposal must ensure that implementation of the Convention and the Protocol would not be affected. For example, generally a state that ratifies a convention assumes an obligation to implement its provisions. It must be clear that an intergovernmental organization that becomes a party to the Convention on behalf of its member states would assume the same obligation and would not interpose additional rules or requirements or otherwise impede its implementation.

Second, ratification by an intergovernmental organization must be effective to bind its member states or to bind specified member states. But this approach to ratification should be utilized only if it would not unduly delay the effectiveness of the Convention in the member states. That delay would undermine the purposes of the Convention and reduce its value.

Third, organizations that provide specialized services on behalf of, but which are not empowered to ratify a treaty for, their member states would require special scrutiny. Their rights derived from becoming a party to the Convention could be realized only to the extent that the organization would exercise those rights on behalf of a member state that also was a party to the Convention. Otherwise, rights would be conferred on states that were not otherwise bound to the Convention and which would not be obligated to recognize international interests and other rights arising out of the Convention. That would be an unacceptable result.

5. Designated Entry Points. We are very interested in issues that may arise in the implementation of the international registry concerning entry points in Contracting States designated under Protocol Article XVIII. This is especially so in the context of an entry point that also is a Contracting State's national aircraft registry. During the course of the diplomatic conference members of our delegation would benefit from meeting with members of other delegations to discuss these issues of implementation.

6. Post-Diplomatic Conference Matters. There are three important post-Diplomatic Conference matters that we believe the conference should address.

a. Official Commentary. We support a resolution or other action at the diplomatic conference to mandate the issuance of official comments to the text of the Convention and the Protocol. The commentary should be sponsored jointly by ICAO and UNIDROIT. In preparing the commentary, it is essential that the two secretariats enlist the assistance of legal and aviation industry experts. States and legal and industry experts also must have a reasonable period of time to provide input on the proposed commentary before it is finalized.

b. Review Board. We also support the creation of a Review Board pursuant to Article XXXII of the Protocol. However, we believe that a membership of five would be an inadequate number of members. We support establishment of the board soon after the diplomatic conference has completed its work. As with the commentary, it is essential that the review board work closely with legal and aviation industry experts. One matter that the board should consider is the feasibility of accommodating, in a future additional protocol or in appropriate revisions to the Protocol, certain types of smaller aircraft and certain state-owned aircraft.

c. International Registry. We believe it essential that the diplomatic conference establish a date certain for the creation and operation of the international registry. We also believe that in considering an appropriate initial Registrar, or an interim Registrar if necessary to avoid unnecessary delay, a wide scope of eligibility must be observed. Any entity demonstrating the required capabilities should be considered. In a hi-tech, electronic registry the discretion that the Registrar can exercise will be negligible. Consequently, conflicts of interest on the part of potential candidates for Registrar which are associated with the aviation industry do not present an issue of any practical importance.

7. Aviation Working Group ("AWG")/International Air Transport Association ("IATA") Comments. We have taken note of the joint comments dated 31 August 2001 submitted by the AWG and IATA ("Joint Comments"). In general, we support their major proposals, some of which relate to points we have mentioned above.

In particular, we support the proposal for a single "opt-in" Annex to permit a Contracting States to adopt only those "optional" provisions that it chooses by its affirmative act (Joint Comments, Appendix 1-A). This approach is essential to ensure maximum flexibility for Contracting States.

The additional debtor-protection provisions (Joint Comments, Appendix 1-B) are less central than the “opt-in” Annex approach. They may even address matters not covered by the Convention. However, so long as the proposed language in Appendix 1-B is not modified in ways that would undermine the utility of the convention in promoting asset-based financing, we could support the proposal.

We also generally support the limited technical comments submitted by the AWG and IATA. Some of these are particularly important.

Article 17(5) (new): 5.- A Contracting State making a declaration permitted by the preceding paragraph and the Protocol may specify the requirements, if any, to be satisfied prior to transmission of such information through its designated entity.

Although the proposal would clarify what is implicit in the current text, we believe that this point is of sufficient importance to be made explicit in the text. A designated entity must be free to specify the means, manner, and conditions for its transmission of information in the registration process.

Article 27: “except for losses attributable to acts or circumstances arising prior to receipt of registration information at the International Registry.”

We support this proposal for very limited exceptions to the liability of the Registry. The proposal is consistent with existing technology. Limitations on liability should be confined to very narrow concepts of *force majeure* in order to retain the confidence of the aviation industry.

Article 39: “...which under that State's law would have priority without filing or other publication over an interest in an object equivalent...”

It has been the intention and understanding throughout the process of formulating the Convention that the superpriority afforded certain non-consensual interests would relate only to non-consensual interests that have priority under national laws in the absence of filing or other public notice.

Article 55: Transition. We also support the policy underlying Alternative A. It would not be feasible and would be enormously costly to apply the Convention to pre-existing transactions and interests. We question, however, whether the current text of Article 55 is adequate. The time the Convention enters into force (i.e., when it has been ratified by 3 or 5 states) cannot be the relevant time for determining whether an interest is pre-existing. For example, following entry into force of the Convention it nonetheless should not apply to transactions entered into by debtors situated in states that have not yet become Contracting States. For this purpose it may be necessary to specify a single state in which a debtor is situated; the approach taken in Article 4 may be too broad. We intend to formulate an alternative text during the course of the diplomatic conference.

Protocol Article XVIII(2)(a): “international interests or prospective international interests in, assignments of international interests or prospective assignments in, or sales or prospective sales of, helicopters....”

We support this expansion of the role of designated entry points in the international registry system. The current text would exclude many, if not most, transmissions of information for registration.

8. Continued Industry Participation. The purpose of the Convention and the Protocol is to promote private sector financing for the air transportation industry in all regions. The success of the Convention and the Protocol will depend on the continued cooperation and acceptance of the aviation industry. Consequently, we believe it important that aviation industry associations and representatives be consulted and involved not only at the diplomatic conference but in all stages of implementation of the Convention and the Protocol.

APPENDIX**PROPOSAL FOR REVISED TEXT OF CHAPTER IX OF THE
DRAFT CONVENTION****CHAPTER IX – ASSIGNMENTS OF ASSOCIATED RIGHTS, INTERNATIONAL INTERESTS
AND RIGHTS OF SUBROGATION*****Article 30 – Effects of assignment***

1. An assignment of associated rights or of the related international interest made in conformity with Article 31 also transfers to the assignee, to the extent agreed by the parties to the assignment:
 - (a) in the case of an assignment of associated rights, the related international interest;
 - (b) in the case of an assignment of an international interest, 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 31 – Formal requirements of assignment

1. An assignment of an international interest or of associated rights 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 32 – Debtor's duty to assignee

1. To the extent that associated rights and the related international interest have been transferred in accordance with Articles 30 and 31, 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 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 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,

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.

**COMMENTS ON THE DRAFT CONVENTION AND
THE DRAFT AIRCRAFT PROTOCOL**

(Presented by Uruguay)

1. DOUBLE STRUCTURE OF A GENERAL CONVENTION AND SPECIFIC PROTOCOLS

1.1 We consider that the separation of what was originally conceived as a single document applicable to all categories of high-value mobile equipment into two instruments: 1) a base Convention, establishing the general rules applicable to all of the different categories of equipment of that type; and 2) separate Protocols for the different, specific types of equipment, establishing the special rules necessary to adapt the provisions of the Convention to the special characteristics of each category of equipment, has comparative advantages that make this solution preferable.

1.2 The reason for this decision was to facilitate the prompt entry into force of the new international system proposed in relation to aircraft equipment, since the representatives of the aviation industry who participated in the Working Group emphasized the need to have this instrument as soon as possible, avoiding delays resulting from the consideration of the special needs of other categories of equipment, whose interest groups have not achieved the same degree of progress as has been obtained by the aviation industry.

1.3 Perhaps the main advantage of this double structure of a general Convention and specific Protocols is that of providing a basic body of rules applicable to the whole spectrum of high-value mobile equipment and also a set of rules that refer exclusively to the characteristics particular to some specific categories of mobile equipment. In the terminology proposed by AWG and IATA, the Convention would be the general part, to be complemented for each category of equipment by a Protocol drafted specially to meet the specific needs of the respective category.

1.4 This proposed double structure makes it possible for the Convention to establish the basic principles with regard to interests in mobile equipment while the Protocols, for their part, make those principles operational. This appears to be extremely useful for the following reasons, in addition to what has already been stated:

- It avoids useless repetitions that would be incurred if the general principles had to be repeated in relation to each specific category of mobile equipment.
- It makes it possible to have a set of basic standards in a Convention that is generally applicable to all types of mobile equipment (provided that this equipment is “uniquely identifiable”, as required by Article 2.2 of the Convention) and also applicable to situations not provided for at the time of developing and approving the Convention. This appears to be especially useful for countries such as ours where there has not been up until now considerable development of the air and space industry, but where it may prove to be very useful for industrialists in general to have a clear and reliable system of interests that allows them access to the international credit necessary to acquire or renew high-value equipment.
- It allows more specific and detailed regulation of matters particular to some specific categories of mobile equipment that it would be impossible to provide for and include in a single, general Convention.
- It allows the different sectors involved in the respective categories of mobile equipment to advance at their own pace in the development of their specific Protocols. All the sectors, not only the aviation sector, could see themselves benefit from the outset from a general Convention, leaving open the possibility of promoting, given the specific needs

particular to their own sector, the development of a specific Protocol that provides for their own needs. This last possibility is expressly provided for in Article 50 of the Convention.

– It gives governments greater flexibility to adopt only those Protocols that refer to categories of equipment that prove to them to be useful, without losing the benefits given to them by the general Convention.

2. METHODOLOGY USED AND PUBLIC INTERNATIONAL LAW

2.1 We consider that there are no objections either from the methodological point of view since the 1986 Vienna Convention on the Law of Treaties (approved by Uruguay by Act No. 16.173 of 30 March 1991) establishes in Article 2 that a “treaty means an international agreement ... , whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”.

3. NUMBER OF RATIFICATIONS REQUIRED FOR THE ENTRY INTO FORCE OF THE CONVENTION

3.1 We share the arguments put forward by AWG and IATA in their comments of 31 August 2001 in favour of the solution provided for by Article 47 of the Convention which establishes its entry 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, ... ”.

3.2 All the arguments put forward in favour of requiring a larger number of ratifying States for these instruments to enter into force, collapse with a single argument: three States represent more than 60 per cent of the volume of transactions, while around 120 States represent less than 10 per cent of that volume. The possibility of entry into force with that minimum number is a positive one. Consequently, there is no necessary linkage between the number of ratifying States and the actual volume of transactions.

3.3 With regard to the system for the regulation of the supply agreement, as well as to the interests, this is determined by the sphere of application (Article 3); with regard to interpretation and applicable law provided for in Article 5.3, there is subjection to the rules of private international law of the forum State. Consequently, jurisdiction becomes a decisive element, for the regulation of which there prevails the autonomy of the will provided for in Articles 41 and 42 of the Convention, in accordance with Article XX of the Protocol.

DCME Doc No. 30
29/10/01

COMMENTS ON THE DRAFT CONVENTION AND THE DRAFT PROTOCOL

(Presented by Japan)

1. ARTICLE 55 OF THE DRAFT CONVENTION

1.1 The Government of Japan would support Alternative A.

1.2 Although we recognize Alternative B's advantages that would create a clear priority system, including the pre-existing interests, which thereby reduce the risks for future transactions, we should be very attentive to the possible risks, incurred by the parties to the pre-existing transactions who fail to re-register their interest in the International Registry, as well as to the burdens and costs for the re-registration. Thus, after considering the advantages and disadvantages of both alternatives, the Government of Japan is led to make the above-mentioned conclusion.

2. PARAGRAPH 2 OF ARTICLE XIX OF THE DRAFT PROTOCOL

2.1 The Government of Japan proposes to change five calendar days to longer days (for example, ten calendar days) just for the practical reason that five days would be too short to complete all the steps for the discharge of the registration.

DCME Doc No. 31
30/10/01

PROPOSALS TO BE INSERTED IN THE CONSOLIDATED TEXT

(Presented by Saudi Arabia)

SUMMARY

This paper deals with support of the intention to adopt the Draft Consolidated Text and the proposal of certain amendments to some articles of the text.

Paragraph 2 of the paper contains action by the Conference.

REFERENCES

DCME Doc No. 5

1. INTRODUCTION

1.1 There is no doubt that the Convention on International Interests in Mobile Equipment has many positive aspects provided that the interests of all the parties participating in air transport are taken into consideration so as to keep a just and equitable balance between the creditor and the debtor (creditors v. debtors) as one of its main characteristics is the facilitation of financing and the creation of an international registry to register interests and give them priority over the rest of interests in the aircraft object or the aircraft itself. These characteristics must be reflected as promotion of aviation safety. From this starting point, certain amendments have been proposed to the Consolidated Text to take into consideration some of the legal characteristics which the text should contain.

2. PROPOSED AMENDMENTS TO THE CONSOLIDATED TEXT ARE THE FOLLOWING:

A. Support for the intention to adopt the Draft Consolidated Text arises from the legal starting point that the consolidation of the provisions of the Convention and the Protocol integrates the subject to be regulated and unifies the substantive character of the provisions of which they are formed.

B. It is proposed to add an article clearly specifying the objective of the Convention and not to be content with the objectives provided for in the preamble to the Convention because they are general terms with unclear intention. This paper refers in the introduction to the most important objectives that the Convention endeavours to achieve.

C. Support of the intention to create an autonomous body as the Supervisory Authority to oversee interests and registration, the establishment of which is proposed by the Convention (The Consolidated Text) because this subject is still under discussion and consultations and we support the intention for the ICAO to act as the Supervisory Authority which does not prevent the autonomous body in the formation of its cadres from seeking the aid of professionals from the various Contracting States, including the ICAO.

D. It is proposed to increase the membership of "the Review Board" provided for in article 73 instead of being content with five members only and that the text includes an indication of the competence of the Council to propose amendments to the Convention which helps to make the Council representative of the interests of the various relevant parties to the Convention.

3. ACTION BY THE CONFERENCE

3.1 Approval of taking the proposals in paragraph 2 into consideration when adopting the Draft Consolidated Text.

DCME Doc No. 32
31/10/01

COMMENTS ON THE DRAFT CONVENTION (Presented by Japan)

1. ARTICLE 2(4) – DETERMINATION OF CHARACTERISATION

1.1 This paragraph only mentions that the Convention does not determine the characterisation of a certain international interest among the three categories as provided in paragraph 2 of the same Article, and does not explicitly provide for the rule of determination. We believe that the consensus among us with respect to this point, which is further confirmed by Comment 3 to this Article in the Explanatory Report and Commentary, is the applicable law of the forum State. We also acknowledge its history that the paragraph was so provided in the early draft texts, but later changed to the current wording.

1.2 Having considered the historical reason, as well as being hesitant to re-open the same issue, we still believe that the paragraph explicitly provides that the applicable law determines the characterisation. Since the characterisation is always the first step to determine the applicability of relevant provisions, i.e. the remedies, under the Convention, and thus, this paragraph seems to be so important to be argued and interpreted repeatedly by the relevant parties in future, the explicit provision is preferable to avoid possible future confusions and misinterpretations. Our proposed wording is as follows:

“The applicable law, including the rules of private international law of the forum State, shall determine whether an interest to which paragraph 2 applies falls within sub-paragraph (a), (b) or (c) of that paragraph.”

2. ARTICLE 17(2) – EVIDENCE OF CONSENT

2.1 Although this Article grants to the Protocol and regulations the broad authority and discretions to specify the registration requirements and formalities, the only restriction as explicitly provided is paragraph 2. However, we are concerned that the registration system would be easily exposed to the risk of possible fraudulent filings if no evidence that the consent of the relevant party was given is required at all.

2.2 We very much appreciate the intention and observation of this paragraph based on the electronic and the notice-filing nature of the system, and thus, we agree that the Registrar or a designated entry points should not search or require the evidence of authenticity or verification of the consent. However, we believe that the system should have a certain instrumental role (i.e. the receipt of the consent apparently signed by a party in whose disfavour a registration is made), in order to protect such party from the fraudulent or improper registration. Since the kind and level of the evidence of the consent is largely dependent upon the system to be built in future and its trustworthiness, it would be difficult to specify these in the Convention at this moment. Thus, we propose that paragraph 2 be deleted.

COMMENTS ON THE DRAFT CONVENTION
(Presented by Japan)**CHAPTER IX – ASSIGNMENTS OF INTERNATIONAL INTERESTS
AND RIGHTS OF SUBPROGATION**

1. We refer to footnote 2 of Chapter IX of the Convention, especially the Chairman's proposal that Chapter IX be more into line with those national legal systems under which an assignment of associated rights would carry with it the international interest securing those rights. Since Japan, together with other civil law jurisdictions, has such a legal system, we have supported this proposal.

1.1 The attached is the revised draft of Chapter IV made by Japan for discussion purpose. In revising the text, we tried to put more focus on the assignment of associated rights in order to harmonize with the legal principle that the security follows the secured right. Further, new paragraphs 2 of Articles 31 and 34 are added to ensure that the associated rights and the international interest may not be assigned independently. On the other hand, we also tried to add, as least as possible, to the requirements and formalities of the assignment of a right normally provided for in national laws. We ask our revision be considered.

2. Apart from the above revision, Japan prefers to delete the entire sub-paragraph (c) of Article 32 (1) because it imposes an additional burden or adverse effect to a creditor, which may not be recognized under national laws. Although paragraph 1 is the obligation of the debtor, paragraph 2 provides for the debtor's discharge. In addition, this Article is not relating to determine the priority among the competing assignees. Thus, if a debtor receives the first notice in conformity with paragraph 1 and makes a payment to that assignee, the debtor will be discharged from making further payments to subsequent assignees under paragraph 2, even if the first assignee is not ultimately found to be the assignee with the priority under Article 34. Although we anticipate certain limited cases where supplemental rules might be necessary, such as those applicable to the simultaneous receipt of more than one notice, as the general rule to be included in the Convention, this Article seems to satisfy adequate debtor's protection.

APPENDIX**PROPOSAL FOR REVISED TEXT OF CHAPTER IX OF THE
DRAFT CONVENTION****CHAPTER IX – ASSIGNMENTS OF ASSOCIATED RIGHTS
AND RIGHTS OF SUBROGATION***Article 30 – Formal requirements of assignment*

An assignment of associated rights is valid only if it:

- (a) [same];
- (b) enables to identify the associated rights; and
- (c) [same].

Article 31 – Effects of assignment

1. An assignment of associated rights made in conformity with the preceding Article also transfers to the assignee:

(a) the international interest which secures or associates with such associated rights; and

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

2. The assignor may not assign either of associated rights or the international interest which secures or associates with such associated rights separately from the rest.

[3.– the rest is the same as the draft text except for the reference to the paragraph number].

Article 32 – Debtor’s duty to assignee

1. To the extent that associated rights have been transferred in accordance with Article 30, the debtor in relation to the associated rights is bound by the assignment and has a duty to make payment or give other performance to the assignee, but only if:

[(a) the rest is the same as in the draft text].

3. Nothing in this Article 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, [the rest is the same as the draft text].

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

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

[(c) same as the draft text]; and

(d) to the object were references to the assigned associated rights and the related international interest.

Article 34 – Priority of competing assignments

1. Where there are competing assignments of associated rights in accordance with Article 30 and at least one of the assignments of the relevant international interest is registered in accordance with Chapter V, [the rest is the same as the draft text].

2. In the case of the preceding paragraph, the associated rights shall vest to the assignee with the priority determined under the preceding paragraph.

[Articles 35 and 36 – same as the draft text]

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. same as the draft text].

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COMMENTS ON THE DRAFT CONVENTION
(Presented by the United States)

Article 28 – Priority of competing interests

We propose revision of Article 28(3) of the Convention as follows:

3. The buyer or lessee of, or other purchaser of an interest in, 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.

Note that Article 14 *bis* proposed by the AWG and IATA would ensure the quiet possession and use of an aircraft, absent a default. While we generally support this initiative, if this approach is adopted it must be made subject to Article 28(3). A debtor that takes its interest subject to a registered interest (e.g., a lessee from a debtor whose interest is subject to a registered interest) would not have a right of quiet possession and use that would prevail over the rights of the holder of the senior international interest.

DCME Doc No. 35
1/11/01

**CONCLUSIONS OF THE INFORMAL CONSULTATION GROUP
ON ARTICLE 26(2) OF THE DRAFT CONVENTION**
(Presented by Canada on behalf of the Informal Consultation Group)

The Informal Consultation Group on Article 26(2) of the draft Convention met on Thursday, 1 November 2001, at 13:00 hours. The following delegations were represented: Canada, Egypt, France, Germany, Italy, Republic of Korea, Singapore, South Africa, United Kingdom and United States. The meeting was convened by Mr. Gilles Lauzon (Canada).

The Group submits that the following amendments (highlighted) be made to the draft instruments:

- Modify Article 26 of the draft Convention as follows :
 - 2. **The Supervisory Authority and its officers and employees shall enjoy ~~functional~~ such immunity from legal or administrative process as is specified in the Protocol.**
- Add in Article XVI of the draft Aircraft Protocol the following provision:

[1bis. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as provided under the rules applicable to them.]

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2/11/01

COMMENTS ON ARTICLE 7(2) OF THE DRAFT CONVENTION
(Presented by Australia)

Replace Article 7(2) with the following article:

“Any remedy given by sub-paragraph (a), (b) or (c) of the preceding paragraph or by Article 12 must be exercised either:

- (a) in a commercially reasonable manner; or
- (b) in conformity with any provision of the security agreement that is not manifestly unreasonable.”

(An alternate drafting configuration of the Australian proposal, which differs only in that it does not employ sub-paragraphs, could be used as follows:

“Any remedy given by sub-paragraph (a), (b) or (c) of the proceeding paragraph must be exercised either in a commercially reasonable manner, or in conformity with any provision of the security agreement that is not manifestly unreasonable.”)

DCME Doc No. 37
2/11/01
English and French only

COMMENTS ON ARTICLE 49 OF THE DRAFT CONVENTION
(Presented by the Rail Working Group (RWG))

The “architecture” of the proposed Convention, with certain basic rules in a Convention and detailed industry related provisions in industry Protocols, recognises that the various industries have common objectives but with different circumstances. The Rail Working Group fully supports this, arguably, unorthodox but highly pragmatic approach. In this note, supplemental to our submission of 4 October 2001 (DCME Doc No. 15), we propose to address the issue of the adoption of the Protocols relating to Railway Rolling Stock and Space Assets (the “follow-on protocols”) and would respectfully suggest that the Conference should also adopt an innovative approach in relation thereto.

As mentioned in our submission of 4 October 2001, we believe that it is very important that follow-on protocols are adopted expeditiously. This is because:

- Every year that passes without the follow-on protocols has a significant negative financial effect on the rail and space sectors and will, in many countries, curtail capital investment in those sectors;
- There is some competition (as well as co-operation) between the aviation and the other two sectors; a long time period between the implementation of the Aircraft Protocol and the other Protocols will result in a competitive disadvantage for the other industries; and
- Once additional Protocols are in force, this will open up the possibility of combined financing of transportation assets, which have common funders and/or common manufacturers.

The proposed Article 49 of the Convention is based on the premise that progress on the follow-on protocols is well advanced (differentiating them from possible protocols initiated pursuant to Article 50) and that therefore they can be adopted through a streamlined procedure. The current Article 49 was placed in square brackets at the third Joint Session when one delegation queried its place in the draft Convention but the Secretary-General of UNIDROIT indicated its importance in the

context of the work underway on the preliminary draft Protocols to the draft Convention on Matters specific to Railway Rolling Stock and Space Assets. The RWG considers that Article 49 should remain in the Convention, subject to a more specific indication in the Convention as to how the follow-on protocols may be adopted.

The current working draft of Article 49 is not, as we read it, intended to subvert the sovereignty of Contracting States but merely to provide a mechanism for approval of the follow-on protocols. Indeed it gives UNIDROIT authority to move forward the follow-on protocols quickly and to involve States, which are not members of UNIDROIT. Nonetheless, UNIDROIT's role is solely to facilitate speedy consideration of the protocols concerned and does not limit any Contracting State to the Convention from declining to sign a specific protocol or signing with reservations or derogations. Article 49 is, moreover, appropriate, as Article 50 is not pertinent since the conditions stated therein have been fulfilled in relation to the rail and space industries.

The streamlined procedure in Article 49 also is logical. We know already that many of the provisions in the respective protocols are similar and it should not be necessary to begin the whole approval process *de novo*. Rather we should be able to utilise to the maximum the considerable investments in time and money made by Contracting States taking advantage of the fact that the follow-on protocols represent an extension of the work being done at this Conference. A streamlined procedure is appropriate for the following reasons:

- (a) it is a natural conclusion from the "Convention plus protocols" architecture, since the bulk of the work has already been concluded in consideration of the Convention and the protocols only seek to apply the basic rules to specific industry conditions;
- (b) it is considerably more cost effective than waiting for a detailed approval through a full scale diplomatic conference;
- (c) it permits the reference to discussions and conclusions at the Conference and avoids unnecessary repetition; and
- (d) it will facilitate speedy implementation with the consequent benefits listed above.

If the concept of Article 49 is accepted for the follow-on protocols, how should it be structured? The RWG broadly supports the current draft of the Article and the proposed minor changes proposed by the UNIDROIT secretariat and set out in their submission of 10/10/01 (DCME Doc No. 16). But we do have some comments on Article 49 (and which, where relevant, are implemented in the annexed proposed revised Article 49):

1. In their submission of 10/10/01, the UNIDROIT secretariat recall that the Public International Law Working Group meeting in 1999 suggested that "UNIDROIT, in view of its central role in the inception of the overall multi-equipment project and in the development of the preliminary draft Rail and Space Protocols, should play a co-ordinating role and be intimately involved in the development of future Protocols, in conjunction with the relevant intergovernmental Organisations and the non-governmental Organisations representing the professional interests concerned." It was also suggested at the meeting that the diplomatic Conference might usefully adopt a resolution making a policy statement to this effect. We endorse this suggestion.

2. The class of States with which UNIDROIT should communicate texts is, in our view, too limited. UNIDROIT should be empowered to involve all States accredited or invited to the current diplomatic Conference. This is especially important in our view so that as many African countries as possible are involved in the project which, as relates to rail, will be especially beneficial to the development of their economies. Article 49(1) should be modified appropriately and we ask that such countries, which are not members of UNIDROIT or OTIF, nonetheless are invited to the future meetings of Government Experts considering the follow-on protocols.

3. We consider that there should be a more extensive Article 49(4) *et seq.* determining the procedure for adoption. Considerable discussion has already taken place as to what this should be. See in particular the report of the Public International Law Working Group of 1999 and the valuable paper from Professor Chinkin of last year. There are two key questions, namely, should the rules on

adoption of a protocol be set out in that protocol or in the Convention and secondly, if not sent down to the protocols, what is the correct approach in the Convention?

We consider that it would be easy to place the issue in the respective protocols but this would be a mistake. The follow-on protocols are effectively an iteration of the Convention and therefore it is appropriate for the Convention to govern their adoption. Moreover, it is surely correct to legislate at the level of the Convention for consistency in the adoption procedure. This would result in a seamless integration of the respective protocols and also facilitate for Contracting States the adoption process by eliminating a variable between the protocols.

If it is accepted that Convention should contain the provisions regulating adoption of the follow-on protocols, what should these provisions contain? In her analysis mentioned above, Professor Chinkin set out three options, namely:

(a) an opt out system whereby UNIDROIT adopted a protocol and this would apply to Contracting States if they did not opt out within a pre-set period;

(b) an opt in system whereby Contracting States would need to opt-in to an agreed formulation of the protocol; or

(c) a conventional structure, whereby the protocol is adopted by diplomatic Conference in the same way as for the Convention itself and the aviation protocol.

We consider that the solution lies between (b) and (c). Option (a) is highly desirable in terms of the speed of adoption process but we doubt many States would agree in advance even to risk being bound by an instrument to which they are not a directly consenting party. This approach raises sovereignty issues unnecessarily as well as presenting some significant organisational issues. We accept also that some type of diplomatic meeting will be necessary since it must be correct that Contracting States review the protocol's content and influence it in a plenary and diplomatic forum as opposed to doing so informally through meetings of government experts. We are mindful of the fact also that although the protocols do merely seek to apply the Convention to a specific industry, on the other hand they each will modify the basic provisions of the Convention in certain cases. But we remain concerned as to the time that will be required as well as the expense for governments. We propose therefore a compromise where UNIDROIT will be required to call a diplomatic meeting (we deliberately avoid the word "conference") expeditiously with the clear understanding that it will be short and that Contracting States may elect not to attend but to opt in to the protocol after the meeting. This proposal is elaborated in more detail in the text annexed.

In conclusion, the RWG appreciates the considerable work already done at the Conference which has direct application to the rail and space industries. It is very important that this work is converted into direct benefits for these industries as soon as possible and this should be effected through a standardised methodology in the body of the Convention for adoption of the follow-on protocols. However the adoption process should be inclusive and not exclude States which are not members of UNIDROIT or the international organisation(s) involved with the project. The process should be speedy with a modest diplomatic meeting taking place for the purposes of adoption of the protocol(s) shortly after formal adoption of the protocol by the UNIDROIT General Assembly and also contain a clear mechanism for States to adopt the protocol without needing to attend the diplomatic meeting.

APPENDIX

**PROPOSED CHANGES TO ARTICLE [49] AS MODIFIED
BY THE UNIDROIT SECRETARIAT AND SET OUT IN THEIR SUBMISSION
OF 10/10/01 (DCME DOC NO. 16)***Article [49] – 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 falling within Article 2(3)(b) or (c) and prepared by a working group convened by UNIDROIT, to all States Parties to this Convention, all Member States of UNIDROIT, such other Member State of the United Nations as UNIDROIT considers appropriate and all Member States of any intergovernmental Organisation represented in that working group. Such States shall be invited by UNIDROIT 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 such relevant non-governmental Organisations as UNIDROIT considers appropriate. Such non-governmental Organisations shall be invited to submit promptly 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. Upon approval by its Governing Council, UNIDROIT shall expeditiously convene a short diplomatic meeting for adoption of the draft Protocol and shall invite all States specified in Article 49 (1) above and such States shall also be notified of the adoption of the Protocol at such meeting. The procedure for the adoption of Protocols covered by this Article shall be determined by the States participating in their preparation.

5. State Parties not attending the diplomatic meeting may ratify the Protocol by deposit of an instrument of ratification, acceptance, approval or accession with the depositary thereof.

6. Any non-State Party may accede to the Protocol by deposit of an instrument of accession with the depositary thereof as from the date it is open for signature. Such State shall become a State Party to the Convention and the Protocol so accepted. It shall not be bound by any earlier Protocol.

COMMENTS ON ARTICLES 39 AND 55 OF THE DRAFT CONVENTION

(Presented by the United States)

The United States submits the following proposals for additional technical revisions of the Convention and the Aircraft Protocol. In formulating these additional proposals and in revising some of our earlier proposals, we have benefitted greatly from comments from other delegations and the Aviation Working Group.

1. ARTICLE 39 – NON-CONSENSUAL RIGHTS AND INTERESTS

We propose revision of Article 39 of the Convention as follows:

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~~ under paragraph 1 by a Contracting State before the later of:

(a) the Contracting State's deposit of its instrument of ratification, acceptance, approval or accession with respect to this Convention; and

(b) the registration of the international interest.¹

2. TRANSITION

We propose revision of Article 55 of the Convention as follows:

Article 55 – 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.]~~

1. Subject to paragraph 5, this Convention does not apply to a right, duty, interest or transaction relating to a debtor which existed before the effective date of this Convention .

2. Subject to paragraph 5, a right or interest relating to a debtor which existed before the effective date of this Convention retains the priority that it enjoyed under the applicable law before the effective date of this Convention.

3. Subject to paragraph 5, a transaction validly entered into by a debtor before the effective date of this Convention and the rights, duties and interests flowing from it remains valid after the

¹ The time the Convention enters into force needs to feature in this temporal rule because paragraph 3(b) assumes that at the time of registration the Convention has already come into force.

effective date of this Convention and may be terminated, completed, consummated or enforced as required or permitted by the applicable law as though this Convention had not entered into force.

4. For the purposes of this article:

(a) “effective date of this Convention” means in relation to a debtor the later of the time:

(i) the Convention enters into force; and

(ii) the State in which the debtor is located becomes a Contracting State; and

(b) the debtor is located in the Contracting State where it has its centre of administration or, if it has no centre of administration, its habitual residence.

5. After the effective date of this Convention, Articles 7 to 14 of this Convention apply to a transaction entered into before the effective date of the Convention to the extent that the debtor and the creditor at any time so agree.¹

Alternative B²

~~[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 [10 years] after the entering 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.]~~

3. DUTY TO HONOUR DE-REGISTRATION REQUEST

The United States proposes an addition of a new Article IX(4) to the Protocol to read as follows:

4. (a) The registry authority in a Contracting State shall, subject to the applicable aviation safety laws and regulations, honour a request for de-registration and export of an object if:

(i) the request is properly submitted by a creditor that holds a registered international interest in the object; and

(ii) all holders of registered interests ranking in priority to that of the creditor requesting de-registration and export have been satisfied or consented in writing to the de-registration and export and the creditor has given notice pursuant to paragraph 4.

(b) In its determination of whether the conditions precedent to a de-registration and export under paragraph (a) have been satisfied, the registry authority shall be governed by the applicable law of the Contracting State including the rules and regulations applicable to the registry authority.

¹ The Protocol should contain a similar provision permitting the parties to apply the “opt-in” provisions to the extent that the Contracting State in which the debtor is located has made the relevant declaration(s).

² The ICAO Legal Committee, while maintaining both alternatives A and B, expressed the view that in case alternative B was selected, the fees charged with respect to these transactions should be nominal.

4. NOTICE OF EXERCISE OF DE-REGISTRATION REMEDY

We propose revision of Article IX of the Protocol to add a new paragraph 4, which would require notice of the exercise of the remedy of de-registration and export. This change will make the article consistent with Article 7(3) of the Convention with respect to notice.

4. A chargee proposing to procure the de-registration and export of an aircraft under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed de-registration and export to:

- (a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and
- (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

We also propose the renumbering and revision of Article IX(4) of the Protocol as follows:

4-5. A chargee giving ten or more calendar days' prior written notice of a proposed sale or lease or a proposed de-registration and export to interested persons shall be deemed to satisfy the requirement of providing "reasonable prior notice" specified in Article 7(3) of the Convention or paragraph 4. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

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5/11/01

English and French only

COMMENTS ON ARTICLE 49 OF THE DRAFT CONVENTION

(Presented by the Space Working Group (SWG))

In response to the Rail Working Group's constructive written comments regarding the procedures for adoption of future Protocols by Contracting States to the Convention (DCME Doc No. 37), we support the provision of a process that provides the speediest adoption of future protocols and, in particular, the Space Assets and Rail Protocols, consistent with the requirements of international law regarding the adoption of international instruments and the ability of States to have an adequate opportunity to review and accept the provisions of future Protocols. A mechanism that is the most expeditious that is consistent with the principles of international law governing adoption of protocols should be contained in the Convention. Accordingly, the SWG endorses the position put forth by the Rail Working Group (DCME Doc No. 37) to change Article 49 in order to facilitate the speedy adoption of the Space Assets Protocol.

STATUS OF A CONSOLIDATED TEXT
(Presented by Egypt)**SUMMARY**

This paper presents proposals by the Arab Republic of Egypt on the status of the framework Convention on International Interests in Mobile Equipment, the Protocol on Matters Specific to Aircraft Equipment and the Consolidated Text.

Action proposed is in paragraph 6 of this paper.

1. At the outset, it is to be pinpointed that intensive work covering several years was undertaken by UNIDROIT in the preparation of both the draft UNIDROIT Convention and the draft Aircraft Protocol. This work was done through establishing a study group, a registration working group and an aviation working group within UNIDROIT. ICAO later joined the work in relation to the Aircraft Protocol.

2. From the outset, the UNIDROIT conceptual approach regarding this issue was to have a framework convention supplemented by a series of equipment-specific protocols belonging to mobile equipment of aircraft, satellite and outer space assets, railway rolling stock, oil rigs etc.

3. Such approach would enhance the utility and preserve the integrity of the legal regime of international interests in mobile equipment and in the meantime allows for the incorporation in the relevant protocol provisions that are specific to that type of equipment not available in the framework convention. It allows as well for variations from the provisions of the convention as may be necessitated by the nature of the mobile equipment concerned. Finally, such approach has the advantage of allowing a simplified procedure for the adoption of the protocols.

4. The multi-equipment system which the draft Convention covers under separate protocols requires co-operation between UNIDROIT and the interested governmental organizations in particular.

4.1 Hence, ICAO agreed to work with UNIDROIT to review both the draft Convention and the draft Aircraft Protocol. For this purpose, a series of joint legal meetings were held under the auspices of the two organizations with the valuable assistance of their Secretariats. As a result, many changes to both the draft Convention and the draft Aircraft Protocol were introduced as they appear in the documentation of the diplomatic Conference in documents DCME Doc Nos. 3 and 4.

5. Egypt is convinced that the consolidated text comprising both the framework Convention and the Aircraft Protocol should be an informal text for practical use only and for the purpose of convenience in application. Egypt does not favour giving the consolidated text a formal status by considering it an international legal instrument subject to signature and ratification. Our position is justified by the following reasons:

a) The adoption of a Convention on International Interests in Aircraft Equipment would lead to a series of stand-alone conventions corresponding to the other types of equipment in fields like outer space assets, railway rolling stock, oil rigs etc. Such a situation would defeat one of the main objectives that UNIDROIT has succeeded to secure by formulating a framework convention incorporating a complete unified and integrated legal system applicable to all types of mobile equipment. Such a legal system shall be jeopardized if each specialized organization responsible for a specific type of equipment went its own way in having a separate convention.

b) It is cumbersome for states to fulfil their constitutional requirements towards several conventions corresponding to the different specific mobile equipment. Furthermore, subsequent diplomatic conferences would have to be convened each time a draft Convention about a new type of equipment needs to be adopted.

c) The approach of having a separate convention for each type of equipment would lead to duplication and inconsistency, particularly regarding the legal regime of the international rights and interests as such in the different conventions, a matter which would undermine the integrity of the whole system.

d) The unilateral-equipment approach, contrary to the multi-equipment approach, would not allow for simplified procedure in respect of the adoption and coming into force of the different protocols.

6. ACTION PROPOSED

6.1 That the Diplomatic Conference:

- a) adopt a framework Convention on International Interests in Mobile Equipment;
- b) adopt a Protocol on Aircraft Equipment; and
- c) take note of a consolidated text to be produced by ICAO and UNIDROIT Secretariats as an informal text of convenience.

6.2 That the framework Convention expressly allows for the conclusion of other protocols covering types of equipment that are not specifically mentioned in this Convention.

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DRAFT FINAL PROVISIONS OF THE DRAFT CONVENTION

(Presented by the ICAO Secretariat)

This paper presents proposals for the Final Provisions of the Draft Convention, based on DCME Docs Nos. 3 and 16. They are also suggested to apply, *mutatis mutandis*, to the Final Provisions of the Draft Protocol (DCME Doc No. 4).

Article 47 – Signature, Ratification, Acceptance, Approval or Accession

1. This Convention shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Convention shall be open to all States for signature at until it enters into force in accordance with Article 49.

2. This Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a “Regional Economic Integration Organisation” means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a “Contracting State” or “Contracting States” in this Convention, applies equally to a Regional Economic Integration Organisation. For the purpose of Articles 49 and 60, the references to “Contracting States” or “States” shall not apply to a Regional Economic Integration Organisation.

3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.

4. Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time.

Article 48 – Depositary and its Functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with which is hereby designated the Depositary.
2. The Depositary shall:
 - (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Convention;
 - (iii) each declaration made in accordance with this Convention;
 - (iv) the withdrawal of any declaration; and
 - (v) the notification of denunciation of this Convention and the date on which it takes effect;
 - (b) transmit certified true copies of this Convention to all States specified in sub-paragraph (a);
 - (c) provide the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, of each declaration or withdrawal of a declaration, and of each ratification of denunciation, so that the information contained therein is easily and fully available.

Article 49 – Entry into Force

1. This Convention shall enter into force on the first day of the month following the expiration of six months after the date of the deposit of the the instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such instrument 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 States Parties to this Convention and that Protocol.

An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.

2. For other States and for other Regional Economic Integration Organisations, this Convention shall take effect on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession with the Depositary but only as regards a category of objects to which a Protocol applies and subject, in relation to such Protocol, to the requirements of sub-paragraphs (a), (b) and (c) of the preceding paragraph.

3. This Convention and the Protocol shall be read and interpreted together as one single instrument.

Article 50 – Internal Transactions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Convention, declare that the Protocol shall not apply to a transaction which is an internal transaction in relation to that State.
2. Notwithstanding paragraph 1, 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 51 – 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 Convention, it may at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.
2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which this Convention applies.
3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that Contracting State.
4. Where a Contracting State extends this Convention to one or more of its territorial units, declarations and reservations permitted under this Convention may be made in respect of each such territorial unit, and the declarations and reservations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

Article 52 – Determination of Courts

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

Article 53 – Declarations Regarding Remedies

1. A Contracting State may, at the time of signature, ratification, acceptance, approval of, or accession to the Protocol, declare 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 shall, at the time of signature, ratification, acceptance, approval of, or accession to this Convention, 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 54 – Declarations Regarding Relief Pending Final Determination

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

Article 55 – Reservations, Declarations and Non-application of Reciprocity Principle

1. No reservations shall be permitted except those expressly authorised in this Convention and the Protocol.
2. No declarations shall be permitted except those expressly authorised in this Convention and the Protocol.
3. Any declaration or subsequent declaration made under this Convention shall be notified in writing to the Depositary.
4. The provisions of this Convention subject to any reservation or declaration validly made shall be binding on the States Parties that do not make such reservations or declarations in their relations vis-à-vis the reserving or declaring State Party.

Article 56 – Subsequent Declarations

1. A State Party may make a subsequent declaration at any time after the date on which this Convention has entered into force for it, by notifying the Depositary to that effect.
2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.
3. Notwithstanding the previous paragraphs, this Convention 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 any such subsequent declaration.

Article 57 – Withdrawal of Declarations and Reservations

Any State Party having made a declaration under, or a reservation to this Convention may withdraw it at any time by notifying the Depositary in writing. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the Depositary.

Article 58 – Denunciations

1. Any State Party may denounce this Convention by written notification to the Depositary.
2. Denunciation shall take effect on the first day of the month following the expiration of [six/twelve] months after the date on which notification is received by the Depositary.
3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such denunciations had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

*Article 59 – 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

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 [10 years] after the entering into force of this Convention in the State Party 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 Party to this Convention.]

Article 60 – Amendments and Related Matters

1. At the request of not less than twenty-five percent of the Contracting States at any time, or at the initiative of the Depositary every five years after the entry into force of this Convention, a Conference of the Contracting States may be convened to consider:

- (a) the practical operation of this instrument and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
- (b) the judicial interpretation given to, and the application made of the terms of this Convention;
- (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority; and
- (d) whether any modifications to this Convention or the arrangements relating to the International Registry are desirable.

2. Any amendment to this Convention shall be approved by at least a two-third majority of States participating in the Conference referred to in the preceding paragraph and shall then come into force in respect of States which have ratified such amendment when ratified by ... (the same number as in paragraph 1 of Article 48) States.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Cape Town on the 16th day of November of the year two thousand and one in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Convention.

DCME Doc No. 42

5/11/01

English and French only

COMMENTS ON ARTICLE 48 OF THE DRAFT CONVENTION

(Presented by the Rail Working Group (RWG))

Article 48(1) of the proposed Convention permits Contracting States to disapply parts of the Convention to “internal transactions”.

Article 1(n) defines an “internal transaction” as

“a transaction of a type listed in Article 2(2)(a) to (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”

As drafted however, this is an “all or nothing” option for the States. This will potentially cause problems unnecessarily for some States, particularly in relation to the rail sector, since it precludes selective disapplication. For example, a Contracting State may wish to disapply parts of the Convention in relation to underground/metro railway systems or tram systems but not exclude transactions relating to rolling stock on suburban standard gauge railways even if these are still “internal transactions”. As currently drafted, Article 48(1) gives no scope for this and could place Contracting States in a difficult position where they either disapply in relation to all internal transactions or none. Whilst this may be less of an issue in the Aircraft and Space sectors, we see no disadvantage in giving Contracting States the flexibility, in relation to a Protocol, to designate that only certain types of equipment transactions are excluded. Accordingly, in the proposed amended text for Article 48(1) set out below, we suggest that this flexibility is given.

Proposed changes to Article 48(1)***Article 48 – 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 with regard to all types of objects or some of them.

DCME Doc No. 43
5/11/01

ENTRY INTO FORCE AND INTERNATIONAL REGISTRY PROPOSAL

(Presented by Germany, France, Russian Federation, United Kingdom and United States)

The above-identified States jointly propose the following key features of an overall arrangement relating to the entry into force, including the associated establishment of the international registry system for aircraft objects.

ENTRY INTO FORCE GENERALLY

Convention enters into force 2 months after the [5th][7th] ratification

Protocol enters into force 2 months after the later of:

(a) [5th][7th] ratification; and

(b) ratification by States compromising, in the aggregate, no less than [5 per cent] [10 per cent] of scheduled international and domestic air traffic, objectively determined.

RE: INTERNATIONAL REGISTRY SYSTEM**A. Supervisory Authority**

1. ICAO appointed Supervisory Authority (“SA”).
2. Primary work of SA done, with organisational support and assistance of ICAO Secretariat, by an International Registry Commission (“**IR Commission**”), which reports directly to ICAO Council. (Similar to the “International Explosives Technical Commission” employed in Marking of Plastic Explosives Convention (1991)).
3. IR Commission composed of major aviation and air transportation States and other signatory or ratifying States to ensure geographic representation.
4. Since SA appointment takes effect on entry into force, ICAO also appointed “Provisional SA” (“**PSA**”) to establish the International Registry; points 1 – 3 immediately above relating to SA apply in respect of PSA.

(Must confirm that PSA has immunity through standing ICAO arrangements).

B. Establishment of International Registry

1. PSA given procedural flexibility in establishing the International Registry, subject to points 2 – 4 immediately below.
2. To ensure no delay on entry into force following receipt of required ratifications, International Registry shall be established, tested and *ready for legal operation* by no later than [six months][nine months] from the adoption of the texts at the Conference (assuming the availability of start-up funds).

3. In selecting the Registrar, the PSA shall ensure that:
 - (a) a prompt, fair and transparent process followed; and
 - (b) the Registrar is technically qualified to create and operate International Registry (of a type envisaged by the IRTF's Basic Features of the Registry and Requirements Document (Attachments 1 and 2, respectively, to Second Report of the IRTF)).
4. Fees for use of the International Registry will be nominal and comparable to those used in other electronic registries designed the register notices of secured transaction and leasing interests.
5. There is a high degree of confidence that start-up funds will be available from a variety of sources to finance the establishment of the electronic International Registry. Funds and other resources may also be available, if necessary, to offset certain operational expenses during the early years of operation.
6. The above noted items relating to the establishment of the International Registry system and setting of user fees shall be undertaken in close cooperation with airlines, financial participants, manufacturers and other users of the system to ensure functionality.

RE: RESOLUTION OF THE DIPLOMATIC CONFERENCE

The Final Acts of the Conference would include statements reflecting the above points to the extent they are not included in provisions of the Convention or Protocol.

DCME Doc No. 44
6/11/01

**PROPOSALS FOR TECHNICAL REVISIONS TO
CHAPTER IX OF THE CONVENTION
(Presented by the United States)**

The United States submits the following proposal to the Commission of the Whole for technical revisions of Chapter IX of the Convention dealing with assignments of associated rights and international interests.

We have consulted with several interested delegations and observers concerning this proposal. We believe that the revised Chapter IX annexed to this proposal as an appendix provides an excellent basis for submission to the Drafting Committee. The appendix is marked to reflect deletions and additions from the appendix to DCME Doc No. 28. That appendix is a revised version of Chapter IX prepared by the Rapporteur to the Joint Sessions.

APPENDIX

PROPOSAL FOR REVISED TEXT OF CHAPTER IX OF THE
PRELIMINARY DRAFT CONVENTIONCHAPTER IX – ASSIGNMENTS OF ASSOCIATED RIGHTS, INTERNATIONAL INTERESTS AND
RIGHTS OF SUBROGATION

[The following revised Chapter IX of the Convention has been marked to reflect changes from the draft (prepared by the Rapporteur to the Joint Sessions), which is attached as an appendix to the United States' observations, DCME Doc No. 28.]

Article 30 – Effects of assignment

1. An assignment of associated rights ~~or of the related international interest~~ made in conformity with Article 31 also ~~transfers~~ assigns to the assignee, to the extent agreed by the parties to the assignment:
 - (a) ~~in the case of an assignment of associated rights, the related international interest; and~~
 - (b) ~~in the case of an assignment of an international interest, 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 associated rights revert in the assignor, to the extent that they are still subsisting, when the obligations secured have been discharged.

Article 31 – Formal requirements of assignment

1. An assignment ~~of an international interest or~~ of associated rights 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.
2. An assignment of an international interest created pursuant to a security agreement is not valid unless some or all related associated rights also are assigned.

Article 32 – Debtor's duty to assignee

1. To the extent that associated rights and the related international interest have been ~~transferred~~ assigned in accordance with Articles 30 and 31, 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 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~~ this article 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 associated rights and the related international interest and the security interest created by that assignment;

(b) to the chargee and charger 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 associated rights and the related international interest ~~related to the object~~.

Article 34 – Priority of competing assignments

Where there are competing assignments of associated rights and ~~the~~ related international ~~interests~~ interest and at least one of the assignments ~~of the related international interest~~ 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) a sum advanced and utilised for the purchase of another object in which the assignor held another international interest if:~~

~~(i) the assignor assigned the international interest to the assignee; and~~

~~(ii) the assignment has been registered;.~~

~~(c) the price payable for the object; or~~

~~(d) the rentals payable in respect of the object,~~

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

1. This Article applies where a registered international interest in an object secures or is associated with associated rights under another contract.

2. The holder of the international interest or an assignee of that interest whose assignment has been registered has priority over another assignee of the associated rights only if the other contract states that they are secured by or associated with the object. In all other cases the priority of the competing assignments of the associated rights shall be determined by the applicable law.

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.

DCME Doc No. 45
6/11/01

PROPOSALS ON REPLACEABLE UNITS

(re Article 28(6) Convention and XIV(2) and (3) Protocol)
(Presented by Germany)

During the deliberations of the Committee of the Whole on Article 28, the German Delegation addressed a problem concerning Article 28(6) of the Convention and Article XIV of the Protocol in relation to replaceable units. The purpose of this paper is to elaborate on this problem and to propose a solution for it.

1. The matter concerns the legal status of replaceable units that are installed on the aircraft, e.g. computer units in the cockpit. These units will often be charged by an individual security interest under national law. There is a danger that the interests in those replaceable units that exist under national law will get lost because the Convention nowhere provides for any rules to safeguard these interests in relation to an international interest constituted in the whole airframe. This would be particularly unfortunate in view of spare parts that are installed on the aircraft as replacements for units that are damaged and need to be exchanged. These replaceable units can have a high economic value that may easily amount to several hundred thousand dollars each. They are often financed separately – for example when they are bought for use as spare parts – and their financing requires security. If no interests (neither national nor under the Convention) can validly be created in those replaceable units, it gets difficult to finance such items. As a result the operation of the aircraft is jeopardized. Additionally, the whole market for spare part financing may break down and seriously endanger the regular functioning of air traffic.

For these reasons it has to be ensured that security rights in replaceable units are not affected by the installation of these units on airframes. Article 28(6) already addresses this problem but only solves it as far as priorities are concerned. To solve the problem entirely, Article 28(6) should read as follows:

“This Convention does not affect the rights in an item, not being an object within a category designated by the Protocol, which is installed or will be installed on such an object.”

2. In this context, the corresponding rules in the Protocol (Article XIV(2) and (3)) also have to be examined. It is not clear how the current draft of Article XIV(2) and (3) relates to replaceable units other than aircraft engines (*argumentum e contrario*). Besides, we do not see what the purpose of Article XIV(2) is: Article XIV(2) addresses the priority between competing interests in one and the same aircraft engine. There is no necessity to have special rules for that; the relevant provisions of the Convention apply. Therefore, Article XIV(2) should be deleted.

In contrast, Article XIV(3) needs to be maintained. However, the wording of this provision should generally clarify that the installation of an engine on an airframe does in no way affect the legal situation of that engine. Airframes and engines are assets in both of which security interests can be created separately.

We therefore propose to substitute Article XIV(2) and (3) by the following wording for a new paragraph 2:

“The rights in an aircraft engine shall not be affected by its installation on an airframe or removal from an aircraft.”

Finally, there is an additional need to clarify the relationship between Article 28(6) and the Protocol: The definition of “airframe” as provided in Article I lit. (e) of the Protocol includes “all installed, incorporated or attached accessories, parts and equipment”. This also covers items charged with a national interest prior to their installment that come under Article 28(6) of the Convention. In order to avoid that the provision of Article 28(6) is overridden by the definition of “airframe” in the Protocol, the applicability of Article 28(6) should be clearly stated. To that effect we suggest the following wording for a new Article XIV(3) :

“For items installed on an airframe or an engine, Article 28(6) applies.”

DCME Doc No. 46

6/11/01

COMMENTS ON ARTICLES 29 AND 39 OF THE DRAFT CONVENTION

(Presented by Singapore)

1. Article 29 of the draft Convention is silent on the treatment of non-registrable, non-consensual rights or interests in insolvency proceedings of the debtor.
2. Article 39 of the draft Convention only provides for the preservation of priority of declared non-registrable, non-consensual rights or interests over registered international interests, whether in or outside the insolvency of the debtor, under the particular Contracting State.
3. While the situation is clear that priority will be accorded to non-registrable, non-consensual rights or interests in the case when insolvency proceedings against the debtor take place in the same Contracting State in which the subject non-registrable, non-consensual rights arose, the same degree of certainty is absent in a case when the insolvency proceedings of the debtor are commenced in another Contracting State. The status of non-registrable, non-consensual rights and interests will therefore be precarious in cross-border insolvency situations even as between Contracting States.
4. Considering the importance of non-registrable, non-consensual rights and interests as well as the potentially large amounts that may be at stake accompanying these non-registrable, non-consensual rights and interests, e.g. repairer's fees secured by a repairer's lien, it is the view of the Singapore delegation that it is appropriate and necessary to provide under the Convention for the recognition of non-registrable, non-consensual rights and interests in any insolvency proceedings that may be commenced in any Contracting States against the debtor.
5. For the above reasons, the Singapore delegation proposes that draft Article 29 of the Convention be amended by adding a new Article 29(1) *bis*, to read as follows:

“In insolvency proceedings against the debtor in any Contracting State, non-registrable, non-consensual rights and interests relevant to the debtor under this Convention shall be accorded the same priority over registered international interests to the same extent as if the relevant non-registrable, non-consensual rights and interests were declared by the Contracting State in which the insolvency proceedings were commenced.”

DCME Doc No. 47
7/11/01

PROPOSAL CONCERNING THE DRAFT CONVENTION
(Presented by Mexico)

The Mexican delegation proposes the elimination of Article 44 of the Convention on international interests in mobile equipment.

Mexico has supported in different forums, especially the international Conference of The Hague, the principle according to which, failing agreement between the parties, the prevailing jurisdiction should be that of the debtor's residence. We recognise however that the common law system postulates a different principle.

In view of the fact that it is impossible to draft a compromise solution leading to a minimum level of consensus and considering that the existing solution causes more problems than it tries to resolve, we request the elimination of Article 44.

DCME Doc No. 48
7/11/01

**PROPOSAL CONCERNING CONTINUATION OF EXAMINATION OF MATTERS
RELATING TO ESTABLISHMENT OF THE INTERNATIONAL REGISTRY**
(Presented by France and the United States)

1. INTRODUCTION

1.1 The International Registry Task Force, as established at the Third Joint Session in Rome from 20 to 31 March 2000, has, in accordance with its terms of reference, reported to the Secretariats of ICAO and UNIDROIT.

1.2 Previous work is deemed completed with the exception of the regulations of the International Registry which are an on-going project.

1.3 Nevertheless, there are outstanding and important issues relating to the linkage between registration authorities (national registries) and the International Registry.

1.4 Examples of issues common to registration authorities are:

- a) substantive and procedural matters concerning registration authorities as designated points of entry to the International Registry;
- b) how registration authorities will treat prospective international interests;
- c) consideration with respect to non-consensual interests under Articles 38 and 39 of the Convention; and
- d) cancellation of aircraft registration based on requests by authorized persons.

2. RECOMMENDATION

2.1 It would be desirable that, as soon as possible, this Conference give consideration to the creation of an International Registry Advisory Group (IRAG) to give support and advice to the Supervisory Authority under the following terms of reference:

- a) further work on draft regulations for the International Registry;
- b) examination and reporting about issues common to registration authorities as described in paragraph 1.4 above with a view to facilitating prompt and successful establishment of the International Registry; and

c) work on such other matters relating to the International Registry as the Supervisory Authority may request with a view to insuring the establishment of the International Registry when the Convention and Protocol enter into force.

2.2 The above recommendation assumes that the costs of the functioning of the IRAG will not be borne by the Supervisory Authority.

DCME Doc No. 49

7/11/01

**REVISED DRAFT FINAL PROVISIONS CAPABLE OF EMBODIMENT
IN THE DRAFT CONVENTION**

(Presented by the UNIDROIT and ICAO Secretariats on the basis of DCME Doc No. 16
and DCME Doc No. 41)

Article 47 – Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Convention shall be open to all States for signature at Rome until it enters into force in accordance with Article 49.

2. This Convention shall be subject to ratification, acceptance or approval by States which have signed it.

3. Any State which does not sign this Convention may accede to it at any time.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

Article 48 – Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a [Contracting] State [Party], to the extent that that Organisation has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organisation shall not count as a [Contracting] State [Party] in addition to its Member States which are [Contracting] States [Parties].

2. The Regional Economic Integration Organisation shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Convention applies equally to a Regional Economic Integration Organisation unless otherwise provided.

Article 49 – 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 the deposit of theth instrument of ratification, acceptance, approval or accession 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 States Parties to this Convention and that Protocol.

2. For other States this Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies and subject, in relation to such Protocol, to the requirements of sub-paragraphs (a), (b) and (c) of the preceding paragraph.

Article 50 – Internal transactions

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

2. Notwithstanding paragraph 1, 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 51 – Future Protocols

1. The Depositary may create working groups, in co-operation with such relevant non-governmental Organisations as the Depositary considers appropriate, 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 Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all States Parties to this Convention, all member States of the Depositary and member States of the United Nations which are not members of the Depositary and shall invite such States to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

3. The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental Organisations as the Depositary considers appropriate. Such non-governmental Organisations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.

4. When the competent bodies of the Depositary adjudge such a draft Protocol ripe for adoption, the Depositary shall convene a diplomatic Conference for its adoption.

5. Once such a Protocol has been adopted, subject to paragraph 6, this Convention shall apply to the category of objects covered thereby.

6. Article 46 applies to such a Protocol only if specifically provided for in that Protocol.

Article 52 – 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 Convention, it may, at the time of

ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. Any such declaration shall state expressly the territorial units to which this Convention applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.

4. Where a Contracting State extends this Convention to one or more of its territorial units, declarations and reservations permitted under this Convention may be made in respect of each such territorial unit, and the declarations and reservations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

Article 53 – Determination of courts

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

Article 54 – Declarations regarding remedies

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare 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 shall, at the time of ratification, acceptance, approval of, or accession to the Protocol, 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 55 – Declarations regarding relief pending final determination

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

Article 56 – 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. Any declaration or subsequent declaration or any withdrawal of a declaration or a reservation made under this Convention shall be notified in writing to the Depositary.

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

Article 57 – Subsequent declarations

1. A State Party may make a subsequent declaration at any time after the date on which this Convention has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article 58 – Withdrawal of declarations and reservations

Any State Party having made a declaration under, or a reservation to this Convention may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

Article 59 – Denunciations

1. Any State Party may denounce this Convention by notification in writing to 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 on which notification is received by the Depositary. Where a longer period for that denunciation to take effect is specified in the notification of denunciation, it shall take effect upon the expiration of such longer period after its notification to the Depositary.

3. Notwithstanding the previous paragraphs, this Convention 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 any such denunciation.

Article 60 – 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

[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 [10 years] after the entering into force of this Convention in the State Party 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 Party to this Convention.]

Article 61 – [Review Board and Review Conferences]*

1. A five-member Review Board shall promptly be appointed by ..., in order to prepare yearly reports for the States Parties, Contracting States and negotiating States, addressing the matters specified in sub-paragraphs (a)-(d) of paragraph 2. The composition of the Review Board, its terms of reference and its organisation and administration shall be determined, in consultation with other relevant interests, by

2. At the request of not less than twenty-five per cent of the States specified in the preceding paragraph, Review Conferences of those States shall be convened from time to time to consider:

- (a) the practical operation of this Convention and the Protocol and their effectiveness in facilitating the asset-based financing and leasing of the objects covered by their terms;
- (b) the judicial interpretation given to, and the application made of the terms of this Convention, the Protocol and the regulations;
- (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority; and
- (d) whether any modifications to this Convention and the Protocol or the arrangements relating to the International Registry are desirable.]

[Amendments and related matters]

1. At the request of not less than twenty-five percent of the Contracting States at any time, or at the initiative of the Depositary every five years after the entry into force of this Convention, a Conference of the Contracting States may be convened to consider:

- (a) the practical operation of this instrument and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
- (b) the judicial interpretation given to, and the application made of the terms of this Convention;
- (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority; and
- (d) whether any modifications to this Convention or the arrangements relating to the International Registry are desirable.

2. Any amendment to this Convention shall be approved by at least a two-third majority of States participating in the Conference referred to in the preceding paragraph and shall then come into force in respect of States which have ratified such amendment when ratified by ... (the same number as in paragraph 1 of Article 48) States.]

* On this Article the draft Final Provisions prepared by the two Secretariats differ. That prepared by the UNIDROIT Secretariat contemplates only the establishment of a Review Board and the convening of Review Conferences, whereas that prepared by the ICAO Secretariat contemplates the convening of Conferences of Contracting States for the amendment of the Convention. It is to be recalled however that the Convention is only intended to enter into force in respect of a given category of objects at such time as a Protocol has entered into force for that category and that the particular Protocol is in all ways intended to control. The Public International Law Working Group set up by the UNIDROIT /ICAO Joint Sessions, as recalled in DCME Doc No. 16 at pages 15 and 16, agreed that the only binding review mechanism for a particular category of equipment should therefore be via the Protocol relating to that category and that only a Review Conference of States Parties, Contracting States and negotiating States in respect of a given Protocol should have the power to propose amendments binding on such States. The Public International Law Working Group nevertheless agreed as to the desirability of States Parties, Contracting States and negotiating States in respect of the Convention having the power periodically to call general Review Conferences, although with any amendments that might be proposed by such Conferences only being able to be implemented in relation to a particular category of equipment following confirmation by the States Parties, Contracting States and negotiating States in respect of the Protocol concerned.

Article 62 – Depositary and its Functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

- (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Convention;
 - (iii) each declaration made in accordance with this Convention, together with the date thereof;
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (v) the notification of any denunciation of this Convention together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Convention to all States specified in sub-paragraph (a);
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
- (d) perform such other functions customary for depositaries.

Authentic text and witness clause

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original of which the English, Arabic, Chinese, French, Russian and Spanish texts are equally authentic.

DCME Doc No. 50

10/11/01

**CONSOLIDATED TEXT
OF THE
CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
AND THE PROTOCOL TO THE CONVENTION ON INTERNATIONAL
INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO
AIRCRAFT EQUIPMENT**

(Presented by the Secretariats of ICAO and UNIDROIT)

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**CONSOLIDATED TEXT OF THE
CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
AND THE PROTOCOL TO THE CONVENTION ON INTERNATIONAL
INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO
AIRCRAFT EQUIPMENT**

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use aircraft 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

For the purposes of this Convention, “Convention” means the Consolidated Text of the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment.

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

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

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

(c) “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 lb 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;

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

(e) “aircraft register” means a register maintained by a state or a common mark registering authority for the purposes of the Chicago Convention;

(f) “airframes” means airframes (other than those used in military, customs and 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;
- (g) “assignment” means a contract which, whether by way of security or otherwise, confers on the assignee rights in the international interest;
- (h) “associated rights” means all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the aircraft object;
- (i) “authorised party” means the party referred to in Article 24(2);
- (j) “Chicago Convention” means the Convention on International Civil Aviation, opened for signature in Chicago on 7 December 1944, as amended and its annexes;
- (k) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;
- (l) “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;
- (m) “conditional buyer” means a buyer under a title reservation agreement;
- (n) “conditional seller” means a seller under a title reservation agreement;
- (o) “contract of sale” means a contract for the sale of an aircraft object by a seller to a buyer which is not an agreement as defined in (a) above;
- (p) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;
- (q) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;
- (r) “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 aircraft object is burdened by a registrable non-consensual right or interest;
- (s) “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;
- (t) “guarantee contract” means a contract entered into by a person as guarantor;
- (u) “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;
- (v) “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;
- (w) “insolvency administrator” means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;
- (x) “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;

- (y) “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;
- (z) “interested persons” means:
 - (i) the debtor;
 - (ii) any guarantor under a guarantee;
 - (iii) any other person having rights in or over the aircraft object;
- (aa) “internal transaction” means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant aircraft object under Article 3(4) is deemed to be located, in the same Contracting State at the time of the conclusion of the transaction;
- (bb) “international interest” means an interest to which Article 2 applies;
- (cc) “International Registry” means the international registration facilities established for the purposes of this Convention ;
- (dd) “leasing agreement” means an agreement by which a lessor grants a right to possession or control of an aircraft object (with or without an option to purchase) to a lessee in return for a rental or other payment;
- (ee) “national interest” means an interest in an aircraft object created by an internal transaction;
- (ff) “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;
- (gg) “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 under Article 64(1);
- (hh) “pre-existing right or interest” means a right or interest of any kind in an aircraft 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 52 and to the extent of that declaration;
- (ii) “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;
- (jj) “proceeds” means money or non-money proceeds of an aircraft object arising from the total or partial loss or physical destruction of the aircraft object or its total or partial confiscation, condemnation or requisition;
- (kk) “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;
- (ll) “prospective international interest” means an interest that is intended to be created or provided for in an aircraft 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 aircraft object), whether or not the occurrence of the event is certain;
- (mm) “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;
- (nn) “registered” means registered in the International Registry pursuant to Chapter V;
- (oo) “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;

(pp) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 51;

(qq) “Registrar” means the person or body appointed under Articles 26(2)(b) and 27(1);

(rr) “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;

(ss) “regulations” means regulations made or approved by the Supervisory Authority;

(tt) “sale” means a transfer of ownership of an aircraft object pursuant to a contract of sale;

(uu) “secured obligation” means an obligation secured by a security interest;

(vv) “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 aircraft object to secure the performance of any existing or future obligation of the chargor or a third person;

(ww) “security interest” means an interest created by a security agreement;

(xx) “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;

(yy) “Supervisory Authority” means the Supervisory Authority referred to in Article 26(1);

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

(aaa) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which Article 52 applies) which has not been registered, whether or not it is registrable under this Convention; and

(bbb) “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.

Article 2 – The international interest

1. This Convention provides for the constitution and effects of an international interest in aircraft objects and associated rights.

2. For the purposes of this Convention, an international interest in aircraft objects is an interest, constituted under Article 10, in airframes, aircraft engines or helicopters:

(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

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

4. An international interest in an aircraft object extends to proceeds of that aircraft 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.

3. Without prejudice to paragraph 1 of this article, the Convention shall also apply if an aircraft is registered in an aircraft register of a Contracting State. In such circumstances the application of the Convention shall be from the earlier of:

- (a) the date the aircraft is so registered; and
- (b) the date of an agreement providing that the aircraft shall be so registered.

4. For the purposes of the definition of “internal transaction” in Article 1:

- (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.

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.

Article 6 – Application to sale and prospective sale

The following provisions of this Convention apply in relation to a sale and shall do so as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a contract of sale, a prospective sale, the seller and the buyer, respectively:

- Articles 3 and 4;
- Article 25(1)(a);
- Article 30;
- Article 31(3);

Article 32(1) (as regards registration of a contract of sale or a prospective sale);
Article 37(2) (as regards a prospective sale); and
Article 42.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 41 (other than Article 41(3)), Chapter X, Chapter XI (other than Article 54), Chapter XII and Chapter XIII (other than Article 75) shall apply to sales and prospective sales.

Article 7 – 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 this Convention.

Article 8 – 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 aircraft object for the purposes of Articles 10(c), 11(1)(c) and 43(2)(b) of this Convention.

Article 9 – 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 – CONSTITUTION OF AN INTERNATIONAL INTEREST; CONTRACTS OF SALE

Article 10 – 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 aircraft object of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the aircraft object to be identified; 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.

Article 11 – Formalities and effects of contract of sale

1. For the purposes of this Convention, 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.
2. A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.

CHAPTER III – DEFAULT REMEDIES***Article 12 – Remedies of chargee***

1. In the event of default as provided in Article 17, 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 aircraft object charged to it;
 - (b) sell or grant a lease of any such aircraft object;
 - (c) collect or receive any income or profits arising from the management or use of any such aircraft object,
- or apply for a court order authorising or directing any of the above acts.

2. A chargee proposing to sell or grant a lease of an aircraft object under the preceding paragraph 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(z)(i) and (ii); and
- (b) interested persons specified in Article 1(z)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

3. 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 the preceding paragraph. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

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 13 – Vesting of aircraft object in satisfaction; redemption

1. At any time after default as provided in Article 17, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any aircraft 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 aircraft 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 commensurate with the value of the aircraft 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 17 and before sale of the charged aircraft 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 12(1). 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 12(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 41.

Article 14 – 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 17, the conditional seller or the lessor, as the case may be, may:

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

Article 15 – Additional remedies of creditor

1. In addition to the remedies specified in Article 12 and in Articles 14 and 19, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in such provisions:

- (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.

Article 16 – Additional remedies under applicable law

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 21.

Article 17 – 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 12 to 15 and 19.

2. In the absence of such an agreement, “default” for the purposes of Articles 12 to 15 and 19 means a substantial default.

Article 18 – Standard for exercising remedies

Any remedy given by this Convention shall be exercised in a commercially reasonable manner. An agreement between the debtor and the creditor as to what is a commercially reasonable manner shall be conclusive.

Article 19 – 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 aircraft object and its value;
- (b) possession, control or custody of the aircraft object;

- (c) immobilisation of the aircraft object;
 - (d) lease or management of the aircraft object and the income therefrom; and/or
 - (e) sale and application of proceeds therefrom.
2. For the purposes of the preceding paragraph, “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. Ownership or any other interest of the debtor passing on a sale under sub-paragraph (e) of paragraph 1 of this article is free from any other interest over which the creditor's international interest has priority under the provisions of Article 41 of this Convention.
4. In making any order under paragraph 1 of this Article, 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
 - (b) fails to establish its claim, wholly or in part, on the final determination of that claim.
5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of the preceding paragraph.
6. Before making any order under paragraph 1, the court may require notice of the request to be given to any of the interested persons.
7. Nothing in this Article affects the application of Article 18 or limits the availability of forms of interim relief other than those set out in paragraph 1.
8. With regard to the remedies in Article 15(1):
- (a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than [five] working days after the creditor notifies such authorities that the relief specified in Article 15(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with this Convention; and
 - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.
9. Paragraphs 1(e), 2, 3, 5 and 8 of this Article apply only where a Contracting State has made a declaration to that effect under Article 68(2) and to the extent stated in such declaration.

Article 20 – Procedural requirements

Subject to Article 67(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 21 – Derogation

The parties may, by agreement in writing, exclude the application of Article 22 and, in their relations with each other, derogate from or vary the effect of any of the preceding provisions of this Chapter, except as stated in Articles 12(3) to (5), 13(3) and (4), 15(2), 19 and 20.

Article 22 – 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 68(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. With regard to the remedies in Article 15(1)

- (a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with this Convention; and
- (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

9. No exercise of remedies permitted by this Convention 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 52(1), shall have priority in the insolvency over registered interests.

13. The provisions of this Convention 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 68(3) whether it will:

(a) cure all defaults and to 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 23 – 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 22.

Article 24 – 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 Convention 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 15(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 15(1).

CHAPTER IV – THE INTERNATIONAL REGISTRATION SYSTEM*Article 25 – 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; and
- (e) notices of national interests.

2. For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

Article 26 – The Supervisory Authority

1. There shall be a Supervisory Authority which shall be [].
2. The Supervisory Authority shall:
 - (a) establish or provide for the establishment of the International Registry;
 - (b) appoint or re-appoint the Registrar in accordance with the provisions of Article 27;
 - (c) ensure that any rights required for the continued effective operation of the International Registry are such as may be assigned in the event of a change of Registrar;
 - (d) after consultation with the Contracting States, make or approve and ensure the publication of regulations dealing with the operation of the International Registry;
 - (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
 - (f) supervise the Registrar and the operation of the International Registry;
 - (g) at the request of the Registrar provide such guidance to the Registrar as the Supervisory Authority thinks fit;
 - (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
 - (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention; and
 - (j) report periodically to Contracting States concerning the discharge of its obligations under this Convention.
3. The Supervisory Authority may enter into any agreement requisite for the performance of its functions including any agreement referred to in Article 39(3).
4. The Supervisory Authority shall own all proprietary rights in the data and archives of the International Registry.
5. The first regulations shall be made by the Supervisory Authority so as to take effect on the entry into force of this Convention.

Article 27 – The Registrar

1. The first Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Convention. Thereafter, the Registrar shall be appointed or re-appointed at regular five-yearly intervals by the Supervisory Authority.
2. The Registrar shall ensure the efficient operation of the International Registry and perform the functions assigned to it by this Convention and the regulations.
3. The fees referred to in Article 26(2)(h) shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry, and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 26(2) of this Convention.

Article 28 – Designated entry points

1. At the time of ratification, acceptance, approval of, or accession to this Convention, 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:

- (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 29 – Working hours of the registration facilities

The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated during working hours in their respective territories.

CHAPTER V – MODALITIES OF REGISTRATION*Article 30 – Registration requirements*

1. In accordance with this Convention, the regulations shall specify the requirements:

- (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.

2. Such requirements shall not include any evidence that a consent to registration required by Article 32(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.

Article 31 – When registration takes effect

1. A registration shall be valid only if made in conformity with Article 32 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 manufacturer's serial number, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

Article 32 – 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 either party with the consent in writing of the other.

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 33 – Duration of registration

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

2. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

Article 34 – Searches

1. Any person may, in the manner prescribed by the 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 regulations, shall issue a registry search certificate with respect to any aircraft 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 35 – List of declarations and declared non-consensual rights or interests

The Registrar shall maintain a list of declarations, withdrawals of declarations, and of the categories of non-consensual right or interest communicated to the Registrar by the depositary as having been declared by Contracting States in conformity with Article 52 and the date of each such declaration or withdrawal of declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the regulations to any person requesting it.

Article 36 – 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 37 – 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. For the purpose of the preceding paragraph 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.

4. 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 38 – 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 39 – 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.

4. Except for the purposes of Article 40(1) and in relation to any claim made under that paragraph and for the purposes of Article 55:

(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.

5. The Supervisory Authority may waive the immunity conferred by the preceding paragraph.

CHAPTER VII – LIABILITY OF THE REGISTRAR***Article 40 – Liability and insurance***

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 and its officers and employees or from a malfunction of the international registration system [except].

2. The Registrar shall provide insurance or a financial guarantee covering all liability of the Registrar under this Convention.

CHAPTER VIII – EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES***Article 41 – 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. A buyer under a registered contract of sale acquires 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.

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 aircraft object extends to proceeds.

6. Subject to the following paragraph, this Convention does not determine priority as between the holder of an interest in an item held prior to its installation on an aircraft object and the holder of an international interest in that aircraft object.

7.– The provisions of paragraphs (1) to (4) of the present Article shall determine the priority of the holders of interests in an aircraft engine, whether or not installed on an airframe.

8. Ownership of an aircraft engine shall not pass by virtue of its installation on, or removal from, an airframe or an aircraft.

Article 42 – 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 – ASSIGNMENTS OF INTERNATIONAL INTERESTS
AND RIGHTS OF SUBROGATION**

Article 43 – 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 aircraft 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 this Convention but without the need to state a sum or maximum sum secured;
 - (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.

Article 44 – Effects of assignment

1. An assignment of an international interest in an aircraft 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.
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 45 – 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 44(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 46 – 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 12, 13 and 15 and 16 to 20 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 aircraft object were references to the assigned rights relating to the aircraft object.

Article 47 – 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 41 apply as if the references to an international interest were references to an assignment of an international interest.

Article 48 – 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 41 [only to the extent that such associated rights relate to:

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

and the reasonable costs referred to in Article 12(5).]

Article 49 – Effects of assignor's insolvency

The provisions of Article 42 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Article 50 – 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.

CHAPTER X – NON-CONSENSUAL RIGHTS OR INTERESTS***Article 51 – Registrable non-consensual rights or interests***

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

Article 52 – 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 this Convention declare, generally or specifically, those categories of non-consensual right or interest (other than a right or interest to which Article 51 applies) which under that State's law would have priority over an interest in the aircraft 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 – JURISDICTION***Article 53 – Choice of forum***

Subject to Articles 54 and 55, the courts of a Contracting State chosen by the parties to a transaction have exclusive jurisdiction in respect of any claim brought under this Convention, unless otherwise agreed between the parties, whether or not the chosen forum has a connection with the parties or the transaction.

Article 54 – Jurisdiction under Article 19(1)

1. The courts of a Contracting State chosen by the parties and the courts on the territory of which the aircraft object is situated or in which the aircraft is registered may exercise jurisdiction to grant relief under Article 19(1)(a), (b), (c), and Article 19(7) in respect of that aircraft object.

2. The courts of a Contracting State chosen by the parties and the courts on the territory of which the debtor is situated may exercise jurisdiction to grant relief under Article 19(1)(d) and (e) and Article 19(4) if the enforcement of such relief is limited to the territory of the forum.

3. A court may exercise jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 19(1) will or may take place in a court of another Contracting State or in an arbitral tribunal.

Article 55 – 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 40.

2. Where a person fails to respond to a demand made under Article 37(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 56 – General jurisdiction

1.– Except as provided by Articles 53, 54 and 55, 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.

2. For the purposes of this Article, and of Article 54, and subject to Article 53, a court of a Contracting State also has jurisdiction where that State is the State of registry.

Article 57 – Waivers of sovereign immunity

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Articles 53, 54 or 56 of this 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 XII – RELATIONSHIP WITH OTHER CONVENTIONS***Article 58 – Relationship with the Convention on the International Recognition of Rights in Aircraft***

This 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 Convention, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

Article 59 – Relationship with the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft

1. This 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 Convention.

2. A Contracting State Party to the above Convention may declare, at the time of ratification, acceptance, approval of, or accession to this Convention, that it will not apply this Article.

Article 60 – Relationship with the UNIDROIT Convention on International Financial Leasing

This Convention shall supersede the UNIDROIT Convention on International Financial Leasing, opened for signature in Ottawa on 28 May 1988, as it relates to aircraft objects.

Article 61 – Relationship with the [draft] UNCITRAL Convention on Assignment of Receivables in International Trade

[This Convention shall supersede the [draft] UNCITRAL Convention on Assignment of Receivables in International Trade as it relates to the assignment of receivables which are associated rights related to international interests in aircraft objects.]

CHAPTER XIII – FINAL PROVISIONS***Article 62 – Adoption of Convention***

1. The Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment are open for signature at the concluding meeting of the Diplomatic Conference for their adoption and will remain open for signature by States at the Headquarters of the International Institute for the Unification of Private Law in Rome until their entry into force.

2. The Convention and the Protocol are subject to ratification, acceptance or approval of Contracting States which have signed it.

3. The Convention and the Protocol are open for accession by all States which are not signatory States as from the date they are open for signature.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the depositary.

Article 63 – Entry into force

1. The Convention on International Interests in Mobile Equipment 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 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. The Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment 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.

3. For each Contracting State that ratifies, accepts, approves or accedes to the Protocol after the deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession, the Protocol enters into force in respect of that Contracting State on the first day of the month following the expiration of [three] months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article 64 – Internal transactions

1. A Contracting State may declare at the time of ratification, acceptance, approval or accession 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 12(2) and 13(1), Chapter V, Article 41, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

Article 65 – 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 Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention 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 Convention extends.

3. If a Contracting State makes no declaration under paragraph 1, this Convention is to extend to all territorial units of that Contracting State.

Article 66 – Determination of courts

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

Article 67 – Declarations regarding remedies

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

2. A Contracting State at the time of signature, ratification, acceptance, approval of or accession to the Convention 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 68 – Declarations relating to certain provisions

1. A Contracting State may declare, at the time of ratification, acceptance, approval of, or accession to this Convention that it will apply any one or more of Articles 9, 23 and 24 of this Convention.

2. A Contracting State may declare, at the time of ratification, acceptance, approval of, or accession to this Convention, that it will apply Article 19 wholly or in part. If it so declares with respect to Article 19(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 Convention, that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article 22 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 22.

4. The courts of Contracting States shall apply Article 22 in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

Article 69 – Reservations, declarations and non-application of reciprocity principle

1. No reservations are permitted except those expressly authorised in this Convention.

2. No declarations are permitted except those expressly authorised in this Convention.

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 70 – Subsequent declarations

1. A Contracting State may make a subsequent declaration at any time after the date on which this Convention 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 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 Convention 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 71 – Withdrawal of declarations and reservations

Any Contracting State which makes a declaration under, or a reservation to this Convention 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 six months after the date of the receipt of the notification by the depositary.

Article 72 – Denunciations

1. The Convention and/or the Protocol may be denounced by any Contracting State at any time after their entry into force for that Contracting State, by the deposit of an instrument or instruments 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, the Convention and/or the 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.

Article 73 – 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) to (d) of paragraph 2.

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 Convention and its effectiveness in facilitating the asset-based financing and leasing of aircraft objects;
- (b) the judicial interpretation given to the terms of this Convention 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 Convention or the arrangements relating to the International Registry are desirable.

Article 74 – Depositary arrangements

1. The Convention shall be deposited with the [.....].

2. The depositary shall:

- (a) inform all Contracting States of the Convention, of the Protocol and [.....] of:
 - (a) 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 the Convention and the Protocol;
 - (iii) the withdrawal of any declaration;
 - (iv) the date of entry into force of the Convention and of the Protocol; and
 - (v) the deposit of an instrument of denunciation of the Convention and/or of the Protocol together with the date of its deposit and the date on which it takes effect;
- (b) transmit certified true copies of the Convention and of the Protocol to all signatory States, to all States acceding to the Convention and to the Protocol, and to [.....];
- (c) provide the Registrar with the contents of each instrument of ratification, acceptance, approval, accession, declaration or withdrawal of a declaration, so that the information contained therein may be made publicly accessible; and
- (d) perform such other functions customary for depositaries.

Article 75 – 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

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 [10 years] after the entering 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 41.

3. The preceding paragraph does not apply to any right or interest in an aircraft 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

FORM OF IRREVOCABLE DE-REGISTRATION AND EXPORT REQUEST AUTHORISATION

Annex Referred to in Article 24(1)

[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").

* Select the term that reflects the relevant nationality registration criterion

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 24 of the Convention. 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 Convention on International Civil Aviation, signed at Chicago, on 7 December 1944; 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]

By: [insert name of signatory]
Its: [insert title of signatory]

[insert relevant notational details]

DCME Doc No. 51
8/11/01

**PROPOSAL FOR INCLUSION OF A PROVISION RELATING TO NON-CONSENSUAL
RIGHTS OR INTERESTS IN THE DRAFT PROTOCOL**
(Presented by Belgium)

Belgium submits the following proposal to the Commission of the Whole for inclusion in the Draft Protocol.

1. We have consulted with several interested delegations and observers concerning this proposal. We believe that in its present form, the Draft Convention/Protocol could jeopardize the rights of EUROCONTROL, the European Organisation for the Safety of Air Navigation, to successfully recover air navigation route charges. EUROCONTROL is an international organisation with headquarters in Brussels, Belgium and currently comprises 30 European Member States, including Belgium. It is governed by the International Convention Relating to Co-operation for the Safety of Air Navigation, as amended by the Protocol of 12 February 1981 and revised by the Protocol of 27 June 1997.

2. One of EUROCONTROL's tasks is to establish, bill and collect route charges on behalf of the Member States participating in the common Route Charges System. Each Route Charge bill issued by the Organisation constitutes a single charge due in respect of each flight and constitutes a single claim by EUROCONTROL, payable at its headquarters. Moreover, the charge attaches as a lien to the aircraft which incurred the charge, irrespective of in whose hands it may be, if the law of the Member State concerned so permits.

3. The Draft Convention and Protocol (Articles 38 and 39 of the Convention) provide adequate safeguards for Contracting States to protect their non-consensual rights or interests. However, by not allowing EUROCONTROL to also register its non-consensual rights or interests, Belgium is concerned that the result may be a reduction in EUROCONTROL's recovery of route charges, to the consequential detriment of its Member States.

4. We therefore propose the following addition to the Protocol:
"An international organisation constituted by sovereign States and entrusted by its Member States with collection of air navigation charges may at any time in a declaration, pursuant to Article 39 of the Convention, deposited with the depositary of the Protocol, declare that a non-consensual right or interest of a category covered by its declaration shall, within a Member State, have priority over an international interest if that non-consensual right or interest is of a kind that within the Member State concerned would have priority over an interest in the object equivalent to that of the international interest. Such a declaration shall be effective for the territorial extent of its Member States who are Contracting States."

DCME Doc No. 52
8/11/01

**PROPOSALS REGARDING THE DRAFT CONVENTION
AND THE DRAFT PROTOCOL**

(Presented by Sweden on behalf of the Informal Group on Jurisdiction Issues)

Article 41

Add to the end of the Article:

"Such an agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of the forum."

Article 53

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 and/or 42, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief that will be applied.

Article 44 bis (new)

The provisions of this Chapter are not applicable to insolvency proceedings.

Article XXVIII

Add as a new paragraph of the Article:

5. 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 XX, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief that will be applied.

DCME Doc No. 53

9/11/01

**REVISED DRAFT FINAL PROVISIONS FOR THE PROTOCOL
TO BE CONSIDERED BY THE FINAL CLAUSES COMMITTEE**

(Presented by the ICAO and UNIDROIT Secretariats)

Article XXV – Signature, ratification, acceptance, approval or accession

1. This Protocol shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article XXVII.

2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.

3. Any State which does not sign this Protocol may accede to it at any time.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

Article XXVI – Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation unless otherwise provided.

Article XXVII – 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 the deposit of the ...the instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.

2. For other States this Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article XXVIII – Declarations relating to certain provisions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply any one or more of Articles VIII, XII and XIII of this Protocol.

2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare 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, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare 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 – Declarations under the Convention

Articles 50, 52, 53, 54 and 55 of the Convention shall apply for the purposes of this Protocol.

Article XXX – Reservations and declarations

1. No reservations may be made to this Protocol but declarations authorised by Articles XXVIII, XXIX, XXXI and XXXII may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

Article XXXI – Subsequent declarations

1. A State Party may make a subsequent declaration at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article XXXII – Withdrawal of declarations

Any State Party having made a declaration under this Protocol may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

Article XXXIII – Denunciations

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which notification is received by 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 any such denunciation.

Article XXXIV – [Review Board and Review Conferences]*

1. A five-member Review Board shall promptly be appointed by ..., in order to prepare yearly reports for the States Parties, Contracting States and negotiating States, addressing the matters specified in sub-paragraphs (a)-(d) of paragraph 2. The composition of the Review Board, its terms of reference and its organisation and administration shall be determined, in consultation with other relevant interests, by
2. At the request of not less than twenty-five per cent of the States specified in the preceding paragraph, Review Conferences of those 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, and the application made of the terms of this Protocol and the regulations;
 - (c) the functioning of the international registration system, 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.]

[Amendments and related matters]

1. At the request of not less than twenty-five per cent of the Contracting States at any time, or at the initiative of the Depositary every five years after the entry into force of this Protocol, a Conference of the Contracting States may be convened to consider:
 - (a) the practical operation of this instrument and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
 - (b) the judicial interpretation given to, and the application made of the terms of this Protocol;
 - (c) the functioning of the international registration system, 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.
2. Any amendment to this Protocol shall be approved by at least a two-third majority of States participating in the Conference referred to in the preceding paragraph and shall then come into force in respect of States which have ratified such amendment when ratified by ... (the same number as in paragraph 1 of Article XXVII) States.]

* On this Article the draft Final Provisions prepared by the two Secretariats differ. That prepared by the UNIDROIT Secretariat contemplates only the establishment of a Review Board and the convening of Review Conferences, whereas that prepared by the ICAO Secretariat contemplates the convening of Conferences of Contracting States for the amendment of the Protocol.

Article XXXV – Depositary and its Functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

- (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Protocol;
 - (iii) each declaration made in accordance with this Protocol, together with the date thereof;
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Protocol to all States specified in sub-paragraph (a);
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
- (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original of which the English, Arabic, Chinese, French, Russian and Spanish texts are equally authentic.

DCME Doc No. 54

10/11/01

**PROPOSAL ON ARTICLE XVI OF THE PROTOCOL
AND ON A CONFERENCE RESOLUTION RELATING TO SUPERVISORY AUTHORITY
AND INTERNATIONAL REGISTRY MATTERS**

(Presented by the Members of the Informal Consultation Group: Brazil, Canada, China,
Egypt, France, India, Nigeria, Singapore, Switzerland and United States)

Article XVI – The Supervisory Authority and the Registrar

1.– The Supervisory Authority of the Registrar on Aircraft Objects shall be the international entity designated by a Resolution adopted by the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol.

2.– Should the international entity referred to in paragraph 1 above not be available, a Conference of Signatory and Contracting States shall be convened to designate another Supervisory Authority.

3.— The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task to assist the Supervisory Authority in the discharge of its functions.

4.— (former para. 2 unchanged).

DRAFT RESOLUTION NO. 2

(to be included in the Final Act)

RELATING TO THE ESTABLISHMENT OF THE SUPERVISORY AUTHORITY AND THE INTERNATIONAL REGISTRY FOR AIRCRAFT OBJECTS

THE CONFERENCE,

HAVING ADOPTED the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment*;

HAVING REGARD to Article XVI paragraph 1 of the Protocol;

CONSCIOUS of the need to undertake preparatory work regarding the establishment of the International Registry in order to ensure that it is operational by the time the Convention and the Protocol enter into force;

CONSIDERING that the Council of the International Civil Aviation Organization (ICAO), following a recommendation made by the 31st Session of its Legal Committee, decided during its 161st Session to accept, in principle, the role of the Supervisory Authority of the International Registry for the purpose of the Protocol, and to defer further decisions on this matter until after the Diplomatic Conference;

RESOLVES:

TO INVITE ICAO to accept the functions of the Supervisory Authority upon the entry into force of the Convention and the Protocol;

TO INVITE ICAO to establish a Commission of Experts consisting of not more than 15 members appointed by the ICAO Council from among persons nominated by the Signatory and Contracting States to the Convention and to the Protocol, having the necessary qualifications and experience, with the task to assist the Supervisory Authority, upon the entry into force of the Convention and the Protocol;

TO SET UP, pending the entry into force of the Convention and Protocol, a Preparatory Commission to act as Provisional Supervisory Authority for the establishment of the International Registry, under the guidance and supervision of the ICAO Council. Such Preparatory Commission shall be composed of persons, having the necessary qualifications and experience, nominated by the following States: *(insert names of States)*

TO DIRECT the Preparatory Commission to carry out, under the guidance and supervision of the ICAO Council, the following functions:

(1) to ensure that the International Registry be set up, in accordance with an objective, transparent and fair selection process, and that it become ready to be operated with a target date of one year from the adoption of the Convention and the Protocol, and at the latest by the time of the entry into force of the Convention and the Protocol;

(2) to ensure the necessary liaison and coordination with the private industry which will be users of the International Registry; and

(3) to work on such other matters relating to the International Registry as may be required with a view to ensuring the establishment of the International Registry.

TO URGE the States participating in the Conference and interested private parties to make available, at the earliest possible time, the necessary start-up funding on a voluntary basis for the tasks of the Preparatory Commission and of ICAO, required under the two preceding resolving clauses, and to entrust ICAO with the task to administer such funds.

DCME Doc No. 55
9/11/01

**ADDITIONAL CLAUSE TO THE PREAMBLE
OF THE DRAFT CONVENTION**
(Presented by Egypt)

Egypt proposes the following clause to be added to the Preamble of the Draft Convention:

“Mindful of the principles of law contained in the *Convention on International Civil Aviation*, done at Chicago on 7 December 1944, and the consideration of the principles established in the Convention relating to the other protocols of the present Convention.”

DCME Doc No. 56
10/11/01

**PROPOSED CHANGES TO ARTICLE 49 AS MODIFIED BY
THE UNIDROIT SECRETARIAT AND SET OUT IN THEIR SUBMISSION
OF 10/10/01 (DCME DOC NO. 16) AND THE SUBMISSION OF THE RAIL WORKING
GROUP OF 2/11/01 (DCME DOC NO. 37) TOGETHER WITH A PROPOSAL FOR
A DRAFT RESOLUTION TO BE ADOPTED
BY THE DIPLOMATIC CONFERENCE**

(Presented by Argentina, Australia, France, Germany, Mexico, Jamaica, Japan,
South Africa, Sweden, United Kingdom, United States and the Rail Working Group)

We propose deletion of Article 49 on the understanding that the contents would be replaced by the proposed draft resolution attached. This does, we believe, address concerns raised by certain delegations in the Commission of the Whole and takes into account that much of the action originally proposed in the original proposal for Article 49 in DCME Doc. No. 16 has been superseded by events.

DRAFT RESOLUTION NO. 3
(to be included in the Final Act)

PURSUANT TO ARTICLE 2(3)(b) AND (c) OF THE CONVENTION

THE CONFERENCE,

HAVING ADOPTED, in Article 2(3)(b) and (c) of the Convention, provisions contemplating the adoption of Protocols on matters specific to Railway Rolling Stock and Space Assets;

CONSIDERING THAT such Protocols will be applied together with the terms of the Convention and are expected also to include analogous provisions to those contained in the Aircraft Protocol;

CONSIDERING THAT considerable progress has already been made in relation to the development of such Protocols and such progress has been welcomed by the Conference;

CONSIDERING THAT the completion of such Protocols is to be expected to confer significant benefits on the international community as a whole, in particular for developing states; and

CONSIDERING IT DESIRABLE to involve as wide a range of States as possible in the process for the adoption of such Protocols and to keep the costs of such adoption to a reasonable minimum;

RESOLVES:

TO INVITE the negotiating States to work towards expeditious adoption of the draft Protocols under preparation in respect of those objects falling within Article 2(3)(b) and (c);

TO INVITE the International Institute for the Unification of Private Law (UNIDROIT) to use its good offices to facilitate such objective;

TO INVITE UNIDROIT to give all Member States of UNIDROIT and Member States of the United Nations which are not members of UNIDROIT, an opportunity to participate in the negotiation and adoption of such Protocols in a cost effective manner; and

TO INVITE the competent bodies of UNIDROIT to consider favourably the implementation of an expedited procedure for the adoption of such Protocols, and in particular to consider the diplomatic Conference required for their adoption being as short as possible consistently with the need for States to give such Protocol proper consideration.

REPORT OF THE FINAL CLAUSES COMMITTEE**PART I**

(Presented by the Chairman of the Final Clauses Committee)

1. INTRODUCTION

1.1 At its Fourth Plenary Meeting on 31 October 2001, the Conference established the Final Clauses Committee with the following composition:

Canada, China, Cuba, Egypt, France, Jamaica, Kenya, Pakistan, Saudi Arabia, Senegal, Singapore, Sweden, Switzerland and United States.

1.2 At the first meeting of the Committee on 7 November 2001, on a proposal made by France and seconded by Singapore, Dr. Kenneth Rattray (Jamaica) was elected Chairman of the Committee.

1.3 The Committee held its second meeting on 8 November 2001. It decided to recommend the following final provisions of Articles 47 to 59 for the Convention (Part II to follow).

2. DRAFT FINAL PROVISIONS FOR THE CONVENTION***Article 47 – Signature, ratification, acceptance, approval or accession***

1. This Convention shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Convention shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article 49.

2. This Convention shall be subject to ratification, acceptance or approval by States which have signed it.

3. Any State which does not sign this Convention may accede to it at any time.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

Article 48 – Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly

notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Convention applies equally to a Regional Economic Integration Organisation unless otherwise provided.

Article 49 – 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 the deposit of the third instrument of ratification, acceptance, approval or accession 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 States Parties to this Convention and that Protocol.

2. For other States this Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies and subject, in relation to such Protocol, to the requirements of sub-paragraphs (a), (b) and (c) of the preceding paragraph.

Article 50 – Internal transactions

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

2. Notwithstanding paragraph 1, 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 51 – Future Protocols

1. The Depositary may create working groups, in co-operation with such relevant non-governmental organisations as the Depositary considers appropriate, 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 Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all States Parties to this Convention, all member States of the Depositary, member States of the United Nations which are not members of the Depositary and the relevant intergovernmental organisations, and shall invite such States and organisations to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

3. The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental organisations as the Depositary considers appropriate. Such non-governmental organisations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.

4. When the competent bodies of the Depositary adjudge such a draft Protocol ripe for adoption, the Depositary shall convene a diplomatic conference for its adoption.

5. Once such a Protocol has been adopted, subject to paragraph 6, this Convention shall apply to the category of objects covered thereby.

6. Article 46 applies to such a Protocol only if specifically provided for in that Protocol.¹

Article 52 – Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. Any such declaration shall state expressly the territorial units to which this Convention applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.

4. Where a Contracting State extends this Convention to one or more of its territorial units, declarations permitted under this Convention may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

Article 53 – Determination of courts

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

Article 54 – Declarations regarding remedies

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare 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 shall, at the time of ratification, acceptance, approval of, or accession to the Protocol, 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 55 – Declarations regarding relief pending final determination

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will not apply the provisions of Article 12, wholly or in part.²

Article 56 – Reservations and declarations

1. No reservations may be made to this Convention but declarations authorised by Articles 38, 39, 50, 52, 53, 54, 55, 57 and 58 may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

¹ The Final Clauses Committee has not taken a decision with respect to paragraph 6 pending the Report of the Drafting Committee.

² The Final Clauses Committee has not taken any decision on this Article pending the decision of the Commission of the Whole.

Article 57 – Subsequent declarations

1. A State Party may make a subsequent declaration at any time after the date on which this Convention has entered into force for it, by notifying the Depositary to that effect.
2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.
3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article 58 – Withdrawal of declarations

Any State Party having made a declaration under this Convention may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

Article 59 – Denunciations

1. Any State Party may denounce this Convention by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which notification is received by the Depositary.
3. Notwithstanding the previous paragraphs, this Convention 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 any such denunciation.

DCME Doc No. 57
10/11/01
Addendum
12/11/01

**REPORT OF THE FINAL CLAUSES COMMITTEE
PART II**

(Presented by the Chairman of the Final Clauses Committee)

1. INTRODUCTION

- 1.1 The Committee held its Third Meeting on 12 November 2001. It made the following amendments to Part I of its report:
- 1.2 In Article 49, paragraph 1, the term “six months” in the second line is replaced by “three months”.
- 1.3 Article 51, paragraph 6 shall be revised pending decision of the Commission of the Whole with respect to Article 46.
- 1.4 In accordance with the decision of the Commission of the Whole (DCME Doc No. 52, Article 53, which was approved with editorial changes as suggested by the Drafting Committee), Article 55 should read:

“A Contracting State may declare at the time of ratification, acceptance, approval of, or accession to, the Protocol that it will not apply the provisions of Article 12 and the related provisions of Article 42, wholly or in part. Where the effect of the declaration is that Article 12 and the related provisions of Article 42 will be applied only in part, the declaration shall specify in which conditions that part will be applied and which other forms of relief will be available.”

1.5 With respect to the issues raised in Flimsies Nos. 2 and 3 of the Final Clauses Committee, the Committee did not take any decision pending informal consultations among interested States, which will report directly to the Commission of the Whole.

1.6 With respect to Article 60 of the Draft Convention, different views were expressed. It has been proposed that Alternative A be retained with the following modification: “Unless otherwise declared by a Contracting State at the time of ratification, acceptance, approval of, or accession to the Convention, 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.” The Committee decided to refer this Article back to the Commission of the Whole for decision.

1.7 The Committee decided to recommend the rest of the final provisions as follows.

2. FINAL PROVISIONS FOR THE CONVENTION

Article 61 – Review Conferences, amendments and related matters

1. The Depositary shall prepare yearly reports for the States Parties as to the manner in which the international regime established in this Convention has operated in practice.

2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of States Parties shall be convened from time to time to consider:

- (a) the practical operation of this Convention and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
- (b) the judicial interpretation given to, and the application made of the terms of this Convention and the regulations;
- (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority; and
- (d) whether any modifications to this Convention or the arrangements relating to the International Registry are desirable.

3. Any amendment to this Convention shall be approved by at least a two-third majority of States participating in the Conference referred to in the preceding paragraph and shall then come into force in respect of States which have ratified such amendment, when ratified by three States.

Article 62 – Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

- (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Convention;
 - (iii) each declaration made in accordance with this Convention, together with the date thereof;

(iv) the withdrawal or amendment of any declaration, together with the date thereof; and

(v) the notification of any denunciation of this Convention together with the date thereof and the date on which it takes effect;

(b) transmit certified true copies of this Convention to all Contracting States;

(c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and

(d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original of which the English, Arabic, Chinese, French, Russian and Spanish texts are equally authentic.

3. FINAL PROVISIONS FOR THE PROTOCOL

Article XXV – Signature, ratification, acceptance, approval or accession

1. This Protocol shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article XXVII.

2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.

3. Any State which does not sign this Protocol may accede to it at any time.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

Article XXVI – Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation unless otherwise provided.

Article XXVII – 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 the deposit of the third ¹ instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.

2. For other States this Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article XXVIII – Declarations relating to certain provisions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply any one or more of Articles VIII, XII and XIII of this Protocol.

2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare 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, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare 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.

5. A Contracting State may declare at the time of ratification, acceptance, approval of, or accession to, the Protocol that it will not apply the provisions of Article 12 and the related provisions of Article 42, wholly or in part. Where the effect of the declaration is that Article 12 and the related provisions of Article 42 will be applied only in part, the declaration shall specify in which conditions that part will be applied and which other forms of relief will be available.

Article XXIX – Declarations under the Convention

Declarations made under the Convention, including those made under Articles 38, 39, 50, 52, 53, 54, 55, 57 and 58 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

Article XXX – Reservations and declarations

1. No reservations may be made to this Protocol but declarations authorised by Articles XXVIII, XXIX, XXXI and XXXII may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

¹ Four States made a reservation with respect to the number of ratifications required for entry into force.

Article XXXI – Subsequent declarations

1. A State Party may make a subsequent declaration at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.
2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.
3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article XXXII – Withdrawal of declarations

Any State Party having made a declaration under this Protocol may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

Article XXXIII – Denunciations

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which notification is received by 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 any such denunciation.

Article XXXIV – Review Conferences, amendments and related matters

1. The Depositary, in consultation with the Supervisory Authority, shall prepare yearly reports for the States Parties as to the manner in which the international regime established in the Convention as amended by the Protocol has operated in practice.
2. At the request of not less than twenty-five per cent of the States specified in the preceding paragraph, Review Conferences of the States Parties shall be convened from time to time to consider:
 - (a) the practical operation of the Convention as amended by the Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
 - (b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;
 - (c) the functioning of the international registration system, 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.
3. Any amendment to this Protocol shall be approved by at least a two-third majority of States participating in the Conference referred to in the preceding paragraph and shall then come into force in respect of States which have ratified such amendment when ratified by three States.

Article XXXV – Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

- (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Protocol;
 - (iii) each declaration made in accordance with this Protocol, together with the date thereof;
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Protocol to all Contracting States;
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
- (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original of which the English, Arabic, Chinese, French, Russian and Spanish texts are equally authentic.

DCME Doc No. 58

10/11/01

DRAFT RESOLUTION NO. 1

(to be included in the Final Act)

**ADOPTING THE CONSOLIDATED TEXT OF THE CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
AND THE AIRCRAFT PROTOCOL**

THE CONFERENCE,

MINDFUL of the objectives of the *Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment*;

DESIROUS to facilitate the application and implementation of the Convention and of the Protocol;

TAKING INTO ACCOUNT Article 6, paragraph 1, of the Convention, which states that the Convention and the Protocol shall be read and interpreted together as a single instrument;

RECOGNIZING the need of the international civil aviation community to facilitate the implementation of the rules applicable to aircraft objects in a user-friendly manner;

HAVING AGREED to entrust the Joint Secretariat of the Conference, namely the Secretariats of the International Civil Aviation Organization (ICAO) and of the International Institute for the Unification of Private Law (UNIDROIT), with the drawing up of an authoritative consolidated text;

RESOLVES:

TO HEREBY ADOPT the Consolidated Text of the *Convention on International Interests in Mobile Equipment* and the *Protocol thereto on Matters Specific to Aircraft Equipment* as set out in the **Attachment** to this Resolution.

DCME Doc No. 59
10/11/01

DRAFT RESOLUTION NO. 4
(to be included in the Final Act)

**RELATING TO TECHNICAL ASSISTANCE WITH REGARD
TO THE IMPLEMENTATION AND THE USE OF THE
INTERNATIONAL REGISTRY**

THE CONFERENCE,

MINDFUL of the objectives of the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on Matters Specific to Aircraft Equipment*;

DESIROUS to facilitate the implementation of the Convention and the Protocol as well as the prompt implementation and the use of the international registry;

RESOLVES:

TO ENCOURAGE all Negotiating States, international organizations, as well as private parties, such as the aviation and financial industries, to assist the developing Negotiating States in any appropriate way, including facilities and know-how necessary to use the international registry, so as to allow them to benefit from the Convention and the Protocol as early as possible.

DCME Doc No. 60
10/11/01
Revised
13/11/01

DRAFT FINAL ACT
of the Diplomatic Conference to Adopt a Mobile Equipment Convention
and an Aircraft Protocol held under the joint auspices of the
International Institute for the Unification of Private Law and the
International Civil Aviation Organization
at Cape Town from 29 October to 16 November 2001

The Plenipotentiaries at the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol, held under the joint auspices of the International Institute for the Unification of Private Law and the International Civil Aviation Organization, met at Cape Town, at the invitation of the Government of the Republic of South Africa, from 29 October to 16 November 2001 for the

purpose of considering the draft *Convention on International Interests in Mobile Equipment* and the draft *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*, prepared by three Joint Sessions of a Committee of Governmental Experts of the International Institute for the Unification of Private Law and a Legal Sub-Committee of the International Civil Aviation Organization, as well as by the Legal Committee of the International Civil Aviation Organization.

The Governments of the following fifty-six States were represented at the Conference and presented credentials in due and proper form:

Angola, the Republic of	Chile, the Republic of
Argentina, the Republic of	China, the People's Republic of
Australia	Congo, the Republic of
Bahrain, the State of	Costa Rica, the Republic of
Belgium, the Kingdom of	Côte d'Ivoire, the Republic of
Benin, the Republic of	Cuba, the Republic of
Botswana, the Republic of	Czech Republic, the
Brazil, the Federative Republic of	Ethiopia, Federal Democratic Republic of
Burundi, the Republic of	Finland, the Republic of
Cameroon, the Republic of	French Republic, the
Canada	Germany, the Federal Republic of
Ghana, the Republic of	Republic of Korea, the
Hellenic Republic, the	Russian Federation, the
India, the Republic of	Singapore, the Republic of
Iran, the Islamic Republic of	South Africa, the Republic of
Ireland	Spain, the Kingdom of
Italy, the Republic of	Sudan, the Republic of the
Jamaica	Sweden, the Kingdom of
Japan	Swiss Confederation, the
Jordan, the Hashemite Kingdom of	Thailand, the Kingdom of
Kenya, the Republic of	Tonga, the Kingdom of
Lebanese Republic, the	Turkey, the Republic of
Lesotho, the Kingdom of	Uganda, the Republic of
Libyan Arab Jamahiriya, the Socialist People's	United Arab Emirates, the
Malawi, the Republic of	United Kingdom of Great Britain and
Mexican States, the United	Northern Ireland, the
Netherlands, the Kingdom of the	United Republic of Tanzania, the
Nigeria, the Federal Republic of	United States of America, the
Oman, the Sultanate of	

The following eleven international Organisations and groups were represented by Observers:

- African Civil Aviation Commission (AFCAC)
- Aviation Working Group (AWG)
- European Organisation for the Safety of Air Navigation (EUROCONTROL)
- European Community
- Hague Conference on Private International Law
- International Air Transport Association (IATA)
- Intergovernmental Organisation for International Carriage by Rail (OTIF)
- International Mobile Satellite Organization (IMSO)
- Rail Working Group (RWG)
- Space Working Group (SWG)
- United Nations

The Conference unanimously elected as President Mr. Medard Rutoijo Rwelamira (South Africa) and further unanimously elected as Vice-Presidents:

First Vice-President – Mr. Harold S. Burman (United States)
 Second Vice-President – Mr. Gao Hongfeng (China)
 Third Vice-President – Mr. Souleiman Eid (Lebanon)
 Fourth Vice-President – Mr. Jorio Salgado Gama Filho (Brazil)
 Fifth Vice-President – Mr. John Atwood (Australia)

The Joint Secretariat of the Conference was the following:

For the International Institute for the Unification of Private Law:

Secretary General – Mr. Herbert Kronke, Secretary-General
 Executive Secretary – Mr. Martin Stanford, Principal Research Officer
 Deputy Secretary and Conference Officer – Ms. Marina Schneider, Research Officer
 Deputy Secretary – Ms. Frédérique Mestre, Research Officer
 Assistant Secretary – Ms. Lena Peters, Research Officer

For the International Civil Aviation Organization:

Secretary General – Mr. Ludwig Weber, Director of the Legal Bureau
 Executive Secretary – Mr. Silvério Espínola, Principal Legal Officer
 Deputy Secretary – Mr. Jiefang Huang, Legal Officer
 Assistant Secretary – Mr. Arie Jakob, Legal Officer
 Conference Officer – Mr. Michael J. Blanch, Chief, Conference & Office Services Section

Other officials of both Organisations also provided services to the Conference.

The Conference established a Commission of the Whole which was chaired by Mr. Antti T. Leinonen (Finland) and the following Committees:

Credentials Committee

Chairman: Mrs. Joyce Thompson (Ghana)
 Members: Costa Rica
 Ghana
 Oman
 Singapore
 Spain

Drafting Committee

Chairman: Sir Roy Goode (United Kingdom)
 Members: Argentina
 Canada
 China
 France
 Germany
 Jamaica
 Japan
 Lebanon
 Mexico
 Nigeria
 Russian Federation

South Africa
United Arab Emirates
United Kingdom
United States

Final Clauses Committee

Chairman: Mr. Kenneth O. Rattray (Jamaica)

Members: Canada
China
Cuba
Egypt
France
Jamaica
Kenya
Pakistan
Saudi Arabia
Senegal
Singapore
Sweden
Switzerland
United States.

Following its deliberations, the Conference adopted the texts of the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*.

The said Convention and Protocol have been opened for signature at Cape Town this day.

The Conference furthermore adopted by consensus the following Resolutions:

DRAFT RESOLUTION NO. 1

**RELATING TO THE CONSOLIDATED TEXT OF THE CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
AND THE PROTOCOL TO THE CONVENTION ON INTERNATIONAL
INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC
TO AIRCRAFT EQUIPMENT**

MINDFUL of the objectives of the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*;

DESIROUS of facilitating the application and implementation of the Convention and the Protocol;

TAKING INTO ACCOUNT Article 6, paragraph 1 of the Convention, which states that the Convention and the Protocol shall be read and interpreted together as a single instrument;

HAVING AGREED to entrust the Joint Secretariat of the Conference, namely the Secretariats of the International Civil Aviation Organization (ICAO) and of the International Institute for the Unification of Private Law (UNIDROIT), with the drawing up of a consolidated text to facilitate the implementation of the rules contained in the Convention and the Protocol in a user-friendly manner;

THE CONFERENCE:

HEREBY TAKES NOTE OF the Consolidated Text of the *Convention on International Interests in Mobile Equipment* and the *Protocol thereto on Matters specific to Aircraft Equipment* as set out in the **Attachment** to this Resolution.

DRAFT RESOLUTION NO. 2**RELATING TO THE ESTABLISHMENT OF THE SUPERVISORY AUTHORITY
AND THE INTERNATIONAL REGISTRY FOR AIRCRAFT OBJECTS****THE CONFERENCE,**

HAVING ADOPTED the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*;

HAVING REGARD to Article XVI, paragraph 1 of the Protocol;

CONSCIOUS of the need to undertake preparatory work regarding the establishment of the International Registry in order to ensure that it is operational by the time the Convention and the Protocol enter into force;

CONSIDERING that the Council of the International Civil Aviation Organization (ICAO), following a recommendation made by the 31st Session of its Legal Committee, decided during its 161st Session to accept, in principle, the role of Supervisory Authority of the International Registry for the purpose of the Protocol, and to defer further decisions on this matter until after the Diplomatic Conference;

RESOLVES:

TO INVITE ICAO to accept the functions of Supervisory Authority upon the entry into force of the Convention and the Protocol;

TO INVITE ICAO to establish a Commission of Experts consisting of not more than 15 members appointed by the ICAO Council from among persons nominated by the Signatory and Contracting States to the Convention and to the Protocol, having the necessary qualifications and experience, with the task of assisting the Supervisory Authority, upon the entry into force of the Convention and the Protocol;

TO SET UP, pending the entry into force of the Convention and the Protocol, a Preparatory Commission to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry, under the guidance and supervision of the ICAO Council. Such Preparatory Commission shall be composed of persons, having the necessary qualifications and experience, nominated by the following States: (insert names of States).

TO DIRECT the Preparatory Commission to carry out, under the guidance and supervision of the ICAO Council, the following functions:

(1) to ensure that the international registration system be set up, in accordance with an objective, transparent and fair selection process, and that it become ready to be operated with a target date of one year from the adoption of the Convention and the Protocol, and at the latest by the time of the entry into force of the Convention and the Protocol;

(2) to ensure the necessary liaison and coordination with private industry which will be users of the International Registry; and

(3) to work on such other matters relating to the International Registry as may be required with a view to ensuring the establishment of the International Registry.

TO URGE the States participating in the Conference and interested private parties to make available, at the earliest possible date, the necessary start-up funding on a voluntary basis for the tasks of the Preparatory Commission and of ICAO, required under the two preceding resolving clauses, and to entrust ICAO with the task of administering such funds.

DRAFT RESOLUTION NO. 3

PURSUANT TO ARTICLE 2(3)(b) AND (c) OF THE CONVENTION

THE CONFERENCE,

HAVING ADOPTED, in Article 2(3)(b) and (c) of the Convention, provisions contemplating the adoption of Protocols on Matters specific to Railway Rolling Stock and Space Assets;

CONSIDERING that such Protocols will be applied together with the terms of the Convention and are expected also to include analogous provisions to those contained in the Aircraft Protocol;

CONSIDERING that considerable progress has already been made in relation to the development of such Protocols and such progress has been welcomed by the Conference;

CONSIDERING that the completion of such Protocols is to be expected to confer significant benefits on the international community as a whole, in particular for developing States; and

CONSIDERING IT DESIRABLE to involve as wide a range of States as possible in the process for the adoption of such Protocols and to keep the costs of such adoption to a reasonable minimum;

RESOLVES:

TO INVITE the negotiating States to work towards expeditious adoption of the draft Protocols under preparation in respect of those objects falling within Article 2(3)(b) and (c);

TO INVITE the International Institute for the Unification of Private Law (UNIDROIT) to use its good offices to facilitate such objective;

TO INVITE UNIDROIT to give all Member States of UNIDROIT and Member States of the United Nations which are not members of UNIDROIT an opportunity to participate in the negotiation and adoption of such Protocols in a cost-effective manner; and

TO INVITE the competent bodies of UNIDROIT to consider favourably the implementation of an expedited procedure for the adoption of such Protocols, and in particular to consider the diplomatic Conference required for their adoption being as short as possible consistently with the need for States to give such Protocol proper consideration.

DRAFT RESOLUTION NO. 4

RELATING TO TECHNICAL ASSISTANCE WITH REGARD TO THE IMPLEMENTATION AND THE USE OF THE INTERNATIONAL REGISTRY

THE CONFERENCE,

MINDFUL of the objectives of the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on Matters specific to Aircraft Equipment*;

DESIROUS of facilitating the implementation of the Convention and the Protocol as well as the prompt implementation and use of the International Registry;

RESOLVES:

TO ENCOURAGE all negotiating States, international Organisations, as well as private parties, such as the aviation and financial industries, to assist the developing negotiating States in any appropriate way, including facilities and know-how necessary to use the International Registry, so as to allow them to benefit from the Convention and the Protocol as early as possible.

DRAFT RESOLUTION NO. 5

**RELATING TO THE OFFICIAL COMMENTARY ON THE CONVENTION
AND AIRCRAFT PROTOCOL**

THE CONFERENCE,

HAVING ADOPTED the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*;

CONSCIOUS of the need for an official commentary on these texts as an aid for those called upon to work with these documents;

RECOGNISING the increasing use of commentaries of this type in the context of modern, technical commercial law instruments; and

MINDFUL that the Explanatory Report and Commentary (DCME-IP/2) provides a sound starting point for the further development of this official commentary;

RESOLVES:

TO REQUEST the preparation of a draft official commentary on these texts by the Chairman of the Drafting Committee, in close cooperation with the ICAO and UNIDROIT Secretariats, and in coordination with the Chairman of the Commission of the Whole, the Chairman of the Final Clauses Committee and interested members of the Drafting Committee and observers that participated in its work;

TO REQUEST that such draft be circulated by the two Secretariats to all negotiating States and participating observers no later than 90 days from the conclusion of the Conference inviting comments thereon; and

TO REQUEST that a revised final version of the official commentary be transmitted by the two Secretariats to all negotiating States and participating observers no later than 180 days from the conclusion of the Conference.

IN WITNESS WHEREOF the Delegates,

GRATEFUL to the Government of the Republic of South Africa for having invited the Conference to South Africa and for its generous hospitality,

HAVE SIGNED this Final Act.

DONE at Cape Town on the sixteenth day of November of the year two thousand and one in two originals of which the English, Arabic, Chinese, French, Russian and Spanish languages are equally authentic. The Convention and the Protocol shall be deposited with the International Institute for the Unification of Private Law. A certified copy of each instrument shall be delivered by the said Organisation to the Governments of each of the negotiating States.

DCME Doc No. 61

10/11/01

INTERIM REPORT BY THE DRAFTING COMMITTEE

(Presented by the Chairman of the Drafting Committee)

At its Fourth Plenary Meeting, held on 31 October 2001, the Conference established the Drafting Committee in the following composition:

Argentina, Canada, China, France, Germany, Jamaica, Japan, Lebanon, Mexico, Nigeria, Russian Federation, South Africa, United Arab Emirates, United Kingdom, United States of America.

The Drafting Committee held nine meetings from 1 to 10 November 2001.

At its first meeting, on a proposal moved by the United Arab Emirates, seconded by Germany and supported by Nigeria, France and South Africa, Professor Sir Roy Goode (United Kingdom) was elected Chairman.

In addition to the members of the Drafting Committee, its meetings were attended by observers from Australia, Belgium, Brazil, Democratic Republic of the Congo, Greece, India, Netherlands, Republic of Korea, Sweden, Thailand and Tonga and from the Aviation Working Group, the European Community, the International Air Transport Association, the Rail Working Group, the Space Working Group and the United Nations.

At its ninth meeting, the Drafting Committee approved the text of:

(a) the draft Convention on International Interests in Mobile Equipment, with the exception of Articles 14 *bis*, 27, 28(3) and (6) and 46 and in respect of Article 38 subject to such revisions as may prove necessary in the light of proposals pending before the Drafting Committee; and

(b) the draft Protocol thereto on Matters specific to Aircraft Equipment up to and including Article IX, albeit in respect of this last Article subject to such revisions as may prove necessary in the light of proposals pending before the Drafting Committee.

These texts are reproduced in Appendices I and II hereto.

The Drafting Committee would draw the attention of the Commission of the Whole to the need for a decision to be taken on policy issues arising under Articles 2(3), 4, 17(2 *bis*) and 32 (1)(c). It would also note that Article 38(3) should be read in the light of the ongoing discussions relating to transitional provisions within the Final Clauses Committee.

The Chairman of the Drafting Committee will be presenting the final report by that Committee on the afternoon of 13 November 2001. This will integrate those provisions of the two texts reproduced hereto.

APPENDIX I

**THE¹ DRAFT CONVENTION ON
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT**

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 and mutual 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,

TAKING INTO CONSIDERATION the objectives and principles enshrined in existing Conventions relating to such equipment,

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;

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

(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;

(d) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;

(e) “conditional buyer” means a buyer under a title reservation agreement;

(f) “conditional seller” means a seller under a title reservation agreement;

(g) “contract of sale” means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above;

¹ The Drafting Committee, whilst implementing the decision of the Commission of the Whole to insert the word “the” in the title of the Convention, would recommend that this change be reversed as not conforming to normal practice in these matters.

(h) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;

(i) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;

(j) “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;

(k) “insolvency administrator” means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;

(l) “insolvency proceedings” means bankruptcy, liquidation or other 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;

(m) “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;

(n) “internal transaction” means a transaction of a type listed in Article 2(2)(a) to (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;

(o) “international interest” means an interest held by a creditor to which Article 2 applies;

(p) “International Registry” means the international registration facilities established for the purposes of this Convention or the Protocol;

(q) “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;

(r) “national interest” means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 48 ²;

(s) “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;³

(t) “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 48(1) ⁴;

(u) “object” means an object of a category to which Article 2 applies;

² The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

³ The definition of “non-consensual right or interest” is being reviewed in the light of the decisions to be reached in respect of Chapter X.

⁴ The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

(v) “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~~ Article 38 and to the extent of that declaration;⁵

(w) “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;

(x) “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;

(y) “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;

(z) “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;

(aa) “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;

(bb) “registered” means registered in the International Registry pursuant to Chapter V;

(cc) “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;

(dd) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under ~~Article 38~~ Article 39;

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

(ff) “regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol;

(gg) “sale” means a transfer of ownership of an object pursuant to a contract of sale;

(hh) “secured obligation” means an obligation secured by a security interest;

(ii) “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;

(jj) “security interest” means an interest created by a security agreement;

(kk) “Supervisory Authority” means, in respect of the Protocol, the Supervisory Authority referred to in Article 16(1);

(ll) “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;

(mm) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which ~~Article 39~~ Article 38 applies) which has not been registered, whether or not it is registrable under this Convention; and

(nn) “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.

⁵ The definition of “pre-existing right or interest” will need to be reviewed in the light of the decisions to be reached in respect of Article 55.

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
- (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~~^{[Without prejudice to Article 50,]⁶ 7 [T]he categories referred to in the preceding paragraphs are:}

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

~~4. This Convention does not determine 4. The applicable law determines~~ 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~~ Article 3(1),⁸ 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~~ sub-paragraph (d) of the preceding paragraph 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.

⁶ The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

⁷ The words within square brackets will need to be reviewed in the light of the discussion on Article 50.

⁸ The Drafting Committee would recommend that the definition of "debtor" provided in Article 4 should not be extended to Article 42. This is a matter for the Commission of the Whole to decide.

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.

Article 5 bis – Relationship between the Convention and the Protocol

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

2. To the extent of any inconsistency between this Convention and the Protocol, the Protocol shall prevail.

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 and subject to any declaration that may be made by a Contracting State under Article 52,⁹ 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;¹⁰

⁹ The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

¹⁰ This provision will need to be reviewed in the light of the outcome of the informal consultations underway on the question of non-registrable non-consensual rights or interests or contractual rights or interests.

~~or 2.~~ The chargee may alternatively apply for a court order authorising or directing any of the ~~above acts:~~ acts referred to in the preceding paragraph.

~~2. Any remedy given by 3.~~ Any remedy set out in sub-paragraph (a), (b) or (c) of ~~the preceding paragraph 1~~ 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 4.~~ 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(m)(i) and (ii); and

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

~~4 5.~~ Any sum collected or received by the chargee as a result of exercise of any of the remedies set out ~~under in~~ paragraph 1 shall be applied towards discharge of the amount of the secured obligations.

~~5 6.~~ Where the sums collected or received by the chargee as a result of the exercise of any remedy ~~given set out~~ 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,~~ distribute the surplus among holders of subsequently ranking interests which have been registered or of which the chargee has been given notice, in order of priority, and pay any remaining balance to the chargor.¹¹

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 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:

¹¹ The final drafting of this provision will depend on the solution to be adopted in respect of Article 55.

- (a) subject to any declaration that may be made by a Contracting State under Article 52,¹² 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~~ Where the debtor and the creditor have not so agreed, “default” for the purposes of Articles 7 to 9 and 12 means a substantial default which substantially deprives the creditor of what it is entitled to expect under the agreement.

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. Subject to any declaration that it may make under Article 55,¹³ 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 and~~
- (d) lease or, except where covered by sub-paragraphs (a) to (c), 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)~~ 7(3) or limits the availability of forms of interim relief other than those set out in paragraph 1.

¹² The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

¹³ The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

Article 13 – Procedural requirements

Subject to Article 52(2) ¹⁴, 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, any two or more of the parties may referred to in this Chapter may at any time, 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) to (5)~~ 7(3) to (6), 8(3) and (4), 12(2) and 13.

*Article 14 bis – [Provision for debtor’s right of quiet possession]***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 under the applicable law; [‡]
 - ~~(d)~~ (d) notices of national interests; and
 - (e) subordinations of interests referred to in any of the preceding sub-paragraphs.
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) ensure that any rights required for the continued effective operation of the International Registry ~~are such as may be assigned~~ will vest in or be assignable to the new Registrar;
 - (d) 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;
 - (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
 - (f) supervise the Registrar and the operation of the International Registry;
 - (g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;

¹⁴ The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

(h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;

(i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and

(j) 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 Supervisory Authority shall own all proprietary rights in the data bases and archives of the International Registry.

5. 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~~ OTHER MATTERS RELATING TO 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 (which shall include provision for prior electronic transmission of any consent required under Article 19);

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

(c) for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.

2. The Registrar shall not be under a duty to enquire whether-

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

3. Registration shall be effected in chronological order of receipt at 2. bis Where an interest registered as a prospective international interest becomes an international interest, no further registration shall be required provided that the registration information is sufficient for a registration of an international interest.]

[3.1 The Registrar shall arrange for registrations to be entered into the International Registry data base and made searchable in chronological order of receipt, and the file shall record the date and time of receipt.

[4.1 The Protocol may provide that a Contracting State may designate an entity or entities in its territory as the entity entry point or entry points through which the information required for registration shall or may be transmitted to the International Registry. A Contracting State making such a designation may specify the requirements, if any, to be satisfied before such information is transmitted to the International Registry.

Article 18 – ~~When~~ Validity and time of registration takes effect

1. A registration shall be valid only if made ~~in conformity with Article 19 and shall take effect by or with the consent in writing of the party specified in Article 19.~~

2. A registration, if valid, shall be complete upon entry of the required information into the International Registry data base so as to be searchable.

2 3. 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.

3.4. 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 provided that the registration was still current immediately before the international interest was constituted as provided by Article 6.

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

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

Article 19 – ~~Who may register~~ Consent to registration

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 either party with the consent in writing of the other.

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 by electronic means concerning interests or prospective international 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 by electronic means 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.

3. A search certificate issued under the preceding paragraph shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.

Article 22 – List of declarations and declared non-consensual rights or interests

The Registrar shall maintain a list of declarations, withdrawals of declaration and 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~~ Articles 38 and 39 and the date of each such declaration or withdrawal of 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, without undue delay, procure the discharge of the registration ~~upon~~ after 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, without undue delay, procure the discharge of the registration ~~upon~~ after 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, without undue delay, procure the discharge of the registration ~~upon~~ after written demand by the debtor delivered to or received at its address stated in the registration.

4. Where a registration ought not to have been made or is incorrect, the person in whose favour the registration was made shall, without undue delay, procure its discharge or amendment after 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~~ such immunity from legal or administrative process as is specified in the Protocol.

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.

4. Except for the purposes of Article 27(1)¹⁵ 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~~ data bases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process.

5. The Supervisory Authority may waive the immunity conferred by the preceding paragraph 4.

CHAPTER VII – LIABILITY OF THE REGISTRAR

Article 27 – Liability and insurance

~~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 and its officers and employees or from a malfunction of the international registration system [except ...]~~

~~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. [to be revised in the light of proposals from the United States and Germany (cf. Flimsies Nos 1 and 5)]~~

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. ~~[to be revised] 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.~~

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.

¹⁵ The numbering of this reference may need to be reviewed in the light of the final form to be given to Article 27.

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 an object and the holder of an international interest in that object.~~[to be revised]

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:
 - (a) any rules of law applicable in insolvency ~~law~~ proceedings relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors; or
 - (b) 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 – ASSIGNMENTS OF ASSOCIATED RIGHTS, 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~~Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with the preceding Article 31 also transfers to the assignee, to the extent agreed by the parties to the assignment:
 - ~~(a)~~(a) the related international interest; and
 - ~~(b) all the interests and priorities of the assignor under this Convention ; and~~
 - ~~(b) all associated rights.~~
- ~~2. Nothing in this Convention prevents a partial assignment of the assignor’s associated rights. In the case of such a partial assignment the assignor and assignee may agree as to their respective rights concerning the related international interest assigned under paragraph 1 and, if they do not agree, their rights shall be governed by the applicable law.~~
- ~~3.~~ Subject to paragraph ~~3~~ 4, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.
- ~~3~~ 4. 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 other than~~ defences arising from fraudulent acts on the part of the assignee.

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

Article 3231 – Formal requirements of assignment

1. An assignment of associated rights transfers the related international interest only if it:
 - (a) is in writing;
 - (b) enables the associated rights to be identified to the contract under which they arise;

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.
2. An assignment of an international interest created or provided for by a security agreement is not valid unless some or all related associated rights also are assigned.
3. This Convention does not apply to an assignment of associated rights which is not effective to transfer the related international interest.

Article 32 – Debtor's duty to assignee

1. To the extent that ~~an associated rights and the related~~ international interest ~~has have~~ been assigned transferred in accordance with ~~the provisions of this Chapter Articles 30 and 31,~~ the debtor in relation to those rights and that interest is bound by the assignment; ~~and, in the case of an assignment within Article 31(1)(b), 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 ~~international interest~~ associated rights [; 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~~ this Article 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 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 ~~they~~ 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 associated rights and the related 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~~ assignee; and

(d) to the object were references to the assigned ~~rights relating to the object~~. associated rights and the related international interest.

Article 34 – Priority of competing assignments

1. Where there are competing assignments of associated rights and the 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 registered~~ interest were references to an assignment of ~~an the associated rights and the related registered interest~~ and as if references to a registered or unregistered interest were references to a registered or unregistered assignment.

2. Article 29 applies to an assignment of associated rights 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~~ 1. The assignee of associated rights and the related international interest whose assignment has been registered, ~~the assignee shall, in relation to only has priority under Article 34(1) over another assignee of the associated rights transferred by virtue of or in connection with the assignment, have priority under Article 28;~~

(a) if the contract under which the associated rights arise states that they are secured by or associated with the object; and

(b) to the extent that the associated rights are related to an object.

2. For the purposes of sub-paragraph (b) of the preceding paragraph, associated rights are related to an object only to the extent that such associated they consist of rights to payment or performance that relate to:

(a) a sum advanced and utilised for the purchase of the object;

(b) a sum advanced and utilised for the purchase of another object in which the assignor held another international interest if the assignor transferred that interest to the assignee and the assignment has been registered;

(c) the price payable for the object;

~~or~~

~~(e)(d) the rentals payable in respect of the object; or,~~
and the reasonable costs referred to in Article 7(5); (e) other obligations arising from a transaction referred to in any of the preceding sub-paragraphs.

3. In all other cases, the priority of the competing assignments of the associated rights shall be determined by the applicable law.

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 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 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.

CHAPTER X – RIGHTS OR INTERESTS SUBJECT TO DECLARATIONS
BY CONTRACTING STATES

Article 38 – Non-consensual rights or interests having priority without registration

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 39 applies) which under that State's law have priority over an interest in the object equivalent to that of the holder of the international interest and which 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. A non-consensual right or interest has priority over an international interest if and only if the former is of a category covered by a declaration deposited prior to the registration of the international interest.

Article 39—

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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. Such a declaration may be modified from time to time.

~~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

This Convention shall apply to the sale or prospective sale of an object as provided for in the Protocol with any modifications therein.

CHAPTER XII – JURISDICTION

Article 41 – Choice of forum

1. Subject to Articles 42 and 43, the courts of a Contracting State chosen by the parties to a transaction have ~~exclusive~~ jurisdiction in respect of any claim brought under this Convention, ~~unless otherwise agreed between the parties~~, whether or not the chosen forum has a connection with the parties or the transaction. Such jurisdiction shall be exclusive unless otherwise agreed between the parties.

2. Any such agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of that forum.

Article 42 – Jurisdiction under Article 12(1)

1. The courts of a Contracting State chosen by the parties and the courts on the territory of which the object is situated may exercise jurisdiction to grant relief under Article 12(1)(a), (b), (c) and Article 12(4) in respect of that object.

2. ~~The courts of a Contracting State chosen by the parties and the courts on the territory of which the debtor is situated may exercise jurisdiction~~ Jurisdiction to grant relief under Article 12(1)(d) and Article 12(4) if the enforcement of such relief is limited to the territory of the forum. or other interim relief by virtue of Article 12 (4) may be exercised:

(a) by the courts chosen by the parties; or

(b) by the courts of a Contracting State on the territory of which the debtor is situated, being relief which, by the terms of the order granting it, is enforceable only in the territory of that Contracting State.

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 Contracting State or ~~in an arbitral tribunal~~ by arbitration.

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.~~

Article 44 bis – Jurisdiction in respect of insolvency proceedings

The provisions of this Chapter are not applicable to insolvency proceedings.

CHAPTER XIII – RELATIONSHIP WITH OTHER CONVENTIONS***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~~ signed at Ottawa on 28 May 1988.

– 16

~~[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).]~~⁴

CHAPTER XIV – FINAL PROVISIONS

[This Chapter is being reviewed by the Final Clauses Committee]

APPENDIX II

**THE ¹⁷ DRAFT PROTOCOL TO THE
~~[UNIDROIT]* [UNIDROIT]**~~ CONVENTION ON
 INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON
 MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT**

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the ~~[UNIDROIT] [UNIDROIT]~~ Convention on International Interests in Mobile Equipment (hereinafter referred to as *the Convention*) as it relates to aircraft equipment, 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,

MINDFUL of the principles and objectives of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944;

HAVE AGREED upon the following provisions relating to aircraft equipment:

¹⁶ The Commission of the Whole has agreed that this Article should be replaced by an Annex to the draft Convention to be based on the U.S. proposal that featured in Flimsy No. 8, however amended, first, to replace the word “supersede” by the words “prevail over”, secondly, to replace the words “aircraft objects” by the words “aircraft objects, railway rolling stock and space assets” and, thirdly, to reflect the language contained in Article 38(1) of the draft UNCITRAL Convention.

¹⁷ The Drafting Committee, whilst implementing the decision of the Commission of the Whole to insert the word “the” in the title of the Protocol, would recommend that this change be reversed as not conforming to normal practice in these matters.

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;

(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 lb 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;

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

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

(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;

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

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

(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;

(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;

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

(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;

(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;

- (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;
- (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) “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; 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.

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]~~ ~~[UNIDROIT]~~ Convention on International Interests in Mobile Equipment as applied to aircraft objects.

Article III – Application of Convention to sales

The following provisions of the Convention apply ~~in relation to a sale and shall do so as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a contract of sale, a prospective sale, the seller and the buyer respectively:~~

- Articles 3 and 4;
- Article 15(1)(a);
- Article ~~18(4)~~ ~~47~~;
- ~~Article 18(3);~~
- Article 19(1) (as regards registration of a contract of sale or a prospective sale);
- Article 24(2) (as regards a prospective sale); and
- Article 29.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 28 (other than Article 28(3) which is replaced by Article XIV(1)), Chapter X, Chapter XII (other than Article 42), Chapter XIII and Chapter XIV (other than Article 55 ¹⁸) shall apply to contracts of sale and prospective sales.

Article IV – Sphere of application

1. Without prejudice to Article 3(1) of the Convention, the Convention shall also apply ~~if an aircraft is in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State. And in such circumstances the application of the Convention shall be from the earlier of:~~

¹⁸ The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

~~(a) the date the aircraft is so registered; and~~
~~(b) the date of an agreement providing that the aircraft shall be so registered which is the~~
State of registry, and where such registration is made pursuant to an agreement for registration of the aircraft it is deemed to have been effected at the time of the agreement.

2. 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.
3. 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 Article IX (2)-(4).

Article V – Formalities, effects and registration of ~~contract~~ contracts 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. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

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 Articles 6(c) and 30(2)(b) 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)~~ 7(3) of the Convention shall not apply to aircraft objects. ~~Any(b) In relation to aircraft objects the following provisions shall apply:~~

~~(i) — any remedy given by the Convention in relation to an aircraft object shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in:~~

~~(ii) — an agreement between the debtor and the creditor as to what is a commercially reasonable manner shall be conclusive, where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.~~

4. A chargee giving ten or more ~~calendar~~ working 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)~~ 7(4) 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.

5. The registry authority in a Contracting State shall, subject to any applicable safety laws and regulations, honour a request for de-registration and export if:

(a) the request is properly submitted by the authorised party under a recorded irrevocable de-registration and export request authorisation; and

(b) the authorised party certifies to the registry authority that all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.

6. A chargee proposing to procure the de-registration and export of an aircraft under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed de-registration and export to:

- (a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and
- (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

[Articles X to XXIV and the Annex to the draft Protocol to be discussed further by the Drafting Committee prior to their submission to the Commission of the Whole]

DCME Doc No. 62
12/11/01

AMENDMENT OF THE AIRCRAFT PROTOCOL
(Presented by Egypt)

Summary

This paper proposes the necessary procedures for the adoption of the amendments to the Protocol and their entry into force.

1. The draft Aircraft Protocol, as contained in DCME Doc No. 4, does not cover an important issue regarding amendments to the Protocol and their entry into force. The only reference of relevance to this issue in the draft Protocol is in Article XXXII, paragraph 2(d), of the draft Protocol entitling the Review Board to consider “whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.”

2. In order to fill this gap, Egypt proposes the incorporation of an Article in Chapter VI dealing with the final provisions of the Protocol. The proposed Article shall read as follows:

“1. Subject to the provisions of Article XXXII of the present Protocol, UNIDROIT and ICAO Secretariats shall communicate to the Contracting States the results of the review by the Review Board on the matters specified in the above-mentioned Article, including the need for any amendments of the present Protocol or the arrangements of the International Registry. If such review receives the approval of not less than twenty-five per cent of the Contracting States, a Conference of Contracting States shall be convened by the two Secretariats which shall prepare the necessary **work** to be considered by the Conference.

2. Any amendment of the present Protocol shall be approved by a simple majority of the Contracting States participating in this Conference.

3. Amendments of the present Protocol as referred to in paragraph 2 above shall enter into force pursuant to the provisions of Article XXVI of the present Protocol.”

DCME Doc No. 63
12/11/01

REVIEW OF THE AIRCRAFT PROTOCOL AND ITS PRACTICAL OPERATION
(Presented by Egypt)

Summary

This paper deals with the composition of the Review Board and the criteria for the appointment of its members.

1. Article XXXII of the Aircraft Protocol provides for the establishment of a five-member Review Board to prepare yearly reports to Contracting States addressing matters specified in paragraph 2 of the same Article. This paragraph does not specify the organization or the conference of States which shall be charged with the responsibility for appointing the Review Board members.

2. Furthermore, Article XXXII does not provide for the criteria for the appointment of the Contracting States as members of the Board. Consequently, Egypt proposes that paragraph 1 of this Article be amended to read as follows:

“1. A five-member Review Board shall promptly be appointed **by ICAO Council** to prepare reports for the Contracting States addressing the matters specified in paragraph 2 of the present Article.”

3. Paragraph 2 of the Article remains as it is.

4. Egypt proposes a new paragraph 3 to be added to the present Article to read as follows:

“3. In appointing the members of the Review Board, the ICAO Council shall give adequate representation to:

- (a) a State of chief importance in air transport;
- (b) States representing the principal legal systems; and
- (c) States not otherwise included whose appointment will ensure adequate geographical representation.”

5. In view of the addition of a new paragraph 3, the Diplomatic Conference may wish to consider increasing the number of the Review Board members from five to seven.

6. Egypt proposes the deletion of the word “yearly” in Article XXXII, paragraph 1, in order to bring more flexibility to the system and enlarge its scope.

DCME Doc No. 64

13/11/01

DRAFT RESOLUTION

RELATING TO THE OFFICIAL COMMENTARY TO THE CONVENTION AND AIRCRAFT PROTOCOL (Presented by the United States)

THE CONFERENCE,

HAVING ADOPTED the *Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment*;

CONSCIOUS of the need for official commentary to these texts as an aid for those called upon to work with these documents;

RECOGNISING the increasing use of commentaries of this type in the context of modern, technical commercial law instruments; and

MINDFUL that the Explanatory Report and Commentary (DCME-IP/2) provides a sound starting point for the further development of this official commentary;

RESOLVES:

TO REQUEST the preparation of draft official commentary to these texts by the Chairman of the Drafting Committee, in close cooperation with the ICAO and UNIDROIT Secretariats, and in coordination with the Chairman of the Commission of the Whole, the Chairman of the Final Clauses Committee, and interested members of the Drafting Committee and observers that participated in its work;

TO REQUEST that such draft be circulated by the two Secretariats to all negotiating States and participating observers no later than 90 days from the conclusion of the Conference inviting comments thereon; and

TO REQUEST that a revised final version of the official commentary be transmitted by the two Secretariats to all negotiating States and participating observers no later than 180 days from the Conclusion of the Conference.

DCME Doc No. 65
13/11/01

DRAFT RESOLUTION

**RELATING TO THE SELECTION OF THE HOST STATE
FOR THE INTERNATIONAL REGISTRY**
(Presented by the African States)

THE CONFERENCE,

TAKING INTO ACCOUNT that a decision by the Conference on the location of the International Registry will facilitate the appointment of the first Registrar;

NOTING the prospective establishment of the Preparatory Commission to act as Provisional Supervisory Authority;

RESOLVES:

TO INVITE the Government of the Republic of South Africa to be the host Government for the International Registry and to work closely with the other Members of the Preparatory Commission to ensure the availability of the Registry upon the entry into force of the Convention and the Protocol.

DCME Doc No. 66
13/11/01

DRAFT RESOLUTION

**RELATING TO THE CONVENING OF FUTURE INFORMAL AND PRELIMINARY
MEETINGS TO CONSIDER ADDITIONAL TOPICS**
(Presented by the United States)

THE CONFERENCE,

MINDFUL of the provisions of the Convention and Protocol completed at the Cape Town Diplomatic Conference;

DESIROUS of promoting a dynamic and continuing process to extend the Convention where appropriate;

WISHING to promote continued interaction of participating States, industry associations and others;

RESOLVES:

TO ENCOURAGE the convening of meetings to undertake preliminary discussions which can be considered at a later date by the Review Committees as foreseen by the treaty system;

TO ADOPT for that purpose the following Resolution:

“In order to explore possible additional topics which could be recommended for consideration by working groups pursuant to Article 51 of the Convention and Article XXXII of the Aircraft Protocol and corresponding Articles, if any, of any additional Protocols;

Any two or more Contracting States may initiate meetings of Negotiating States and request assistance from the Secretariats for that purpose to discuss, on a preliminary and non-binding basis, such topics for possible future consideration as may be appropriate;

Meetings, if any, so convened may wish to review topics not considered by the Diplomatic Conference, which may have become more timely or suitable for future consideration. Examples might be inclusion of smaller aircraft and inclusion of aircraft performing governmental functions. In addition, the feasibility of extending the provisions of the Convention to air transportation facilities such as airport development could be explored.

Any resulting recommendations may be transmitted to the Secretariats for further consideration and distribution.”

DCME Doc No. 67
13/11/01

CONCLUSIONS OF THE EUROCONTROL INFORMAL CONSULTATION GROUP

(Presented by South Africa on behalf of the Informal Consultation Group)

The Informal Consultation Group was comprised of the following delegations: Argentina, Belgium, Cameroon, Canada, Congo, Ivory Coast, Egypt, France, Germany, Jamaica, Kenya, Malawi, Nigeria, Saudi Arabia, Sweden, United States, EUROCONTROL, IATA.

CONCEPTS:

(1) If applicable law permits collection of fees in a Contracting State for aviation charges, wherever incurred, the Contracting State may make a declaration to that effect.

(2) Non-Contracting States should not be permitted to make such declarations.

RECOMMENDATION:

Revise definition as follows in Article 1(s):

“Non-consensual right or interest” means a right or interest conferred under a declaring State’s law to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organization.

Add the following paragraph to the *travaux préparatoires* concerning both Articles 38 and 39:

“A declaration under paragraph 1 of Articles 38 and 39 shall, besides reference to the non-consensual right or interest, include reasonable information on its nature and on the nature of the obligation, which performance it may secure.”

DCME Doc No. 68
13/11/01

**INTERPRETATION CLAUSE TO BE ADDED TO ARTICLE 52
OF THE CONVENTION AND FORMER ARTICLE XVII ON TERRITORIAL UNITS**

(Presented by Canada and China)

Article 52 of the Convention – Former Article XXVII of the Protocol

.....

4. If by virtue of a declaration under this Article, the Convention and Protocol extend to one or more territorial units of a Contracting State:

a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and Protocol apply;

b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and Protocol apply; and

c) unless otherwise provided in a declaration, any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities in a territorial unit to which the Convention and Protocol apply and any reference to the national register or to the registry authority in that Contracting State shall be construed as referring to the aircraft register or to the registry authority in force in the territorial unit or units to which the Convention and Protocol have been extended.

DCME Doc No. 70 *
13/11/01

PROPOSAL REGARDING THE DRAFT CONVENTION

(Presented by the United States and both Secretariats)

**PROPOSED ANNEX AND TRANSFER OF ITS CONTENTS
TO FUTURE ARTICLE 45bis OF THE CONVENTION**

1. This Convention shall prevail over the UNCITRAL Convention on Assignment of Receivables in International Trade as it relates to the assignment of receivables which are associated rights related to international interests in aircraft objects, railway rolling stock and space assets.

2. The preceding paragraph shall be inserted into and constitute Article 45bis of the Convention upon adoption by the United Nations General Assembly of the UNCITRAL Convention on Assignment of Receivables in International Trade.

* No document with the reference number DCME Doc No. 69 was issued by the Conference.

DCME Doc No. 71

13/11/01

FINAL REPORT BY THE DRAFTING COMMITTEE

(Presented by the Chairman of the Drafting Committee)

At its Fourth Plenary Meeting, held on 31 October 2001, the Conference established the Drafting Committee in the following composition:

Argentina, Canada, China, France, Germany, Jamaica, Japan, Lebanon, Mexico, Nigeria, Russian Federation, South Africa, United Arab Emirates, United Kingdom, United States of America.

The Drafting Committee held twelve meetings from 1 to 13 November 2001.

At its first meeting, on a proposal moved by the United Arab Emirates, seconded by Germany and supported by Nigeria, France and South Africa, Professor Sir Roy Goode (United Kingdom) was elected Chairman.

In addition to the members of the Drafting Committee, its meetings were attended by observers from Australia, Belgium, Brazil, Democratic Republic of the Congo, Greece, India, Netherlands, Republic of Korea, Sweden, Switzerland, Thailand and Tonga and from the Aviation Working Group, the European Community, the International Air Transport Association, the Rail Working Group, the Space Working Group and the United Nations.

At its twelfth meeting, the Drafting Committee agreed on and decided to recommend the text of:

- (a) the draft Convention on International Interests in Mobile Equipment and
- (b) the draft Protocol thereto on Matters specific to Aircraft Equipment.

These texts are reproduced in Appendices I and II hereto. As indicated in these Appendices, the Drafting Committee did not consider those provisions of the two draft instruments referred by the Commission of the Whole to the Final Clauses Committee, with the exception of certain drafting aspects of Article 55 of the draft Convention as reproduced in DCME Doc No. 3 referred to it by the Final Clauses Committee.

The Appendices to this Report integrate those provisions of the draft Convention and the draft Protocol carried in Appendices I and II to the Interim Report by the Drafting Committee (DCME Doc No. 61).

The texts of the draft Convention and the draft Protocol carried in Appendices I and II to this Report are marked up against the texts of the same instruments as submitted to the Diplomatic Conference, that is DCME Doc No. 3 and DCME Doc No. 4 respectively. Deletions are shown by the striking through of the relevant provisions and additions by underlining.

APPENDIX I**THE¹ DRAFT CONVENTION ON
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT**

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,

¹ The Drafting Committee, whilst implementing the decision of the Commission of the Whole to insert the word "the" in the title of the Convention, would recommend that this change be reversed as not conforming to normal practice in these matters.

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 and mutual 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,

TAKING INTO CONSIDERATION the objectives and principles enshrined in existing Conventions relating to such equipment.

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;

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

(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;

(d) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;

(e) “conditional buyer” means a buyer under a title reservation agreement;

(f) “conditional seller” means a seller under a title reservation agreement;

(g) “contract of sale” means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above;

(h) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;

(i) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;

(j) “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;

(k) “insolvency administrator” means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;

(l) “insolvency proceedings” means bankruptcy, liquidation or other 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;

(m) “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;

(n) “internal transaction” means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object located (as specified in the Protocol), in the same Contracting State at the time of the conclusion of the contract and where the interest created by the transaction has been registered in a national registry in that Contracting State, which has made a declaration pursuant to Article 48(1) ² ³;

(o) “international interest” means an interest held by a creditor to which Article 2 applies;

(p) “International Registry” means the international registration facilities established for the purposes of this Convention or the Protocol;

(q) “leasing agreement” means an agreement by which one person (the lessor) grants a right to possession or control of an object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment;

(r) “national interest” means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 48 ⁴;

(s) “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) “notice of a national interest” means notice registered or to be registered in the International Registry that a national interest has been created;

(u) “object” means an object of a category to which Article 2 applies;

(v) “pre-existing right or interest” means a right or interest of any kind in or over an object created or arising before the effective date of this Convention as defined by Article 55;⁶

(w) “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;

(x) “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;

(y) “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;

² The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

³ Although the Article of the draft Convention treating of “internal transactions”, Article 48, was one of those referred to the Final Clauses Committee, the Drafting Committee had occasion also to consider this Article in the course of its deliberations in respect of Article 1(n), (r) and (t) and would recommend that a new paragraph 3 be added to Article 48, which might be worded as follows:

“3. – Where notice of a national interest has been registered in the International Registry, the priority of the holder of that interest under Article 28 shall not be affected by the fact that such interest has become vested in another person by assignment or subrogation under the applicable law.”

⁴ The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

⁵ The definition of “non-consensual right or interest” is subject to a proposal regarding Eurocontrol pending before the Commission of the Whole.

⁶ The definition of “pre-existing right or interest” will need to be reviewed in the light of the decisions to be reached in respect of Article 55.

(z) “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;

(aa) “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;

(bb) “registered” means registered in the International Registry pursuant to Chapter V;

(cc) “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;

(dd) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under ~~Article 38~~ Article 39;

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

(ff) “regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol;

(gg) “sale” means a transfer of ownership of an object pursuant to a contract of sale;

(hh) “secured obligation” means an obligation secured by a security interest;

(ii) “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;

(jj) “security interest” means an interest created by a security agreement;

(kk) “Supervisory Authority” means, in respect of the Protocol, the Supervisory Authority referred to in Article 16(1);

(ll) “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;

(mm) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which ~~Article 39~~ 38 applies) which has not been registered, whether or not it is registrable under this Convention; and

(nn) “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.

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

(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~~^[Without prejudice to Article 50,⁷] ⁸ ~~[T]he~~ categories referred to in the preceding paragraphs are:

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

4. ~~This Convention does not determine 4.~~ The applicable law determines 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~~ Article 3(1),⁹ 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~~ sub-paragraph (d) of the preceding paragraph 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.

⁷ The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

⁸ The words within square brackets will need to be reviewed in the light of the discussion on Article 50.

⁹ The Drafting Committee would recommend that the definition of “debtor” provided in Article 4 should not be extended to Article 42. This is a matter for the Commission of the Whole to decide.

Article 5 bis – Relationship between the Convention and the Protocol

1. This Convention and the Protocol shall be read and interpreted together as a single instrument.
2. To the extent of any inconsistency between this Convention and the Protocol, the Protocol shall prevail.

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 and subject to any declaration that may be made by a Contracting State under Article 52,¹⁰ 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;¹¹

~~or 2. The chargee may alternatively apply for a court order authorising or directing any of the above acts, acts referred to in the preceding paragraph.~~

~~2. Any remedy given by 3.~~ Any remedy set out in sub-paragraph (a), (b) or (c) of ~~the preceding paragraph 1~~ 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 4.~~ 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(m)(i) and (ii); and
- (b) interested persons specified in Article 1(m)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

¹⁰ The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

¹¹ This provision will need to be reviewed in the light of the outcome of the informal consultations underway on the question of non-registrable non-consensual rights or interests or contractual rights or interests.

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

56. Where the sums collected or received by the chargee as a result of the exercise of any remedy ~~given set out~~ 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, distribute the surplus among holders of subsequently ranking interests which have been registered or of which the chargee has been given notice, in order of priority, and pay any remaining balance~~ to the chargor.¹²

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 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) subject to any declaration that may be made by a Contracting State under Article 52,¹³ 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.

¹² The final drafting of this provision will depend on the solution to be adopted in respect of Article 55.

¹³ The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

2. ~~In the absence of such an agreement~~Where the debtor and the creditor have not so agreed, “default” for the purposes of Articles 7 to 9 and 12 means a ~~substantial default~~ default which substantially deprives the creditor of what it is entitled to expect under the agreement.

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. Subject to any declaration that it may make under Article 55,¹⁴ 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 and~~
- (d) lease or, except where covered by sub-paragraphs (a) to (c), 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)~~ 7(3) or limits the availability of forms of interim relief other than those set out in paragraph 1.

Article 13 – Procedural requirements

Subject to Article 52(2)¹⁵, 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, any two or more of the parties may referred to in this Chapter may at any time, 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) to (5)~~ 7(3) to (6), 8(3) and (4), 12(2) and 13.

¹⁴ The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

¹⁵ The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

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 under the applicable law; ~~;~~
 - ~~(d) (d) notices of national interests; and~~
 - (e) subordinations of interests referred to in any of the preceding sub-paragraphs.
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) ensure that any rights required for the continued effective operation of the International Registry ~~are such as may be assigned~~ in the event of a change of Registrar will vest in or be assignable to the new Registrar;
 - (d) 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;
 - (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
 - (f) supervise the Registrar and the operation of the International Registry;
 - (g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;
 - (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
 - (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and
 - (j) 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 Supervisory Authority shall own all proprietary rights in the data bases and archives of the International Registry.
5. 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~~ OTHER MATTERS RELATING TO 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 (which shall include provision for prior electronic transmission of any consent from any person whose consent is required under Article 19);

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

(c) for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.

~~2. The Registrar shall not be under a duty to enquire whether-~~

~~2. Such requirements shall not include any evidence that a consent to registration required by Article 19(1), (2) or (3) has been given.~~ under Article 19 has in fact been given or is valid.

~~3. Registration shall be effected in chronological order of receipt at [2. bis~~ Where an interest registered as a prospective international interest becomes an international interest, no further registration shall be required provided that the registration information is sufficient for a registration of an international interest.]

[3.1] The Registrar shall arrange for registrations to be entered into the International Registry data base and made searchable in chronological order of receipt, and the file shall record the date and time of receipt.

[4.1] The Protocol may provide that a Contracting State may designate an entity or entities in its territory as the ~~entity~~ entry point or entry points through which the information required for registration shall or may be transmitted to the International Registry. A Contracting State making such a designation may specify the requirements, if any, to be satisfied before such information is transmitted to the International Registry.

Article 18 – ~~When~~ Validity and time of registration takes effect

1. A registration shall be valid only if made ~~in conformity with Article 19 and shall take effect by or with the consent in writing of the party specified in Article 19.~~

2. A registration, if valid, shall be complete upon entry of the required information into the International Registry data base so as to be searchable.

~~2.3.~~ 3. 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.

~~3.4.~~ 4. 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 provided that the registration was still current immediately before the international interest was constituted as provided by Article 6.

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

~~5.6.~~ 6. A registration shall be searchable in the International Registry data base according to the criteria prescribed by the Protocol.

Article 19 – ~~Who may register~~ Consent to registration

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 either party with the consent in writing of the other.
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 and regulations, make or request a search of the International Registry by electronic means concerning interests or prospective international interests registered therein.
2. Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol and regulations, shall issue a registry search certificate by electronic means 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.
3. A search certificate issued under the preceding paragraph shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.

Article 22 – List of declarations and declared non-consensual rights or interests

The Registrar shall maintain a list of declarations, withdrawals of declaration and 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~~ Articles 38 and 39 and the date of each such declaration or withdrawal of 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 and 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, without undue delay, procure the discharge of the registration ~~upon~~ after 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, without undue delay, procure the discharge of the registration ~~upon~~ after 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, without undue delay, procure the discharge of the registration ~~upon~~ after written demand by the debtor delivered to or received at its address stated in the registration.

4. Where a registration ought not to have been made or is incorrect, the person in whose favour the registration was made shall, without undue delay, procure its discharge or amendment after 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~~ such immunity from legal or administrative process as is specified in the Protocol.

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.

4. ÷

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

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

5. For the purposes of any claim against the Registrar under Article 27(1) or Article 43, the claimant shall be entitled to access to such information and documents as are necessary to enable the claimant to pursue its claim.

6. The Supervisory Authority may waive the inviolability and immunity conferred by paragraph 4.

CHAPTER VII – LIABILITY OF THE REGISTRAR*Article 27 – Liability and insurance*

~~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 and its officers and employees or from a malfunction of the international registration system [except ...]~~

~~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.~~

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 and its officers and employees or from a malfunction of the international registration system except where the malfunction is caused by an event of an inevitable and irresistible nature, which could not be prevented by using the best practices in current use in the field of electronic registry design and operation, including those related to back-up and systems security and networking.

1.*bis* The Registrar shall not be liable under the preceding paragraph for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which it received that information nor for acts or circumstances for which the Registrar and its officers and employees are not responsible arising prior to receipt of registration information at the International Registry relating to such information.

1.*ter* Compensation under paragraph 1 may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.

2. The Registrar shall procure insurance or a financial guarantee covering the liability referred to in this Article to the extent determined by the Supervisory Authority, in accordance with the Protocol.

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.

3.*bis* The conditional buyer or lessee acquires its interest in or right over that object:
(a) subject to an interest registered prior to the registration of the international interest held by its conditional seller or lessor; and
(b) free from an interest not so registered at that time even if it has actual knowledge of that interest.

4. The priority of competing interests or rights 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 an object and the holder of an international interest in that object.~~

(a) does not affect the rights of a person in an item, other than an object, held prior to its installation on an object if under the applicable law those rights continue to exist after the installation; and

(b) does not prevent the creation of rights in an item, other than an object, which has previously been installed on an object where under the applicable law those rights are created.

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:

(a) any rules of law applicable in insolvency law proceedings relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors; or

(b) 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 – ASSIGNMENTS OF ASSOCIATED RIGHTS, 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 Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with ~~the preceding~~ Article 31 also transfers to the assignee, ~~to the extent agreed by the parties to the assignment:~~

~~(a) the related international interest; and~~

~~(b) all the interests and priorities of the assignor under this Convention ; and~~

~~(b) all associated rights.~~ 2. Nothing in this Convention prevents a partial assignment of the assignor’s associated rights. In the case of such a partial assignment the assignor and assignee

may agree as to their respective rights concerning the related international interest assigned under paragraph 1 and, if they do not agree, their rights shall be governed by the applicable law.

~~2 3.~~ Subject to paragraph ~~3 4~~, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.

~~3 4.~~ 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 other than~~ defences arising from fraudulent acts on the part of the assignee.

~~4 5.~~ In the case of an assignment by way of security, the assigned associated rights revert in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

Article 3231 – Formal requirements of assignment

1. An assignment of associated rights transfers the related international interest only if it:
 - (a) is in writing;
 - (b) enables the associated rights to be identified to the contract under which they arise;

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.
2. An assignment of an international interest created or provided for by a security agreement is not valid unless some or all related associated rights also are assigned.
3. This Convention does not apply to an assignment of associated rights which is not effective to transfer the related international interest.

Article 32 – Debtor's duty to assignee

1. To the extent that ~~an~~ associated rights and the related international interest ~~has~~ have been assigned transferred in accordance with ~~the provisions of this Chapter~~ Articles 30 and 31, the debtor in relation to those rights and that interest is bound by the assignment, ~~and, in the case of an assignment within Article 31(1)(b), and~~ 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 ~~international interest~~ associated rights [; 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~~ this Article 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~~ 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 ~~they~~ 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 associated rights and the related 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~~ assignee; and

(d) to the object were references to the assigned ~~rights relating to the object~~. associated rights and the related international interest.

Article 34 – Priority of competing assignments

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

2. Article 29 applies to an assignment of associated rights 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~~ 1. The assignee of associated rights and the related international interest whose assignment has been registered, the assignee shall, in relation to only has priority under Article 34(1) over another assignee of the associated rights transferred by virtue of or in connection with the assignment, have priority under Article 28;

(a) if the contract under which the associated rights arise states that they are secured by or associated with the object; and

(b) to the extent that the associated rights are related to an object.

2. For the purposes of sub-paragraph (b) of the preceding paragraph, associated rights are related to an object only to the extent that such associated they consist of rights to payment or performance that relate to:

(a) a sum advanced and utilised for the purchase of the object;

(b) a sum advanced and utilised for the purchase of another object in which the assignor held another international interest if the assignor transferred that interest to the assignee and the assignment has been registered;

(c) the price payable for the object;

~~or~~

~~(d) the rentals payable in respect of the object; or,~~
(e) other obligations arising from a transaction referred to in any of the preceding sub-paragraphs.

3. In all other cases, the priority of the competing assignments of the associated rights shall be determined by the applicable law.

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~~ 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 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.

CHAPTER X – RIGHTS OR INTERESTS SUBJECT TO DECLARATIONS BY CONTRACTING STATES

Article 38 – Rights having priority without registration

1. A Contracting State may at any time, in a declaration deposited with the depositary of the Protocol declare, generally or specifically:

(a) those categories of non-consensual right or interest (other than a right or interest to which Article 39 applies) which under that State's law have priority over an interest in an object equivalent to that of the holder of a registered international interest shall have priority over a registered international interest, whether in or outside insolvency proceedings; and

(b) that nothing in this Convention shall affect the right of a State or State entity or other provider of public services to arrest or detain an object under the laws of that State for payment of amounts owed to such entity or provider directly relating to the use of that object or another object.¹⁶

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

3. A non-consensual right or interest has priority over an international interest if and only if the former is of a category covered by a declaration deposited prior to the registration of the international interest.

4. Notwithstanding the preceding paragraph, a Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that a right or interest of a category covered by a declaration made under sub-paragraph (a) of paragraph 1 shall have priority over an international interest registered prior to the date of such ratification, acceptance, approval or accession.

~~Article 39.~~

~~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. Such a declaration may be modified from time to time.

¹⁶ The Drafting Committee noted that it might prove necessary to expand the definition of non-consensual right or interest and to modify Article 38 as agreed by it, depending on the conclusions to be reached by the Eurocontrol Informal Consultation Group.

~~*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

This Convention shall apply to the sale or prospective sale of an object as provided for in the Protocol with any modifications therein.

CHAPTER XII – JURISDICTION

Article 41 – Choice of forum

1. Subject to Articles 42 and 43, the courts of a Contracting State chosen by the parties to a transaction have ~~exclusive~~ jurisdiction in respect of any claim brought under this Convention, ~~unless otherwise agreed between the parties~~, whether or not the chosen forum has a connection with the parties or the transaction. Such jurisdiction shall be exclusive unless otherwise agreed between the parties.

2. Any such agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of the chosen forum.

Article 42 – Jurisdiction under Article 12(1)

1. The courts of a Contracting State chosen by the parties and the courts on the territory of which the object is situated may exercise jurisdiction to grant relief under Article 12(1)(a), (b), (c) and Article 12(4) in respect of that object.

2. ~~The courts of a Contracting State chosen by the parties and the courts on the territory of which the debtor is situated may exercise jurisdiction~~ Jurisdiction to grant relief under Article 12(1)(d) and Article 12(4) if the enforcement of such relief is limited to the territory of the forum. or other interim relief by virtue of Article 12 (4) may be exercised:

(a) by the courts chosen by the parties; or

(b) by the courts of a Contracting State on the territory of which the debtor is situated, being relief which, by the terms of the order granting it, is enforceable only in the territory of that Contracting State.

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 Contracting State or ~~in an arbitral tribunal~~ by arbitration.

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 or make orders 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.*~~

Article 44 bis – Jurisdiction in respect of insolvency proceedings

The provisions of this Chapter are not applicable to insolvency proceedings.

CHAPTER XIII – RELATIONSHIP WITH OTHER CONVENTIONS

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~~ signed at Ottawa on 28 May 1988.

– 17

~~[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).]¹⁴~~

¹⁷ The Commission of the Whole has agreed that this Article should be replaced by an Annex to the draft Convention to be based on the U.S. proposal that featured in Flimsy No. 8, however amended, first, to replace the word “supersede” by the words “prevail over”, secondly, to replace the words “aircraft objects” by the words “aircraft objects, railway rolling stock and space assets” and, thirdly, to reflect the language contained in Article 38(1) of the draft UNCITRAL Convention.

CHAPTER XIV – FINAL PROVISIONS

[This Chapter is being reviewed by the Final Clauses Committee] ¹⁸

APPENDIX II

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

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the ~~[UNIDROIT] [UNIDROIT]~~ Convention on International Interests in Mobile Equipment (hereinafter referred to as *the Convention*) as it relates to aircraft equipment, 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,

MINDFUL of the principles and objectives of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944;

HAVE AGREED upon the following provisions relating to aircraft equipment:

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:

¹⁸ The Final Clauses Committee agreed to submit the reaching of a decision on pre-existing rights and interests to the Commission of the Whole but invited the Drafting Committee to consider certain drafting implications of this matter. The Drafting Committee would recommend the following wording for Article 55:

Article 55 [the numbering of which will depend on the results of the deliberations of the Final Clauses Committee]

1. – Unless otherwise declared by a Contracting State at any time, the Convention does not apply to a pre-existing right or interest, which retains the priority it enjoyed under the applicable law before the effective date of this Convention.

2. – For the purposes of Article 1(v) and of determining priority under this Convention:

(a) “effective date of this Convention” means in relation to a debtor the time when this Convention enters into force or the time when the State in which the debtor is situated becomes a Contracting State, whichever is the later; and

(b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if it has no place of business, its habitual residence.

3. – A Contracting State may in its declaration under paragraph 1 specify a date that is later than the effective date after which the Protocol will apply to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in a State referred to in sub-paragraph (b) of the preceding paragraph but only to the extent and in the manner specified in its declaration.

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

(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 lb 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;

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

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

(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;

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

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

(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;

(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;

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

(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;

(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;

(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;

(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) "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; 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.

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]~~ ~~[UNIDROIT]~~ Convention on International Interests in Mobile Equipment as applied to aircraft objects.

Article III – Application of Convention to sales

The following provisions of the Convention apply ~~in relation to a sale and shall do so as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a contract of sale, a prospective sale, the seller and the buyer respectively:~~

Articles 3 and 4;

Article 15(1)(a);

Article ~~18(4)~~ ~~17~~;

~~Article 18(3);~~

Article 19(1) (as regards registration of a contract of sale or a prospective sale);

Article 24(2) (as regards a prospective sale); and

Article 29.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 28 (other than Article 28(3) which is replaced by Article XIV(1)), Chapter X, Chapter XII (other than Article 42), Chapter XIII and Chapter XIV (other than Article 55 ¹⁹) shall apply to contracts of sale and prospective sales.

Article IV – Sphere of application

1. Without prejudice to Article 3(1) of the Convention, the Convention shall also apply ~~if an aircraft is in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State. And in such circumstances the application of the Convention shall be from the earlier of:~~

~~(a) the date the aircraft is so registered; and~~

~~(b) the date of an agreement providing that the aircraft shall be so registered which is the State of registry, and where such registration is made pursuant to an agreement for registration of the aircraft it is deemed to have been effected at the time of the agreement.~~

2. 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;

¹⁹ The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

(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.

3. 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 Article IX (2)-(4).

Article V – Formalities, effects and registration of ~~contract~~ contracts 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. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

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 Articles 6(c) and 30(2)(b) 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)~~ 7(3) of the Convention shall not apply to aircraft objects. ~~Any (b) in relation to aircraft objects the following provisions shall apply:~~

~~(i) any remedy given by the Convention in relation to an aircraft object shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in:~~

~~(ii) an agreement between the debtor and the creditor as to what is a commercially reasonable manner shall be conclusive, where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.~~

4. A chargee giving ten or more ~~calendar~~ working 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)~~ 7(4) 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.

5. The registry authority in a Contracting State shall, subject to any applicable safety laws and regulations, honour a request for de-registration and export if:

(a) the request is properly submitted by the authorised party under a recorded irrevocable de-registration and export request authorisation; and

(b) the authorised party certifies to the registry authority, if required by that authority, that all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.

6. A chargee proposing to procure the de-registration and export of an aircraft under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed de-registration and export to:

(a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and

(b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

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.²⁰

2. For the purposes of Article 12(1) of the Convention, "speedy" in the context of obtaining relief means within such number of working 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) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom",

and Article 42(2) applies with the insertion after the words "Article 12(1)(d)" of the words "and (e)".

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.

²⁰ It was agreed by the Drafting Committee in the course of its discussion of this Article that each Article of the Protocol subject to the making of declarations should be prefaced by a paragraph similarly making this clear.

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. With regard to the remedies in Article IX(1):

(a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than five working days after the creditor notifies such authorities that the relief specified in Article IX(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with this Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

7. Paragraphs 2 and 6 shall not affect any 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 other than a default constituted by the opening of insolvency proceedings 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. With regard to the remedies in Article IX(1) :

(a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

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 non-consensual rights or interests of a category covered by a declaration pursuant to Article 38(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 other than a default constituted by the opening of insolvency proceedings 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 the creditor the opportunity to take 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

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXVIII(1).

2. 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. This Article applies only where a Contracting State has made a declaration pursuant to Article XXVIII(1).

2. 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.

3. 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.

4. 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. Ownership of or another right or interest in an aircraft engine shall not be affected by its installation on or removal from an aircraft. 3. Article 28(6) of the Convention applies to an item, other than an object, installed on an airframe or aircraft engine.

Article XV – Modification of assignment provisions

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.”²¹

Article XV bis – Debtor provisions

1. In the absence of a default within the meaning of Article 10 of the Convention, the debtor shall be entitled to the quiet possession and use of the object in accordance with the agreement as against:

(a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 28(3) *bis* of the Convention or Article XIV(1) of this Protocol, unless and to the extent that the debtor has otherwise agreed; and

(b) the holder of any interest to which the debtor’s right or interest is subject pursuant to Article 28(3) *bis* of the Convention and Article XIV(1) of this Protocol, but only to the extent, if any, that such holder has agreed.

2. Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to an aircraft object.

²¹ The removal of square brackets in Article 32(1)(c) Convention may have implications for this provision.

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 the international entity designated by a Resolution adopted by the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol.

2. Where the international entity referred to in the preceding paragraph is not able and willing to act as Supervisory Authority, a Conference of Signatory and Contracting States shall be convened to designate another Supervisory Authority.]²²

[2 bis. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them.]

[3. The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.]²³

[4.] 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 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. Subject to paragraph 2, a Contracting State may at any time designate an entity or entities in its territory as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or a right or interest under Article 39 in either case arising under the laws of another State.

2. A designation made under paragraph 1 may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of aircraft engines.

Article XIX – Additional modifications to Registry provisions

1. For the purposes of Article 18(6) of the Convention, the search criterion for an aircraft object shall be the name of its manufacturer, its manufacturer's serial number and its model designation, 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

²² This text of Article XVI(1) and (2) reproduces the proposed Article XVI(1) and (2) presented in DCME Doc No. 54 with minor drafting improvements suggested by the Drafting Committee.

²³ This text of Article XVI(3) reproduces the proposed Article XVI(3) presented in DCME Doc No. 54 with minor drafting improvements suggested by the Drafting Committee.

discharge of the registration no later than five working days after the receipt of the demand described in such paragraph.

3. The fees referred to in Article 16(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 16(2) of the Convention.

4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated at least during working hours in their respective territories.

5. The amount of the insurance or financial guarantee referred to in Article 27(2) of the Convention shall, in respect of each event, not be less than the maximum value of an aircraft object as determined by the Supervisory Authority.

6. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 27 of the Convention.

CHAPTER IV – JURISDICTION

Article XX – Modification of jurisdiction provisions

For the purposes of Articles 42 of the Convention and subject to Article 41 of the Convention, a court of a Contracting State also has jurisdiction where the object is a helicopter, or an airframe pertaining to an aircraft, for which 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 or 42 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 writing and contain 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*, signed at Geneva on 19 June 1948, supersede that Convention as it relates to aircraft, as defined in this Protocol, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

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*, signed at 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.

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.

CHAPTER VI – FINAL PROVISIONS

[This Chapter is being reviewed by the Final Clauses Committee]

Annex

**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 manufacturers 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 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 *Convention on International Civil Aviation*, signed at Chicago, on 7 December 1944, 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]

By: [insert name of signatory]
Its: [insert title of signatory]

[insert relevant notational details]

* Select the term that reflects the relevant nationality registration criterion.

REPORT OF THE CREDENTIALS COMMITTEE
(Presented by the Chairman of the Credentials Committee)

1. At its First Meeting held on 29 October 2001, the Conference established a Credentials Committee and the Delegations of Costa Rica, Ghana, Oman, Singapore and Spain were invited to nominate members for this Committee.

2. On 29 October 2001, the First Meeting of the Credentials Committee was held; the Committee was composed as follows:

Ms. Mildred Bogantes Pereira	(Costa Rica)
Mrs. Joyce Thompson	(Ghana)
Mr. Ali Al-Zuwaidi	(Oman)
Mr. Leong Wing Tuck	(Singapore)
Mr. Juan Ignacio Madrid Alonso	(Spain)

On a proposal made by Costa Rica and seconded by Oman, the Delegate of Ghana, Mrs. Joyce Thompson, was unanimously elected Chairman of the Committee.

3. At the Third Meeting of the Plenary of the Conference, the Chairman of the Credentials Committee presented a preliminary report and informed the Conference that as of 1700 hours on 29 October 2001, 56 States and 6 international organizations had registered for the Conference. Credentials in due and proper form had been submitted by 31 States and 2 international organizations. Full powers had been submitted by 12 States.

4. The Committee recommended to the Conference, in conformity with Rule 4 of the Rules of Procedure, that all the delegations registered be permitted to participate in the Conference pending receipt of their credentials in due and proper form; the Conference accepted this recommendation.

5. The Committee held its final meeting on 14 November 2001 and examined the credentials received up to that date.

5.1 The credentials of the following delegations of 56 States were found to be in due and proper form:

Angola	Jamaica
Argentina	Japan
Australia	Jordan
Bahrain	Kenya
Belgium	Lebanon
Benin	Lesotho
Botswana	Libyan Arab Jamahiriya
Brazil	Malawi
Burundi	Mexico
Cameroon	Netherlands
Canada	Nigeria
Chile	Oman
China	Republic of Korea
Congo	Russian Federation
Costa Rica	Singapore
Côte d'Ivoire	South Africa
Cuba	Spain
Czech Republic	Sudan

Ethiopia	Sweden
Finland	Switzerland
France	Thailand
Germany	Tonga
Ghana	Turkey
Greece	Uganda
India	United Arab Emirates
Iran	United Kingdom
Ireland	United Republic of Tanzania
Italy	United States

5.2 The Committee noted that the credentials of three other delegations were not submitted in the original, but only as facsimiles. The Committee considered that Rule 2 of the Rules of Procedure of the Conference required that credentials be submitted in the original, as this was explicitly stated in the Joint Secretariat's invitation and reiterated during the deliberations of the Conference. Accordingly, the Committee would recommend that only credentials made available in original and in due and proper form by 1100 hours on Friday, 16 November 2001, be accepted.

5.3 Furthermore, the following 11 observer delegations presented credentials in due and proper form:

African Civil Aviation Commission (AFCAC)
 Aviation Working Group (AWG)
 European Organisation for the Safety of Air Navigation (EUROCONTROL)
 European Community
 Hague Conference on Private International Law
 Intergovernmental Organization for International Carriage by Rail (OTIF)
 International Air Transport Association (IATA)
 International Mobile Satellite Organization (IMSO)
 Rail Working Group (RWG)
 Space Working Group (SWG)
 United Nations

6. The Credentials Committee took note that as of 14 November 2001, delegations of 25 States had deposited their full powers to sign the Convention and the Protocol:

Bahrain	Kenya
Burundi	Lebanon
Chile	Nigeria
China	Singapore
Congo	South Africa
Côte d'Ivoire	Sudan
Cuba	Switzerland
Ethiopia	Tonga
Ghana	Turkey
Greece	United Arab Emirates
Italy	United Kingdom
Jamaica	United Republic of Tanzania
Jordan	

These full powers were found to be in due and proper form.

DCME Doc No. 73
14/11/01

CHANGE TO ARTICLE 30
(Presented by Japan)

We propose to change the Article from the version provided for in DCME Doc No. 61.

1. Paragraph 1:
To delete “Except as otherwise agreed by the parties,”.

2. Paragraph 2:
To replace the entire paragraph with the following:

“[Nothing in this Chapter prevents a partial assignment of the assignor’s associated rights.] The assignor and assignee may [also] agree as to their respective rights concerning the related international interest transferred under the preceding paragraph, provided, however, that such agreement may not have any effects on the debtor unless so agreed by the debtor.”

DCME Doc No. 74
16/11/01

CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

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 and mutual 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,

TAKING INTO CONSIDERATION the objectives and principles enunciated in existing Conventions relating to such equipment,

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;

- (b) “assignment” means a contract which, whether by way of security or otherwise, confers on the assignee associated rights with or without a transfer of the related international interest;
- (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;
- (d) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;
- (e) “conditional buyer” means a buyer under a title reservation agreement;
- (f) “conditional seller” means a seller under a title reservation agreement;
- (g) “contract of sale” means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above;
- (h) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;
- (i) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;
- (j) “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;
- (k) “insolvency administrator” means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;
- (l) “insolvency proceedings” means bankruptcy, liquidation or other 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;
- (m) “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;
- (n) “internal transaction” means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object located (as specified in the Protocol), in the same Contracting State at the time of the conclusion of the contract and where the interest created by the transaction has been registered in a national registry in that Contracting State, which has made a declaration pursuant to Article 50(1);
- (o) “international interest” means an interest held by a creditor to which Article 2 applies;
- (p) “International Registry” means the international registration facilities established for the purposes of this Convention or the Protocol;
- (q) “leasing agreement” means an agreement by which one person (the lessor) grants a right to possession or control of an object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment;
- (r) “national interest” means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 50;
- (s) “non-consensual right or interest” means a right or interest conferred under the law of a Contracting State that has made a declaration under Article 39 to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organisation;
- (t) “notice of a national interest” means notice registered or to be registered in the International Registry that a national interest has been created;

- (u) “object” means an object of a category to which Article 2 applies;
- (v) “pre-existing right or interest” means a right or interest of any kind in or over an object created or arising before the effective date of this Convention as defined by Article 60;
- (w) “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;
- (x) “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;
- (y) “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;
- (z) “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;
- (aa) “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;
- (bb) “registered” means registered in the International Registry pursuant to Chapter V;
- (cc) “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;
- (dd) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 40;
- (ee) “Registrar” means, in respect of the Protocol, the person or body designated by that Protocol or appointed under Article 17(2)(b);
- (ff) “regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol;
- (gg) “sale” means a transfer of ownership of an object pursuant to a contract of sale;
- (hh) “secured obligation” means an obligation secured by a security interest;
- (ii) “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;
- (jj) “security interest” means an interest created by a security agreement;
- (kk) “Supervisory Authority” means, in respect of the Protocol, the Supervisory Authority referred to in Article 17(1);
- (ll) “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;
- (mm) “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; and
- (nn) “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.

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 7, 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
- (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 assets.

4. The applicable law determines 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 Article 3(1), 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 sub-paragraph (d) of the preceding paragraph 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.

Article 6 – Relationship between the Convention and the Protocol

1. This Convention and the Protocol shall be read and interpreted together as a single instrument.
2. To the extent of any inconsistency between this Convention and the Protocol, the Protocol shall prevail.

CHAPTER II – CONSTITUTION OF AN INTERNATIONAL INTEREST*Article 7 – 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 8 – Remedies of chargee*

1. In the event of default as provided in Article 11, the chargee may, to the extent that the chargor has at any time so agreed and subject to any declaration that may be made by a Contracting State under Article 54, 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.
2. The chargee may alternatively apply for a court order authorising or directing any of the acts referred to in the preceding paragraph.
3. Any remedy set out in sub-paragraph (a), (b) or (c) of paragraph 1 or by Article 13 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.
4. 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(m)(i) and (ii); and
 - (b) interested persons specified in Article 1(m)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.
5. Any sum collected or received by the chargee as a result of exercise of any of the remedies set out in paragraph 1 shall be applied towards discharge of the amount of the secured obligations.
6. Where the sums collected or received by the chargee as a result of the exercise of any remedy set out 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 distribute the surplus among holders of subsequently ranking interests which have been

registered or of which the chargee has been given notice, in order of priority, and pay any remaining balance to the chargor.

Article 9 – Vesting of object in satisfaction; redemption

1. At any time after default as provided in Article 11, 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 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 11 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 8(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 8(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 29.

Article 10 – 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 11, the conditional seller or the lessor, as the case may be, may:

(a) subject to any declaration that may be made by a Contracting State under Article 54, 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 11 – 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 8 to 10 and 13.

2. Where the debtor and the creditor have not so agreed, "default" for the purposes of Articles 8 to 10 and 13 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

Article 12 – 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 15.

Article 13 – Relief pending final determination

1. Subject to any declaration that it may make under Article 55, 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
- (d) lease or, except where covered by sub-paragraphs (a) to (c), 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 8(3) or limits the availability of forms of interim relief other than those set out in paragraph 1.

Article 14 – Procedural requirements

Subject to Article 54(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 15 – Derogation

In their relations with each other, any two or more of the parties referred to in this Chapter may at any time, by agreement in writing, derogate from or vary the effect of any of the preceding provisions of this Chapter except Articles 8(3) to (6), 9(3) and (4), 13(2) and 14.

CHAPTER IV – THE INTERNATIONAL REGISTRATION SYSTEM

Article 16 – 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 subrogations under the applicable law;
 - (d) notices of national interests; and
 - (e) subordinations of interests referred to in any of the preceding sub-paragraphs.
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 17 – 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) ensure that any rights required for the continued effective operation of the International Registry in the event of a change of Registrar will vest in or be assignable to the new Registrar;
 - (d) 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;
 - (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
 - (f) supervise the Registrar and the operation of the International Registry;
 - (g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;
 - (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
 - (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and
 - (j) 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 27(3).
4. The Supervisory Authority shall own all proprietary rights in the data bases and archives of the International Registry.
5. 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 – OTHER MATTERS RELATING TO REGISTRATION

Article 18 – 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 (which shall include provision for prior electronic transmission of any consent from any person whose consent is required under Article 20);
 - (b) for making searches and issuing search certificates, and, subject thereto;
 - (c) for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.
2. The Registrar shall not be under a duty to enquire whether a consent to registration under Article 20 has in fact been given or is valid.
3. Where an interest registered as a prospective international interest becomes an international interest, no further registration shall be required provided that the registration information is sufficient for a registration of an international interest.
4. The Registrar shall arrange for registrations to be entered into the International Registry data base and made searchable in chronological order of receipt, and the file shall record the date and time of receipt.
5. The Protocol may provide that a Contracting State may designate an entity or entities in its territory as the entry point or entry points through which the information required for registration shall or may be transmitted to the International Registry. A Contracting State making such a

designation may specify the requirements, if any, to be satisfied before such information is transmitted to the International Registry.

Article 19 – Validity and time of registration

1. A registration shall be valid only if made in conformity with Article 20.
2. A registration, if valid, shall be complete upon entry of the required information into the International Registry data base so as to be searchable.
3. 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.
4. 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 provided that the registration was still current immediately before the international interest was constituted as provided by Article 7.
5. The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.
6. A registration shall be searchable in the International Registry data base according to the criteria prescribed by the Protocol.

Article 20 – Consent to registration

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 either party with the consent in writing of the other.
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 21 – Duration of registration

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

Article 22 – Searches

1. Any person may, in the manner prescribed by the Protocol and regulations, make or request a search of the International Registry by electronic means concerning interests or prospective international interests registered therein.
2. Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol and regulations, shall issue a registry search certificate by electronic means 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.

3. A search certificate issued under the preceding paragraph shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.

Article 23 – List of declarations and declared non-consensual rights or interests

The Registrar shall maintain a list of declarations, withdrawals of declaration and of the categories of non-consensual right or interest communicated to the Registrar by the Depositary as having been declared by Contracting States in conformity with Articles 39 and 40 and the date of each such declaration or withdrawal of 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 and regulations to any person requesting it.

Article 24 – 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 25 – 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, without undue delay, procure the discharge of the registration after 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, without undue delay, procure the discharge of the registration after 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, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.

4. Where a registration ought not to have been made or is incorrect, the person in whose favour the registration was made shall, without undue delay, procure its discharge or amendment after written demand by the debtor delivered to or received at its address stated in the registration.

Article 26 – 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 27 – 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 such immunity from legal or administrative process as is specified in the Protocol.
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.
4. The assets, documents, data bases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process.
5. For the purposes of any claim against the Registrar under Article 28(1) or Article 44, the claimant shall be entitled to access to such information and documents as are necessary to enable the claimant to pursue its claim.
6. The Supervisory Authority may waive the inviolability and immunity conferred by paragraph 4.

CHAPTER VII – LIABILITY OF THE REGISTRAR

Article 28 – Liability and financial assurances

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 and its officers and employees or from a malfunction of the international registration system except where the malfunction is caused by an event of an inevitable and irresistible nature, which could not be prevented by using the best practices in current use in the field of electronic registry design and operation, including those related to back-up and systems security and networking.
2. The Registrar shall not be liable under the preceding paragraph for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which it received that information nor for acts or circumstances for which the Registrar and its officers and employees are not responsible and arising prior to receipt of registration information at the International Registry.
3. Compensation under paragraph 1 may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.
4. The Registrar shall procure insurance or a financial guarantee covering the liability referred to in this Article to the extent determined by the Supervisory Authority, in accordance with the Protocol.

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

Article 29 – 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.
4. The conditional buyer or lessee acquires its interest in or right over that object:
- (a) subject to an interest registered prior to the registration of the international interest held by its conditional seller or lessor; and
 - (b) free from an interest not so registered at that time even if it has actual knowledge of that interest.
5. The priority of competing interests or rights 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.
6. Any priority given by this Article to an interest in an object extends to proceeds.
7. This Convention:
- (a) does not affect the rights of a person in an item, other than an object, held prior to its installation on an object if under the applicable law those rights continue to exist after the installation; and
 - (b) does not prevent the creation of rights in an item, other than an object, which has previously been installed on an object where under the applicable law those rights are created.

Article 30 – 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:
- (a) any rules of law applicable in insolvency proceedings relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors; or
 - (b) any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

CHAPTER IX – ASSIGNMENTS OF ASSOCIATED RIGHTS AND INTERNATIONAL INTERESTS; RIGHTS OF SUBROGATION

Article 31 – Effects of assignment

1. Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with Article 32 also transfers to the assignee:
- (a) the related international interest; and
 - (b) all the interests and priorities of the assignor under this Convention.
2. Nothing in this Convention prevents a partial assignment of the assignor's associated rights. In the case of such a partial assignment the assignor and assignee may agree as to their

respective rights concerning the related international interest assigned under the preceding paragraph but not so as adversely to affect the debtor without its consent.

3. Subject to paragraph 4, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.

4. 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 other than defences arising from fraudulent acts on the part of the assignee.

5. In the case of an assignment by way of security, the assigned associated 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 – Formal requirements of assignment

1. An assignment of associated rights transfers the related international interest only if it:
 - (a) is in writing;
 - (b) enables the associated rights to be identified to the contract under which they arise;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.
2. An assignment of an international interest created or provided for by a security agreement is not valid unless some or all related associated rights also are assigned.
3. This Convention does not apply to an assignment of associated rights which is not effective to transfer the related international interest.

Article 33 – Debtor's duty to assignee

1. To the extent that associated rights and the related international interest have been transferred in accordance with Articles 31 and 32, 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; and
 - (b) the notice identifies the associated rights.
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 this Article shall affect the priority of competing assignments.

Article 34 – 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 8, 9 and 11 to 14 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 associated rights and the related 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 assignee; and
- (d) to the object were references to the assigned associated rights and the related international interest.

Article 35 – Priority of competing assignments

1. Where there are competing assignments of associated rights and at least one of the assignments includes the related international interest and is registered, the provisions of Article 29 apply as if the references to a registered interest were references to an assignment of the associated rights and the related registered interest and as if references to a registered or unregistered interest were references to a registered or unregistered assignment.

2. Article 30 applies to an assignment of associated rights as if the references to an international interest were references to an assignment of the associated rights and the related international interest.

Article 36 – Assignee’s priority with respect to associated rights

1. The assignee of associated rights and the related international interest whose assignment has been registered only has priority under Article 35(1) over another assignee of the associated rights:

- (a) if the contract under which the associated rights arise states that they are secured by or associated with the object; and
- (b) to the extent that the associated rights are related to an object.

2. For the purposes of sub-paragraph (b) of the preceding paragraph, associated rights are related to an object only to the extent that they consist of rights to payment or performance that relate to:

- (a) a sum advanced and utilised for the purchase of the object;
- (b) a sum advanced and utilised for the purchase of another object in which the assignor held another international interest if the assignor transferred that interest to the assignee and the assignment has been registered;
- (c) the price payable for the object;
- (d) the rentals payable in respect of the object; or
- (e) other obligations arising from a transaction referred to in any of the preceding sub-paragraphs.

3. In all other cases, the priority of the competing assignments of the associated rights shall be determined by the applicable law.

Article 37 – Effects of assignor’s insolvency

The provisions of Article 30 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Article 38 – 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 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.

CHAPTER X – RIGHTS OR INTERESTS SUBJECT TO DECLARATIONS BY CONTRACTING STATES

Article 39 – Rights having priority without registration

1. A Contracting State may at any time, in a declaration deposited with the depositary of the Protocol declare, generally or specifically:

(a) those categories of non-consensual right or interest (other than a right or interest to which Article 40 applies) which under that State's law have priority over an interest in an object equivalent to that of the holder of a registered international interest shall have priority over a registered international interest, whether in or outside insolvency proceedings; and

(b) that nothing in this Convention shall affect the right of a State or State entity, intergovernmental organisation or other private provider of public services to arrest or detain an object under the laws of that State for payment of amounts owed to such entity, organisation or provider directly relating to those services in respect of that object or another object.

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

3. A non-consensual right or interest has priority over an international interest if and only if the former is of a category covered by a declaration deposited prior to the registration of the international interest.

4. Notwithstanding the preceding paragraph, a Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that a right or interest of a category covered by a declaration made under sub-paragraph (a) of paragraph 1 shall have priority over an international interest registered prior to the date of such ratification, acceptance, approval or accession.

Article 40 – 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. Such a declaration may be modified from time to time.

CHAPTER XI – APPLICATION OF THE CONVENTION TO SALES

Article 41 – Sale and prospective sale

This Convention shall apply to the sale or prospective sale of an object as provided for in the Protocol with any modifications therein.

CHAPTER XII – JURISDICTION

Article 42 – Choice of forum

1. Subject to Articles 43 and 44, the courts of a Contracting State chosen by the parties to a transaction have jurisdiction in respect of any claim brought under this Convention, whether or not the chosen forum has a connection with the parties or the transaction. Such jurisdiction shall be exclusive unless otherwise agreed between the parties.

2. Any such agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of the chosen forum.

Article 43 – Jurisdiction under Article 13(1)

1. The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is situated have jurisdiction to grant relief under Article 13(1)(a), (b), (c) and Article 13(4) in respect of that object.
2. Jurisdiction to grant relief under Article 13(1)(d) or other interim relief by virtue of Article 13(4) may be exercised either:
 - (a) by the courts chosen by the parties; or
 - (b) by the courts of a Contracting State on the territory of which the debtor is situated, being relief which, by the terms of the order granting it, is enforceable only in the territory of that Contracting State.
3. A court has jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 13(1) will or may take place in a court of another Contracting State or by arbitration.

Article 44 – 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 or make orders against the Registrar.
2. Where a person fails to respond to a demand made under Article 25(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 45 – Jurisdiction in respect of insolvency proceedings

The provisions of this Chapter are not applicable to insolvency proceedings.

CHAPTER XIII – RELATIONSHIP WITH OTHER CONVENTIONS**Article 46 – 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*, signed at Ottawa on 28 May 1988.

CHAPTER XIV – FINAL PROVISIONS**Article 47 – Signature, ratification, acceptance, approval or accession**

1. This Convention shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Convention shall be open to all States for signature at the Headquarters of the International

Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article 49.

2. This Convention shall be subject to ratification, acceptance or approval by States which have signed it.

3. Any State which does not sign this Convention may accede to it at any time.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

Article 48 – Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Convention applies equally to a Regional Economic Integration Organisation where the context so requires.

Article 49 – Entry into force

1. This Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of the third instrument of ratification, acceptance, approval or accession 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 States Parties to this Convention and that Protocol.

2. For other States this Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies and subject, in relation to such Protocol, to the requirements of sub-paragraphs (a), (b) and (c) of the preceding paragraph.

Article 50 – Internal transactions

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

2. Notwithstanding paragraph 1, the provisions of Articles 8(3) and 9(1), Chapter V, Article 29, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

3. Where notice of a national interest has been registered in the International Registry, the priority of the holder of that interest under Article 29 shall not be affected by the fact that such interest has become vested in another person by assignment or subrogation under the applicable law.

Article 51 – Future Protocols

1. The Depositary may create working groups, in co-operation with such relevant non-governmental organisations as the Depositary considers appropriate, 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 Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all States Parties to this Convention, all member States of the Depositary, member States of the United Nations which are not members of the Depositary and the relevant intergovernmental organisations, and shall invite such States and organisations to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

3. The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental organisations as the Depositary considers appropriate. Such non-governmental organisations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.

4. When the competent bodies of the Depositary adjudge such a draft Protocol ripe for adoption, the Depositary shall convene a diplomatic conference for its adoption.

5. Once such a Protocol has been adopted, subject to paragraph 6, this Convention shall apply to the category of objects covered thereby.

6. The Annex to this Convention applies to such a Protocol only if specifically provided for in that Protocol.

Article 52 – Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. Any such declaration shall state expressly the territorial units to which this Convention applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.

4. Where a Contracting State extends this Convention to one or more of its territorial units, declarations permitted under this Convention may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. If by virtue of a declaration under paragraph 1, this Convention and the Protocol extend to one or more territorial units of a Contracting State:

(a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which this Convention and the Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which this Convention and the Protocol apply;

(b) any reference to the situation of the object in a Contracting State refers to the situation of the object in a territorial unit to which this Convention and the Protocol apply; and

(c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which this Convention and the Protocol apply and any reference to the national registry or to the registry authority in that Contracting State shall be construed as referring to the registry in force or to the registry authority having jurisdiction in the territorial unit or units to which this Convention and the Protocol apply.

Article 53 – Determination of courts

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

Article 54 – Declarations regarding remedies

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare 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 shall, at the time of ratification, acceptance, approval of, or accession to the Protocol, 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 55 – Declarations regarding relief pending final determination

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will not apply the provisions of Article 13 or Article 43, or both, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

Article 56 – Reservations and declarations

1. No reservations may be made to this Convention but declarations authorised by Articles 39, 40, 50, 52, 53, 54, 55, 57, 58 and 60 may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

Article 57 – Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration authorised under Article 60, at any time after the date on which this Convention has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article 58 – Withdrawal of declarations

Any State Party having made a declaration under this Convention, other than a declaration authorised under Article 60, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

Article 59 – Denunciations

1. Any State Party may denounce this Convention by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which notification is received by the Depositary.
3. Notwithstanding the previous paragraphs, this Convention 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 any such denunciation.

Article 60 – Transitional provisions

1. Unless otherwise declared by a Contracting State at any time, the Convention does not apply to a pre-existing right or interest, which retains the priority it enjoyed under the applicable law before the effective date of this Convention.
2. For the purposes of Article 1(v) and of determining priority under this Convention:
 - (a) “effective date of this Convention” means in relation to a debtor the time when this Convention enters into force or the time when the State in which the debtor is situated becomes a Contracting State, whichever is the later; and
 - (b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if it has no place of business, its habitual residence.
3. A Contracting State may in its declaration under paragraph 1 specify a date that is later than the effective date after which the Protocol will apply to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in a State referred to in sub-paragraph (b) of the preceding paragraph but only to the extent and in the manner specified in its declaration.

Article 61 – Review Conferences, amendments and related matters

1. The Depositary shall prepare reports yearly or at such other time as the circumstances may require for the States Parties as to the manner in which the international regimen established in this Convention has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.
2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:
 - (a) the practical operation of this Convention and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
 - (b) the judicial interpretation given to, and the application made of the terms of this Convention and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and

(d) whether any modifications to this Convention or the arrangements relating to the International Registry are desirable.

3. Subject to paragraph 4, any amendment to this Convention shall be approved by at least a two-thirds majority of States participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when ratified, accepted, or approved by three States in accordance with the provisions of Article 49 relating to its entry into force.

4. Where the proposed amendment to this Convention is intended to apply to more than one category of equipment, such amendment shall also be approved by at least a two-thirds majority of States Parties to each Protocol that are participating in the Conference referred to in paragraph 2.

Article 62 – Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

- (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Convention;
 - (iii) each declaration made in accordance with this Convention, together with the date thereof;
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (v) the notification of any denunciation of this Convention together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Convention to all Contracting States;
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
- (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one other.

DCME Doc No. 74
16/11/01
Addendum
29/11/01

ADDENDU

On 16 November 2001, the Plenary of the Diplomatic Conference adopted the following change to Article 60, paragraph 3, of the *Convention on International Interests in Mobile Equipment*:

Article 60 – Transitional provisions

1. *Unchanged.*
2. *Unchanged.*

3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than 3 years after the date on which the declaration becomes effective, when this Convention and the Protocol will become applicable, for the purpose of determining priority, including the protection of any existing priority, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in a State referred to in sub-paragraph (b) of the preceding paragraph but only to the extent and in the manner specified in its declaration.

DCME Doc No. 74
16/11/01
CORRIGENDUM
3/12/01

Arabic, Chinese, English, Russian and Spanish only

CORRIGENDUM

The following should be inserted at the end of the text of the Convention:

ANNEX

Relationship with the United Nations Convention on the Assignment of Receivables in International Trade

1. This Convention shall prevail over the United Nations Convention on the Assignment of Receivables in International Trade as it relates to the assignment of receivables which are associated rights related to international interests in aircraft objects, railway rolling stock and space assets.
2. The preceding paragraph shall be inserted into and constitute Article 45*bis* of the Convention upon adoption by the United Nations General Assembly of the United Nations Convention on the Assignment of Receivables in International Trade.

PROTOCOL
TO THE CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON
MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the Convention on International Interests in Mobile Equipment (hereinafter referred to as *the Convention*) as it relates to aircraft equipment, 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,

MINDFUL of the principles and objectives of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944,

HAVE AGREED upon the following provisions relating to aircraft equipment:

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;

(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 lb 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;

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

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

(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;

(f) “authorised party” means the party referred to in Article XIII(3);

(g) “Chicago Convention” means the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944, as amended, and its annexes;

(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;

(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;

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

(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;

(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;

(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;

(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) “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; 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.

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 Convention on International Interests in Mobile Equipment as applied to aircraft objects.

Article III – Application of Convention to sales

The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

Articles 3 and 4;
Article 16(1)(a);
Article 19(4);
Article 20(1) (as regards registration of a contract of sale or a prospective sale);
Article 25(2) (as regards a prospective sale); and
Article 30.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XIV(1)), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) shall apply to contracts of sale and prospective sales.

Article IV – Sphere of application

1. Without prejudice to Article 3(1) of the Convention, the Convention shall also apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State which is the State of registry, and where such registration is made pursuant to an agreement for registration of the aircraft it is deemed to have been effected at the time of the agreement.

2. 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.

3. 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 Article IX (2)-(4).

Article V – Formalities, effects and registration of contracts 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. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

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 Articles 7(c) and 32(1)(b) of the Convention and Article V(1)(c) of this Protocol.

Article VIII – Choice of law

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).

2. 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.

3. 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. Article 8(3) of the Convention shall not apply to aircraft objects. Any remedy given by the Convention in relation to an aircraft object 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 agreement except where such a provision is manifestly unreasonable.

4. A chargee giving ten or more working 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 8(4) 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.

5. The registry authority in a Contracting State shall, subject to any applicable safety laws and regulations, honour a request for de-registration and export if:

- (a) the request is properly submitted by the authorised party under a recorded irrevocable de-registration and export request authorisation; and
- (b) the authorised party certifies to the registry authority, if required by that authority, that all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.

6. A chargee proposing to procure the de-registration and export of an aircraft under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed de-registration and export to:

- (a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and
- (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

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 XXX(2) and to the extent stated in such declaration.

2. For the purposes of Article 13(1) of the Convention, “speedy” in the context of obtaining relief means within such number of working 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 13(1) of the Convention applies with the following being added immediately after sub-paragraph (d):

“(e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom”,

and Article 43(2) applies with the insertion after the words “Article 13(1)(d)” of the words “and (e)”.

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 29 of the Convention.

5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.

6. With regard to the remedies in Article IX(1):

(a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than five working days after the creditor notifies such authorities that the relief specified in Article IX(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with this Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

7. Paragraphs 2 and 6 shall not affect any 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 XXX(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 other than a default constituted by the opening of insolvency proceedings 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. With regard to the remedies in Article IX(1):

(a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

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 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 XXX(3) whether it will:

(a) cure all defaults other than a default constituted by the opening of insolvency proceedings 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 the creditor the opportunity to take 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

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).

2. 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 request authorisation

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).

2. 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.

3. 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.

4. 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 of an aircraft object under a registered sale acquires its interest in that object free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.

2. A buyer of an aircraft object acquires its interests in that object subject to an interest registered at the time of its acquisition.

3. Ownership of or another right or interest in an aircraft engine shall not be affected by its installation on or removal from an aircraft.

4. Article 29(6) of the Convention applies to an item, other than an object, installed on an airframe, aircraft engine or helicopter.

Article XV – Modification of assignment provisions

Article 33(1) of the Convention applies as if the following were added immediately after sub-paragraph (b):

“(c) is consented to in writing by the debtor, whether or not the consent is given in advance of the assignment or identifies the assignee.”

Article XVI – Debtor provisions

1. In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the object in accordance with the agreement as against:

(a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4) of the Convention or Article XIV(1) of this Protocol, unless and to the extent that the debtor has otherwise agreed; and

(b) the holder of any interest to which the debtor’s right or interest is subject pursuant to Article 29(4) of the Convention and Article XIV(1) of this Protocol, but only to the extent, if any, that such holder has agreed.

2. Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to an aircraft object.

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

Article XVII – The Supervisory Authority and the Registrar

1. The Supervisory Authority shall be the international entity designated by a Resolution adopted by the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol.

2. Where the international entity referred to in the preceding paragraph is not able and willing to act as Supervisory Authority, a Conference of Signatory and Contracting States shall be convened to designate another Supervisory Authority.

3. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.

4. The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.

5. 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 reappointed at regular five-yearly intervals by the Supervisory Authority.

Article XVIII – First regulations

The first regulations shall be made by the Supervisory Authority so as to take effect upon the entry into force of this Protocol.

Article XIX – Designated entry points

1. Subject to paragraph 2, a Contracting State may at any time designate an entity or entities in its territory as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or a right or interest under Article 40 in either case arising under the laws of another State.

2. A designation made under paragraph 1 may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of aircraft engines.

Article XX – Additional modifications to Registry provisions

1. For the purposes of Article 19(6) of the Convention, the search criterion for an aircraft object shall be the name of its manufacturer, its manufacturer's serial number and its model designation, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

2. For the purposes of Article 25(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 working days after the receipt of the demand described in such paragraph.

3. The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 17(2) of the Convention.

4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated at least during working hours in their respective territories.

5. The amount of the insurance or financial guarantee referred to in Article 28(2) of the Convention shall, in respect of each event, not be less than the maximum value of an aircraft object as determined by the Supervisory Authority.

6. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

CHAPTER IV – JURISDICTION

Article XXI – Modification of jurisdiction provisions

For the purposes of Article 43 of the Convention and subject to Article 42 of the Convention, a court of a Contracting State also has jurisdiction where the object is a helicopter, or an airframe pertaining to an aircraft, for which that State is the State of registry.

Article XXII – Waivers of sovereign immunity

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 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 writing and contain a description of the aircraft object.

CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS***Article XXIII – 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*, signed at Geneva on 19 June 1948, supersede that Convention as it relates to aircraft, as defined in this Protocol, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

Article XXIV – 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*, signed at 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.

Article XXV – 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.

CHAPTER VI – FINAL PROVISIONS***Article XXVI – Signature, ratification, acceptance, approval or accession***

1. This Protocol shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article XXVIII.

2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.

3. Any State which does not sign this Protocol may accede to it at any time.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

Article XXVII – Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is

relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

Article XXVIII – 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 the deposit of the eighth instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.

2. For other States this Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article XXIX – Territorial units

1. If a Contracting State has 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 modify its declaration by submitting another declaration at any time.

2. Any such declaration shall state expressly the territorial units to which this Protocol applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.

4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. If by virtue of a declaration under paragraph 1, the Protocol extends to one or more territorial units of a Contracting State:

(a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and Protocol apply;

(b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and Protocol apply; and

(c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and Protocol apply and any reference to the national registry or to the registry authority in that Contracting State shall be construed as referring to the aircraft registry in force or to the registry authority having jurisdiction in the territorial unit or units to which the Convention and Protocol apply.

Article XXX – Declarations relating to certain provisions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply any one or more of Articles VIII, XII and XIII of this Protocol.

2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare 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, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare 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.

5. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will not apply the provisions of Article XXI, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief that will be applied.

Article XXXI – Declarations under the Convention

Declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

Article XXXII – Reservations and declarations

1. No reservations may be made to this Protocol but declarations authorised by Articles XXIX, XXX, XXXI, XXXIII and XXXIV may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

Article XXXIII – Subsequent declarations

1. A State Party may make a subsequent declaration, other than the declaration made in accordance with Article XXXI under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article XXXIV – Withdrawal of declarations

Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

Article XXXV – Denunciations

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by 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 any such denunciation.

Article XXXVI – Review Conferences, amendments and related matters

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by the Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.
2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:
 - (a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
 - (b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;
 - (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and
 - (d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.
3. Any amendment to this Protocol shall be approved by at least a two-thirds majority of States participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by eight States in accordance with the provisions of Article XXVIII relating to its entry into force.

Article XXXVII – Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.
2. The Depositary shall:
 - (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

- (ii) the date of entry into force of this Protocol;
- (iii) each declaration made in accordance with this Protocol, together with the date thereof;
- (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
- (v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Protocol to all Contracting States;
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
- (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

Annex

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 manufacturers 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 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 *Convention on International Civil Aviation*, signed at Chicago, on 7 December 1944, and

* Select the term that reflects the relevant nationality registration criterion.

(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]

By: [insert name of signatory]
Its: [insert title of signatory]

[insert relevant notational details]

DCME Doc No. 76
16/11/01

FINAL ACT

**of the Diplomatic Conference to Adopt a Mobile Equipment Convention
and an Aircraft Protocol held under the joint auspices of the
International Civil Aviation Organization and the
International Institute for the Unification of Private Law
at Cape Town from 29 October to 16 November 2001**

The Plenipotentiaries at the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol, held under the joint auspices of the International Civil Aviation Organization and the International Institute for the Unification of Private Law, met at Cape Town, at the invitation of the Government of the Republic of South Africa, from 29 October to 16 November 2001 for the purpose of considering the draft *Convention on International Interests in Mobile Equipment* and the draft *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*, prepared by three Joint Sessions of a Legal Sub-Committee of the International Civil Aviation Organization and a Committee of Governmental Experts of the International Institute for the Unification of Private Law, as well as by the Legal Committee of the International Civil Aviation Organization.

The Governments of the following fifty-eight States were represented at the Conference and presented credentials in due and proper form:

Angola, the Republic of
Argentina Republic, the
Australia
Bahrain, the State of
Belgium, the Kingdom of
Benin, the Republic of
Botswana, the Republic of

Japan
Jordan, the Hashemite Kingdom of
Kenya, the Republic of
Lebanese Republic, the
Lesotho, the Kingdom of
Libyan Arab Jamahiriya, the Socialist People's
Malawi, the Republic of

Brazil, the Federative Republic of	Mexican States, the United
Burundi, the Republic of	Namibia, the Republic of
Cameroon, the Republic of	Netherlands, the Kingdom of the
Canada	Nigeria, the Federal Republic of
Chile, the Republic of	Oman, the Sultanate of
China, the People's Republic of	Republic of Korea, the
Congo, the Republic of the	Russian Federation, the
Costa Rica, the Republic of	Singapore, the Republic of
Côte d'Ivoire, the Republic of	South Africa, the Republic of
Cuba, the Republic of	Spain, the Kingdom of
Czech Republic, the	Sudan, the Republic of the
Egypt, the Arab Republic of	Sweden, the Kingdom of
Ethiopia, Federal Democratic Republic of	Swiss Confederation, the
Finland, the Republic of	Thailand, the Kingdom of
French Republic, the	Tonga, the Kingdom of
Germany, the Federal Republic of	Turkey, the Republic of
Ghana, the Republic of	Uganda, the Republic of
Hellenic Republic, the	United Arab Emirates, the
India, the Republic of	United Kingdom of Great Britain and
Iran, the Islamic Republic of	Northern Ireland, the United Republic of
Ireland	Tanzania, the
Italian Republic, the	United States of America, the
Jamaica	

The following eleven international Organisations and groups were represented by Observers:

African Civil Aviation Commission (AFCAC)
 Aviation Working Group (AWG)
 European Organisation for the Safety of Air Navigation (EUROCONTROL)
 European Community
 Hague Conference on Private International Law
 International Air Transport Association (IATA)
 Intergovernmental Organisation for International Carriage by Rail (OTIF)
 International Mobile Satellite Organization (IMSO)
 Rail Working Group (RWG)
 Space Working Group (SWG)
 United Nations

The Conference unanimously elected as President Mr. Medard Rutojjo Rwelamira (South Africa) and further unanimously elected as Vice-Presidents:

First Vice-President – Mr. Harold S. Burman (United States)
 Second Vice-President – Mr. Gao Hongfeng (China)
 Third Vice-President – Mr. Souleiman Eid (Lebanon)
 Fourth Vice-President – Mr. Jório Salgado Gama Filho (Brazil)
 Fifth Vice-President – Mr. John Atwood (Australia)

The Joint Secretariat of the Conference was the following:

For the International Civil Aviation Organization:

Secretary General – Mr. Ludwig Weber, Director of the Legal Bureau
 Executive Secretary – Mr. Silvério Espínola, Principal Legal Officer
 Deputy Secretary – Mr. Jiefang Huang, Legal Officer
 Assistant Secretary – Mr. Arie Jakob, Legal Officer
 Conference Officer – Mr. Michael J. Blanch, Chief, Conference & Office Services Section

For the International Institute for the Unification of Private Law:

Secretary General – Mr. Herbert Kronke, Secretary-General

Executive Secretary – Mr. Martin Stanford, Principal Research Officer

Deputy Secretary and Conference Officer – Ms. Marina Schneider, Research Officer

Deputy Secretary – Ms. Frédérique Mestre, Research Officer

Assistant Secretary – Ms. Lena Peters, Research Officer

Other officials of both Organisations also provided services to the Conference.

The Conference established a Commission of the Whole which was chaired by Mr. Antti T. Leinonen (Finland) and the following Committees:

Credentials Committee

Chairman: Mrs. Joyce Thompson (Ghana)

Members: Costa Rica
Ghana
Oman
Singapore
Spain

Drafting Committee

Chairman: Sir Roy Goode (United Kingdom)

Members: Argentina
Canada
China
France
Germany
Jamaica
Japan
Lebanon
Mexico
Nigeria
Russian Federation
South Africa
United Arab Emirates
United Kingdom
United States

Final Clauses Committee

Chairman: Mr. Kenneth O. Rattray (Jamaica)

Members: Canada
China
Cuba
Egypt
France
Jamaica
Kenya
Pakistan
Saudi Arabia
Senegal
Singapore
Sweden

Switzerland
United States

Following its deliberations, the Conference adopted the texts of the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*.

The said Convention and Protocol have been opened for signature at Cape Town this day.

The texts of the said Convention and Protocol are subject to verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within a period of ninety days from the date hereof as to the linguistic changes required to bring the texts in the different languages into conformity with one another.

The Conference furthermore adopted by consensus the following Resolutions:

RESOLUTION NO. 1

RELATING TO THE CONSOLIDATED TEXT OF THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT AND THE PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

MINDFUL of the objectives of the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*;

DESIROUS of facilitating the application and implementation of the Convention and the Protocol;

TAKING INTO ACCOUNT Article 6, paragraph 1 of the Convention, which states that the Convention and the Protocol shall be read and interpreted together as a single instrument;

HAVING AGREED to entrust the Joint Secretariat of the Conference, namely the Secretariats of the International Civil Aviation Organization (ICAO) and of the International Institute for the Unification of Private Law (UNIDROIT), with the drawing up of a consolidated text to facilitate the implementation of the rules contained in the Convention and the Protocol in a user-friendly manner;

THE CONFERENCE:

HEREBY TAKES NOTE OF the Consolidated Text of the *Convention on International Interests in Mobile Equipment* and the *Protocol thereto on Matters specific to Aircraft Equipment* as set out in the **Attachment** * to this Resolution.

RESOLUTION NO. 2

RELATING TO THE ESTABLISHMENT OF THE SUPERVISORY AUTHORITY AND THE INTERNATIONAL REGISTRY FOR AIRCRAFT OBJECTS

THE CONFERENCE,

HAVING ADOPTED the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*;

* The version of DCME Doc No. 76 that was circulated at the Conference did not include an attachment. The Consolidated Text was included as an attachment to Resolution No. 1 of the Final Act, which is reproduced in Part Two.

HAVING REGARD to Article XVII, paragraph 1 of the Protocol;

CONSCIOUS of the need to undertake preparatory work regarding the establishment of the International Registry in order to ensure that it is operational by the time the Convention and the Protocol enter into force;

CONSIDERING that the Council of the International Civil Aviation Organization (ICAO), following a recommendation made by the 31st Session of its Legal Committee, decided during its 161st Session to accept, in principle, the role of Supervisory Authority of the International Registry for the purpose of the Protocol, and to defer further decisions on this matter until after the Diplomatic Conference;

RESOLVES:

TO INVITE ICAO to accept the functions of Supervisory Authority upon the entry into force of the Convention and the Protocol;

TO INVITE ICAO to establish a Commission of Experts consisting of not more than 15 members appointed by the ICAO Council from among persons nominated by the Signatory and Contracting States to the Convention and to the Protocol, having the necessary qualifications and experience, with the task of assisting the Supervisory Authority, upon the entry into force of the Convention and the Protocol;

TO SET UP, pending the entry into force of the Convention and the Protocol, a Preparatory Commission to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry, under the guidance and supervision of the ICAO Council. Such Preparatory Commission shall be composed of persons, having the necessary qualifications and experience, nominated by the following States: Argentina, Brazil, Canada, China, Cuba, Egypt, France, Germany, India, Ireland, Kenya, Nigeria, Russian Federation, Senegal, Singapore, Switzerland, South Africa, Tonga, United Arab Emirates, and United States.

TO DIRECT the Preparatory Commission to carry out, under the guidance and supervision of the ICAO Council, the following functions:

- (1) to ensure that the international registration system be set up, in accordance with an objective, transparent and fair selection process, and that it become ready to be operated with a target date of one year from the adoption of the Convention and the Protocol, and at the latest by the time of the entry into force of the Convention and the Protocol;
- (2) to ensure the necessary liaison and co-ordination with private industry which will be users of the International Registry; and
- (3) to work on such other matters relating to the International Registry as may be required with a view to ensuring the establishment of the International Registry.

TO URGE the States participating in the Conference and interested private parties to make available, at the earliest possible date, the necessary start-up funding on a voluntary basis for the tasks of the Preparatory Commission and of ICAO, required under the two preceding resolving clauses, and to entrust ICAO with the task of administering such funds.

RESOLUTION NO. 3

PURSUANT TO ARTICLE 2(3)(b) AND (c) OF THE CONVENTION

THE CONFERENCE,

HAVING ADOPTED, in Article 2(3)(b) and (c) of the Convention, provisions contemplating the adoption of Protocols on Matters specific to Railway Rolling Stock and Space Assets;

CONSIDERING that such Protocols will be applied together with the terms of the Convention and are expected also to include analogous provisions to those contained in the Aircraft Protocol;

CONSIDERING that considerable progress has already been made in relation to the development of such Protocols and such progress has been welcomed by the Conference;

CONSIDERING that the completion of such Protocols is to be expected to confer significant benefits on the international community as a whole, in particular for developing States; and

CONSIDERING IT DESIRABLE to involve as wide a range of States as possible in the process for the adoption of such Protocols and to keep the costs of such adoption to a reasonable minimum;

RESOLVES:

TO INVITE the negotiating States to work towards expeditious adoption of the draft Protocols under preparation in respect of those objects falling within Article 2(3)(b) and (c);

TO INVITE the International Institute for the Unification of Private Law (UNIDROIT) to use its good offices to facilitate such objective;

TO INVITE UNIDROIT to give all Member States of UNIDROIT and Member States of the United Nations which are not members of UNIDROIT an opportunity to participate in the negotiation and adoption of such Protocols in a cost-effective manner; and

TO INVITE the competent bodies of UNIDROIT to consider favourably the implementation of an expedited procedure for the adoption of such Protocols, and in particular to consider the diplomatic Conference required for their adoption being as short as possible consistently with the need for States to give such Protocol proper consideration.

RESOLUTION NO. 4

RELATING TO TECHNICAL ASSISTANCE WITH REGARD TO THE IMPLEMENTATION AND THE USE OF THE INTERNATIONAL REGISTRY

THE CONFERENCE,

MINDFUL of the objectives of the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on Matters specific to Aircraft Equipment*;

DESIROUS of facilitating the implementation of the Convention and the Protocol as well as the prompt implementation and use of the International Registry;

RESOLVES:

TO ENCOURAGE all negotiating States, international Organisations, as well as private parties, such as the aviation and financial industries, to assist the developing negotiating States in any appropriate way, including facilities and know-how necessary to use the International Registry, so as to allow them to benefit from the Convention and the Protocol as early as possible.

RESOLUTION NO. 5

RELATING TO THE OFFICIAL COMMENTARY ON THE CONVENTION AND AIRCRAFT PROTOCOL

THE CONFERENCE,

HAVING ADOPTED the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*;

CONSCIOUS of the need for an official commentary on these texts as an aid for those called upon to work with these documents;

RECOGNISING the increasing use of commentaries of this type in the context of modern, technical commercial law instruments; and

MINDFUL that the Explanatory Report and Commentary (DCME-IP/2) provides a sound starting point for the further development of this official commentary;

RESOLVES:

TO REQUEST the preparation of a draft official commentary on these texts by the Chairman of the Drafting Committee, in close co-operation with the ICAO and UNIDROIT Secretariats, and in co-ordination with the Chairman of the Commission of the Whole, the Chairman of the Final Clauses Committee and interested members of the Drafting Committee and observers that participated in its work;

TO REQUEST that such draft be circulated by the two Secretariats to all negotiating States and participating observers as soon as practicable after the conclusion of the Conference inviting comments thereon; and

TO REQUEST that a revised final version of the official commentary be transmitted by the two Secretariats to all negotiating States and participating observers as soon as practicable after the conclusion of the Conference.

IN WITNESS WHEREOF the Delegates,

GRATEFUL to the Government of the Republic of South Africa for having invited the Conference to South Africa and for its generous hospitality,

HAVE SIGNED this Final Act.

DONE at Cape Town on the sixteenth day of November of the year two thousand and one in two originals of which the English, Arabic, Chinese, French, Russian and Spanish languages are equally authentic. The Convention and the Protocol shall be deposited with the International Institute for the Unification of Private Law. A certified copy of each instrument shall be delivered by the said Organisation to the Governments of each of the negotiating States.

DCME – IP/1
English only
6/4/01

**PREPARATORY WORK FOR THE ESTABLISHMENT AND OPERATION OF AN
INTERNATIONAL REGISTRY FOR INTERNATIONAL INTERESTS IN AIRCRAFT
EQUIPMENT**

1. BACKGROUND

1.1. At the closing of the third Joint Session of the ICAO Legal Sub-Committee and the Committee of Governmental Experts of the International Institute for the Unification of Private Law (UNIDROIT), held in Rome from 20 to 31 March 2000, a working group, namely the International Registry *Ad Hoc* Task Force (hereinafter referred to as the Task Force), was set up to study matters relating to the establishment and operation of an international registry for international interests in aircraft equipment, as envisaged under Chapters IV to VII of the Draft Convention on International Interests in Mobile Equipment (DCME Doc 3) and Chapter III of the Draft Protocol on Matters specific to Aircraft Equipment (DCME Doc 4), prior to the entry into force of these instruments.

1.2 The 31st Session of the Legal Committee, held in Montreal from 28 August to 8 September 2001, noted the first report of the Task Force and recommended that the Council, recognizing the work of the Task Force, consider appropriate action to continue required preparatory work with a view to rendering the registry operational by the time the instrument come into force, in cooperation with UNIDROIT and taking into account budgetary implications. The Council, in deciding on this recommendation at the ninth meeting of its 161st Session on 22 November 2001, confirmed that further work of the *Ad Hoc* Task Force towards the establishment of an International Registry should be undertaken under the supervision of the Council; that this be coordinated, through the Secretariat, with UNIDROIT; and that the Task Force assist the Secretariat in preparing any necessary decisions by the Council regarding this matter.

2. DOCUMENTATION PACKAGE

2.1 Pursuant to its terms of reference, the Task Force prepared a package of documentation, comprising a request for proposals; basic features of the proposed international registry; a requirements document; instructions for submission of proposals (technical and cost/price) and an evaluation plan, which was presented to ICAO and UNIDROIT with its second report on 20 February 2001.

2.2. The ICAO Council, at the eleventh meeting of its 162nd Session on 13 March 2001, decided that the Second Report of the International Registry Task Force and documentation attached thereto be sent, on an informal basis **and for information purposes only**, to all States invited to attend the Diplomatic Conference to be held in Cape Town, South Africa, from 29 October to 16 November 2001. The package of documentation is attached.

SECOND REPORT OF THE INTERNATIONAL REGISTRY TASK FORCE
(for Registration of Interests in Aircraft Objects)

I. INTRODUCTION

II. WORK IN DUBLIN (JANUARY 16-18, 2001)

III. WORK IN WASHINGTON D.C. (FEBRUARY 13-15, 2001)

IV. NEW DOCUMENTATION

V. REQUEST FOR INFORMATION

VI. RECOMMENDATIONS.

VII. IMPORTANT DECISIONS TO BE MADE AT DIPLOMATIC CONFERENCE. ..

VIII. ON-GOING TASK FORCE ACTIVITIES.

SECOND REPORT OF THE INTERNATIONAL REGISTRY TASK FORCE

Respectfully submitted to the Secretariats of UNIDROIT and ICAO on February 20, 2001

I. INTRODUCTION.

1. The Registry Task Force met in Paris in June 2000 and reported to the Secretariats of UNIDROIT and ICAO on July 28, 2000.¹ That first Report forwarded certain documents relating to the acquisition process for establishing an International Registry.²
2. The Registry Task Force has since met in general session in Dublin, January 16-18, 2001 and in special session in Washington DC, February 13-15, 2001.

II. WORK IN DUBLIN (January 16-18, 2001)

3. The meeting in Dublin, graciously hosted by the Irish delegation at Dublin Castle, was attended by 30 representatives from ICAO, UNIDROIT, IATA, Aviation Working Group (AWG), Brazil, Canada, France, Ireland, Singapore, Spain, Sweden, Switzerland, and the United States.
4. There were two purposes of the Dublin meeting: to discuss certain papers³ on topics relevant to the International Registry; and to consider appropriate procedures which the Registry Task Force might recommend concerning the solicitation of proposals for the establishment of the International Registry.
5. With regard to the topical assignments, all six papers were presented and discussed in Dublin. Because the Evaluation Plan was intrinsic to the acquisition documents previously submitted to the Secretariats on July 28, 2000, it was modified and then approved by the Task Force.⁴ The other five discussion papers however are not being referred at this time. They may require further review and modification, particularly with respect to the very important proposed Regulations.
6. With respect to the Regulations, it was agreed that they must be premised on certain basic characteristics of the International Registry (e.g. wholly electronic, notice-based, etc.). Switzerland (and on behalf of Japan) agreed to revise the draft Regulations consistent with the basic characteristics (Switzerland has since revised its draft). It is believed that the Regulations may be under careful consideration at the Diplomatic Conference and continue to be improved until their adoption by the Supervisory Authority.

¹ The INTRODUCTION to the first Report explains the legal establishment and purpose of the Registry Task Force.

² Also forwarded were papers on Electronic Signature, Confidentiality of the Information Registered in the International Registry, and Liability of the Supervisory Authority and the Registrar.

³ At the Paris meeting in June 2000, certain Task Force members agreed to draft papers on topics relevant to the terms of reference set out for the Registry Task Force at the Third Joint Session in Rome and later relevant to matters raised during the ICAO Legal Committee 31st Session meeting in Montreal, August 28 – September 8, 2000 (see ICAO Report relating to Agenda Item 3: International Interests in Mobile Equipment). Briefly, those assignments were as follows:

1. Regulations of the International Registry – Switzerland and Japan
2. Technical Evaluation Plan for Evaluating Proposals – France and the United States
3. Proprietary Rights in Software and Hardware – Singapore and Ireland
4. Scope of International Legal Relations between Supervisory Authority and Registrar – UNIDROIT and France
5. Funding – Cost Recovery Methods – Finland and AWG
6. Cost of Insurance (Force Majeure) – Canada and Sweden

⁴ The Evaluation Plan was significantly modified at the request of Singapore to provide that if any one offeror were permitted to modify its proposal, all other offerors would have the same opportunity. See Evaluation Plan III.d. (After tentative selection, it is anticipated that negotiations with awardee will be conducted.)

7. After considerable discussion it was agreed that it would be very helpful if the basic features of the International Registry⁵ were described and made an integral part of the documents soliciting proposals. AWG agreed to prepare a draft and present it to the Task Force in Washington D.C., February 13-15, 2001.
8. All Task Force members, particularly those representing States which at this stage might be considering submitting a proposal to operate the International Registry, were encouraged to attend the February 13-15 meeting.
9. It was agreed that subject to acceptance of the basic features description at the February 13-15 meeting, the Task Force co-chairs would immediately issue the Second Report with priority attachments (updated RFP documents) and recommendations.
10. The Task Force concluded that its Report should include a recommendation that the RFP documents be issued by both UNIDROIT and ICAO to interested States 60 days in advance of the Diplomatic Conference requiring that proposals be submitted 60 days after the conclusion of the Diplomatic Conference.

III. WORK IN WASHINGTON D.C. (February 13-15, 2001)

11. The meeting in Washington D.C., graciously hosted by AWG at the offices of Perkins Coie, was attended by 21 representatives from AWG, ICAO, UNIDROIT, IATA (D.C. representative), Brazil, Canada, France, Ireland, Sweden, Switzerland, and the United States.
12. The principal purpose of the meeting was to discuss AWG's draft Basic Features of the International Registry. Two other significant matters were raised; drafting of a Request for Information to be submitted to States which may tender proposals; and further recommendations regarding the process for soliciting and receiving proposals if the Diplomatic Conference was delayed.
13. The AWG Basic Features document was reviewed in detail. It consists of three parts: a Summary of Basic Characteristics; Salient Features of the Convention/Aircraft Protocol relating to the International Registry; and Select Operations Aspects impacting the design of the International Registry. Except for matters mentioned below, this Report will not attempt to further summarize the Basic Features document which is enclosed with this Report as Attachment 1 to the RFP.
14. With respect to Part I.8, it was agreed that it was important to note that not only might Contracting States designate exclusive or non-exclusive entry points for transmission of registrations, but that they might impose conditions on registering international interests (but not searches). It was agreed that this was an important point which might be reflected in the Convention and Aircraft Protocol.
15. With respect to II.3 and the requirement that the International Registry be operated 24 hours a day, 7 days a week; a footnote was added to acknowledge the industry practice of permitting minimal system downtime for maintenance. The group acknowledged that although literal compliance (system operating 100% of time) might be technically achievable with use of back-up systems, costs would be significantly increased.
16. II.6 points out that if a registering party lacks authority, the registration would have no legal effect and that such determination would not be determined by any ex ante intervention of the operator or supervisor of the International Registry. A discussion ensued about the desirability of attempting to insure that a registering party had requisite legal authority. In that respect it was agreed that the RFP would solicit proposals with two options: one electronic signature (e.g. creditor) or two electronic signatures (e.g. creditor and debtor). The Requirements Document has been modified accordingly. See RD, 6.10.5.

⁵ Canada had attached to its Cost of Insurance, a paper on Description of the International Registry.

17. II.8 refers to compliance with the minimal requirements of the electronic application form. It was agreed that registrations not meeting minimum requirements will be electronically rejected.
18. II.10 refers to discharge of registrations. Concern was addressed about the possibility for mischief, (e.g. unauthorized discharges or by hackers). It was agreed that any system should be designed to require a matching of electronic signatures of initial registrant and subsequent amending or discharging party.
19. III.4 points out there is no need for extraneous information in registrations. A very lengthy discussion ensued concerning the desirability of allowing an optional data element on the electronic form for Chicago Convention registration numbers of civil aircraft (which include airframes and helicopters at a given time). On the one hand it was pointed out that such information (e.g. U.S. aircraft registration number N1234Y) has been historically linked with aircraft and might be very helpful in determining the existence of relevant declarations by States. On the other hand, it was said that such information might be difficult to update and therefore could be inaccurate. Finally, a shaky compromise was reached (footnote 57) which recognizes the possible advantage of including Chicago Convention registration information, but declares that such information need not be updated, and cautions with respect to inaccuracy. The Task Force specifically stated that this matter requires further consideration.
20. Concern was expressed that certain manufacturers may not be consistent in assignment of product serial numbers and that therefore perhaps serial numbers alone, may not be reliable in registering interests and searching. A paper on this issue was requested.
21. With respect to the process of soliciting and receiving proposals, there was a lengthy discussion about what might happen if the Diplomatic Conference was delayed until Oct/Nov 2001.⁶ It appeared that during the ICAO Council meeting, a certain date for the Diplomatic Conference would be established. It was agreed that if the Diplomatic Conference was substantially delayed, the Task Force would recommend that the RFP be issued 120 days (instead of 60 days) in advance of the Diplomatic Conference, to permit States more time to prepare proposals.

IV. NEW DOCUMENTATION.

22. Based on the work in Dublin and Washington D.C. revised RFP documentation is attached. It supersedes the documentation attached to our July 28, 2000 Report.
23. The new RFP Documentation consists of the following:
- Request of Proposals (RFP) ⁷
 - Attachment 1 – Basic Features of Proposed International Registry
 - Attachment 2 – Requirements Document
 - Attachment 3 – Instructions for Submission of Proposals (Technical and Cost/Price) ⁸
 - Attachment 4 – Evaluation Plan
24. It was agreed in Washington D.C. that the previously submitted Process for Soliciting and Evaluating Proposals for the International Registry System is no longer relevant because of the new Evaluation Plan (Attachment 4).

⁶ AWG (and on behalf of IATA) wanted it noted that they could not agree that the same arrangement should apply if there were a delay in the Diplomatic Conference until October/November, 2001. They would have like to have seen the Registry Task Force recommend a better use of their time including a preliminary evaluation of proposals.

⁷ Please note that the timetable at 2.i of the RFP may require substantial revision before issuance depending on the circumstances.

⁸ Approved by Task Force in Dublin.

V. REQUEST FOR INFORMATION.

25. The importance of certain basic information being available at the Diplomatic Conference was raised. Such information might include the number of States making responsive proposals, and general cost/price figures (which in turn might lead to conclusions about fee structure for paying for Registry establishment and operation). It was agreed that the Registry Task Force must further consider and then develop a document (Request for Information) to be submitted under a new Report to the Secretariats with our recommendation as to procedure. This will have to be accomplished in advance of the Diplomatic Conference so that important information will be available at the Diplomatic Conference.

VI. Recommendations.

26. It is recommended as follows:

- a. The latest RFP with Attachments 1 through 4 be conditionally accepted (subject to revision which may later be determined to be necessary or appropriate.)
- b. If the Diplomatic Conference is to be held in May, the RFP package be distributed 60 days before the Diplomatic Conference convenes, with proposals required to be submitted 60 days after the Diplomatic Conference concludes.
- c. If the Diplomatic Conference is to be significantly delayed, that the RFP package be distributed 120 days before the Diplomatic Conference commences, with proposals required to be submitted 60 days after the Diplomatic conference concludes.

VII. Decisions to be Made at Diplomatic Conference.

27. The Task Force respectfully calls attention to the fact that we do not believe we should advise with respect to:

- a. The language, both languages or languages of the International Registry (although the RFP documentation will solicit technical and pricing proposals base on multiple language options).
- b. Whether one or two electronic signatures are desirable to register international interests. (Nevertheless the one or two signature option is included in the RFP documentation).
- c. The scope of Force Majeure – as possibly having a significant bearing on cost of insuring against catastrophic system failure.
- d. State of the art technology for electronic signature(s) on registration forms may require use of Public Key Infrastructure (PKI). Some States may require approval of PKI by national law. The Convention/Aircraft Protocol might address this.

VIII. On-going Task Force Activities.

28. The Task Force is presently considering and may meet to further consider certain matters, including:

- a. Development of procedures with respect to Request for Information.
- b. Adoption of papers on assigned topics. (Further consideration is essential with respect to the topic of Regulations.)

On behalf of the *ad hoc* Task Force:

Georges Grall, France

Joseph R. Standell, USA

February 20, 2001

Attachments:

International Registry Acquisition Package:

Request For Proposals for the International Registry

- Attachment 1 – Basic Features of the International Registry
- Attachment 2 – Requirements Document
- Attachment 3 – Instructions for Submission of Proposals (Technical and Cost/Price)
- Attachment 4 – Evaluation Plan (including forms)

**Request for Proposal (RFP)
for the International Registry System**

1. Background.

The Convention, as modified by the Protocol, contemplates the establishment of a notice-based, electronic International Registry, the basic features and implications of which are summarized in Attachment 1 hereto. Article 16 of the draft Basic Convention contemplates an efficiently operated noticed based, electronic International Registry that will perform the functions assigned by the Convention, Protocol, and Regulations. Article 18 provides that registration is effective upon entry of required information into the International Registry database so as to be searchable. Article XIX of the draft Aircraft Equipment Protocol would require unique search criteria for aircraft objects and that the International Registry be operated on a twenty-four hour basis. It is clear that state-of-the-art, computer-based technology is needed for the International Registry to fulfill its functions.

2. Key Concepts.

a. Only interested States will receive the Request for Proposal (RFP). Nothing, however, is to prevent States from making Proposals that contemplate the involvement of private entities.

b. The Authority is responsible for the establishment of an International Registry that will register international interests in aircraft objects. Pursuant to the Aircraft Equipment Protocol, the Registrar will either be appointed in the Protocol or by the Supervisory Authority. After consultation with contracting States, the Authority will make and publish regulations dealing with the operation of the International Registry. The International Registry will be by way of reference to the “Requirements Document (RD) for the International Registry System” found at Attachment 2, and the “Description of the International Registry” found at Attachment 1.

c. The Authority contemplates entering into an agreement or contract with a State to fulfill the International Registry requirements. The Registry does not necessarily have to be operated by a State entity.

d. Any formal agreement or contract resulting from this RFP shall be governed by the UNIDROIT Principles (1994). Reference the UNIDROIT web site at <http://www.unidroit.org/welcome.htm>.

e. The duration of any formal agreement or contract will be for a period consistent with Article XVI (3) of the Aircraft Equipment Protocol but not less than five (5) years after award of agreement or contract.

f. An agreement or contract may be executed at or shortly after the Diplomatic Conference approximately in the middle of 2001. The State with which the agreement or contract is placed will ensure that the International Registry System is operational not later than twelve (12) months from the date that formal notice to proceed is provided by the Authority.

g. This RFP contemplates both technical and cost/price proposals by interested States.¹ Details will be addressed at paragraphs 3 through 5 below. Each State’s technical proposal will be evaluated and ranked in accordance with established criteria. A cost/price proposal is requested for information purposes and will be considered by the Authority in making its selection. The selection will be based on best value considering technical and cost/price factors.

h. The Authority will enter into negotiations with the State that has the highest ranked technical proposal. Negotiations will include applicable terms and conditions to be incorporated in any resultant agreement or contract. Cost/price will be discussed; including reimbursement as may be

¹ The Requirements Document at paragraph 3 requires proposals to address comprehensively financing of the system and exceptions for cost recovery. Financing of the system is considered integral to cost/price considerations.

appropriate for start-up costs. The transaction fees to be established by the Regulations to be charged users of the International Registry shall also be discussed.

i. Key milestone events and time lines/dates are provided as follows. Dates are provided for planning purposes only and are subject to revision.

Event	Time Lines/Dates
1) Issuance of RFP	120 days prior to commencement of the Diplomatic Conference
1a) Issuance of Request for Information	120 days prior to commencement of the Diplomatic Conference
1b) Receipt of Request for Information	30 days prior to commencement of the Diplomatic Conference
2) Receipt of Proposals	60 days after conclusion of the Diplomatic Conference
3) Award and Notice to Proceed	Approximately 60 days after receipt of proposals
4) Commencement of Test Phase	No later than 6 months after Award & Notice to Proceed
5) Completion of Test Phase	No later than 8 months after Award & Notice to Proceed
6) System Implementation and Commissioning ²	No later than 12 months after Award & Notice to Proceed

3. Submissions.

a. Proposals should address both technical capabilities, experience and cost/price issues as discussed in paragraphs 4 and 5 below. Proposals will be treated as confidential and will be reviewed and evaluated for negotiations and award purposes only.

b. Proposals should be addressed to the competent [authority] at [address] so as to be received not later than [date].

4. Technical Proposal.

Each State electing to submit a technical proposal must address the following:

- a. The Requirements Document (**Attachment 2**) in detail.
- b. Responsible Entity and Locations of Facilities.

(Articles 15 and 16 of the draft Basic Convention refer to a the Authority that establishes the International Registry and a Registrar that ensures its efficient operation (collectively the International Registration System). It would appear that the Registrar may play a critical role in the functional design and operation of the International Registry. Therefore, for purposes herein, a submitting State may assume that it will either be designated Registrar or, if not, that the State entity will play a significant role in developing the functional design and operation of the International Registry.)

Submitting States should describe the entity (e.g., government agency, contractor); its role (e.g., Registrar); responsibilities (e.g., develop software, hardware, specifications, provide site, etc.); and proposed location and facilities of the International Registry.

c. Technical Capabilities and Capacities.

(1) Technical Capabilities. Each State should address its possession of the unique technical capabilities required to perform along with its implementation approach in fulfilling the requirements contained in the RD (Attachment 2).

² For discussion on Commissioning see the Requirements Document for the International Registry paragraph 4.

(2) Technical Capacities. Each State should address its possession of the unique technical capacities required to perform along with its implementation approach in fulfilling the requirements contained in the RD (Attachment 2).

d. A Business Model. Ref. RD, paragraph 3, (Attachment 2).

e. Past Performance and Experience. Each State should identify all relevant past and present performance experience with designing, implementing and managing systems of similar complexity and magnitude. The information provided should demonstrate the State's ability to perform the proposed effort.

5. Cost/Price Proposal.

Each State is requested to provide a comprehensive schedule of estimated costs and prices in U.S. dollars and discuss the assumptions on which such estimates are based. The following list may be referred to as appropriate:

a. Start up costs.

Function related:

(1) Hardware design	\$ _____
(2) Hardware assembly	\$ _____
(3) Software design	\$ _____
(4) Software creation	\$ _____
(5) Communication system design	\$ _____
(6) Communication system creation	\$ _____
(7) Security system design	\$ _____
(8) Security system creation	\$ _____
(9) Real time backup system	\$ _____

Site and Facility Related:

(10) Site acquisition cost (already owned, by purchase, or by lease)	\$ _____
(11) Site preparation	\$ _____
(12) Site construction	\$ _____
(13) Furniture and equipment	\$ _____

Miscellaneous:

(14) Permits	\$ _____
(15) Insurance	\$ _____
(16) Legal expenses	\$ _____
(17) Other	\$ _____

Total: \$ _____

b. Yearly Operating Cost of International Registry.

(1) Personnel (wages and benefits for Registry operations)	\$ _____
(2) Hardware replacement, update and maintenance (including personnel)	\$ _____
(3) Software replacement, update and maintenance (including personnel)	\$ _____
(4) Building maintenance and building janitorial (including personnel)	\$ _____
(5) Building security (including personnel)	\$ _____
(6) Rent (see 5.a.(9) above)	\$ _____
(7) Utilities	\$ _____
(8) Insurance	\$ _____
(9) Taxes	\$ _____
(10) Permit Renewals	\$ _____
(11) Legal expenses	\$ _____
(12) Other	\$ _____
Total	\$ _____

6. Instructions for Submission of Proposals. The instructions for submission of technical and cost/price proposals are contained at Attachment 3.
7. Evaluation.
 - a. Proposals will be evaluated in accordance with a pre-established Evaluation Plan found at Attachment 4.
 - b. Proposals will be evaluated and award made on the basis of overall best value.
 - c. The proposals will be evaluated, rated, and scored based on submissions and subject to consideration of the following factors:
 - (i) Technical requirements,
 - (ii) Technical capabilities and capacity,
 - (iii) Business model,
 - (iv) Past performance and experience,
 - (v) Cost/Price

Attachment 1

**Basic Features
of the proposed International Registry
contemplated by the Convention
as modified by the Aircraft Equipment Protocol**

This document sets out the basic features of the registry (“*international registry*”) contemplated by the proposed Convention on International Interests in Mobile Equipment (“*convention*”),¹ as modified by the Aircraft Equipment Protocol (“*aircraft protocol*”).² It will not address the particulars contained in the International Registry Task Force's Requirements Document (“*requirements document*”),³ most notably the technological parameters contained therein. Rather, this document is intended to *clarify basic conceptual matters impacting the system's essential purpose and architecture*. Part I will summarize the basic characteristics of the international registry. Part II will describe the salient features of the convention/aircraft protocol relating to the international registry. Drawing upon Parts I and II, Part III will address select operational aspects impacting the international registry's design.

Part I Summary of Basic Characteristics of the International Registry

1 The international registry will be organized by *aircraft object, not debtor*. With respect to ratification instruments and their associated declarations, it will be organized by *Contracting State*.

Notes: Registrations⁴ and searches will be made, and their results issued, with reference to the manufacturer's serial numbers of aircraft objects. The convention/aircraft protocol secondarily contemplates the publicity of ratification instruments, including declarations by Contracting States, *via* the international registry. These will be organized and searchable by reference to Contracting States.

2 The international registry will be *wholly electronic*.

¹ See Report of the 31st session of the Legal Committee (Doc 9765-LC/191), Attachment D, Part I.

² See Report of the 31st session of the Legal Committee (Doc 9765-LC/191), Attachment E, Part I.

³ See Report of the International Registry Task Force, dated February 2001, submitted to the Secretariats of UNIDROIT and ICAO by Georges Grall (France) and Joseph Standell (USA), Co-Chairmen.

⁴ Unless specified otherwise, references herein to “registrations” include amendments, extensions and discharges. Cf. convention, Art. 15(3).

Notes: Registrations and searches will be made solely by electronic means.⁵

3 The international registry will serve the sole function of establishing priorities among competing, valid claims. The act of registration neither presupposes nor is an aspect of that essential validity.

Notes: The act of registration establishes first-in-time priority, should the interest notified in the registration exist, or, in the case of prospective interests, be created.⁶ Registration does not presuppose a validly existing underlying interest. Nor does registration constitute a step in the process of creating an interest. It simply provides an objective rule-of-decision in the case of competing, valid claims.

4 Priority will be established on a first-in-time basis. First-in-time refers to when an interest is searchable in the international registry.

Notes: This rule permits searching parties to rely on search results, thus enhancing the overall utility of the registry system. Registrants, theoretically burdened by this rule, can self-protect by searching for their own registrations prior to advancing funds or relinquishing possession, as the case may be. An advanced electronic system, coupled with the ability to register prospective interests, each contemplated by the convention/aircraft protocol, permits such registrant self-protection.

5 The international registry will be a minimalist, noticed-based system.

Notes: The absolute *minimum information* needed to put all searchers *on notice* of the asserted or contemplated existence of interests will be permitted and required: (i) names, (ii) contact details, (iii) type of registration (e.g., “international interest” or “contract of sale”) and duration, and (iv) asset description.⁷ Documents may not be registered.

6 The registrar's role will be administrative, not interventionist, with risk management addressed through system design.

Notes: The registrar will not assess the accuracy of submitted information or the authority of a registrant to act. However, the system will be designed with a view towards (i) minimizing the risks of unauthorized registrations bearing in mind the minimalist nature of the system, and (ii) preventing registrations which are manifestly implausible or which otherwise do not contain the required information..

7 The supervisory authority will supervise the registrar and the operation of the international registry in accordance with the basic principles of the convention/aircraft protocol as summarized herein.

Notes: The supervisory authority, after consultations, promulgates regulations. Upon request, it may provide the registrar with guidance. Finally, it will establish procedures for dealing with complaints. The foregoing, however, is understood in a broader context. The supervisory authority is to ensure that an efficient noticed-based registration system exists.

8 Contracting States may designate (exclusive or nonexclusive) entry points for transmission of registration information for select aircraft objects, and such entry points are not part of the international registry as such.

Notes: In effect, such entry points or their designees are users, like any others, with one additional characteristic: Contracting States designating such entry points may impose conditions to be satisfied

⁵ The standard means of providing registration confirmations and search results will be electronic.

⁶ The criteria for valid creation is set out in the texts (e.g., convention, Arts. 6 (international interests) and 30 (assignments) and aircraft protocol, Art. V (contracts of sale), as supplemented by applicable law, to the extent required by convention Art. 5(2).

⁷ See *infra* note 57 for points relating to noting the nationality registration of select aircraft objects.

prior to transmission of such registration information to the international registry.⁸ An entry point designation shall not, however, restrict the ability of parties to directly search the international registry. The liability, if any, of entry point operators for their errors and omissions, is determined by applicable national law, not the convention/aircraft protocol.

Part II Salient Features of the Convention/Aircraft Protocol relating to the International Registry

1 Various interests⁹ in *aircraft objects*,¹⁰ are prioritized¹¹ on a first-in-time registration basis,¹² by virtue of the convention/aircraft protocol's basic priority rules.¹³ These rules are objective and not dependent on a registrant's lack of knowledge of other interests. Parties searching the international registry can rely on the results. The only other rights or interests that may affect such priority are certain non-consensual ones,¹⁴ declared by a Contracting State¹⁵ as preferential¹⁶ and so publicized in the international registry.¹⁷

2 Registration status is obtained by electronic entry into an *international registry*,¹⁸ operated by a *registrar* appointed¹⁹ and supervised by a *supervisory authority*²⁰ (that, in turn, periodically reports

⁸ See *Report of the 31st session of the Legal Committee* (Doc 9765-LC/191) at para. 3:86. Given the importance of avoiding any doubt on this agreed point, it is recommended that the matter be expressly set forth in convention, Art. 17(4) or aircraft protocol, Art. XVIII.

⁹ International interests (security agreements, title reservation agreements and leases) and related subrogations, subordinations and assignments, together with non-consensual rights and interests, notices of national interests, and contracts of sale. See convention, Art. 15(1) and aircraft protocol, Arts. III and V.

¹⁰ Aircraft engines, airframes and helicopters meeting the minimum specifications contained in aircraft protocol Art. I (b), (e) and (l), respectively.

¹¹ If an interest was not validly created in accordance with the convention and applicable law, see *supra* note 6 and accompanying text, it cannot be the subject of a priority dispute. For example, if the debtor lacked title or did not have the company power to enter into the transaction, it would not have the “power to dispose” of the object, as required by convention, Art. 6(b). Thus, the fact that a creditor's international interest was registered would have no legal significance.

¹² This includes “prospective” interests – intended future interests (see convention, Art. 1(x)-(y)) – which *do not exist at the time of registration*. For example, if a prospective international interest is registered and subsequently becomes an international interest, its priority is determined from the date of initial registration. See convention, Art. 18(3). To ensure fairness in this regard, a debtor can require a creditor to discharge a prospective interest any time prior to that creditor's giving or committing to give value. See convention, Art. 24(2).

¹³ See convention, Art. 28 and aircraft protocol, Art. XIV. In addition, registration of international interests and contracts of sale prior to the commencement of insolvency proceedings ensures that they will be effective in such proceedings. See convention, Art. 29 and aircraft protocol, Art. III.

¹⁴ See convention Arts. 1(s) (any right “conferred by law” to secure an obligation). A decision was made not to attempt to internationally harmonize priority rules in this sensitive area, thus avoiding the parallel problems encountered in several other international treaties.

¹⁵ Yet, States must declare which nationally preferred non-consensual rights and interests have priority without registration and are to retain that preference. They are bound by that declaration, and may only amend it prospectively. However, States may make a general and/or prospective declaration. See convention, Art. 39.

¹⁶ Convention, Art. 39 implies that the priority of such declared categories is established as of the time a declaration is “deposited” with the depositary. This standard is at odds with the “noticebased” nature of the system, which would require such priority from the time the declaration is “searchable” in the international registry. This would be consistent with the thinking underlying convention, Art. 18. Moreover, as declarations take effect six months after the date of deposit, such a standard would not cause any problems in practice. Accordingly, consideration should be given to revising Art. 39 with a reference to searchability.

¹⁷ See *id.* Art. 22. More broadly, it is contemplated that the international registry would publicize the contents of all ratification instruments (received from the depositary), including the various declarations contained therein. See aircraft protocol, Art. XXXIII(2)(c).

¹⁸ Created on the legal authority of the convention/aircraft protocol, and its contemplated establishment by the supervisory authority. See convention, Arts. 1(p), 15(1) and 16(2)(a).

to Contracting States). Supervisory activities include the issuance of binding operational regulations, the establishment of complaint procedures, and the ability to provide requested guidance.²¹

3 In view of time differences and the need to avoid preferred regions, the international registry will be operated on a twenty-four (24) hours a day,²² seven (7) days a week basis.²³

4 As the convention/aircraft protocol concerns itself with interests in specified aircraft objects, not general airline financing, registrations and searches are made against such objects, not the debtor's name. The criterion for an object is the manufacturer's serial number, supplemented (as necessary) in the regulations to ensure uniqueness.²⁴

5 First-in-time denotes the time when a registration is “searchable,” meaning when it is stored in durable form, may be electronically accessed at the international registry, and is assigned a sequentially ordered file number.²⁵

6 The convention specifies who is legally entitled to submit registrations.²⁶ In other words, if a party lacking that legal entitlement submits a registration, while it may *appear* on a search result, *it would have no legal effect*. Whether the submitting party is so entitled is justiciable: if in dispute, the matter – which may be legal, factual or both – will be settled by a court with jurisdiction under the convention.²⁷ It will not be determined by the *ex ante* (time of registration) intervention²⁸ of the operator or supervisor of the international registry.

7 The implications of the preceding point – that in a limited-purpose, efficient electronic registry, there will be no human vetting – extend to other legal and factual questions. These include whether (i) the convention/aircraft protocol applies at all,²⁹ (ii) a party has the rights that it purports to dispose,³⁰

19 The texts contemplate an initial five (5) year appointment with the possibility of reappointments. *See* aircraft protocol, Art. XVI(2).

20 *See* convention, Art. 16(1) and aircraft protocol, Art. XVI(1) (designation of supervisory authority). If requested by the diplomatic conference, ICAO has agreed in principle to act as supervisory authority. *See Summary of Decisions of the 161st Council* (C-DEC 161/9) at para. 10(e).

21 *See* convention, Art. 16(2) (responsibilities of supervisory authority). Intentionally omitted from these supervisory functions is the power to require or permit the registrar to change any data relating to a registration.

22 It is recommended that, without qualifying the basic idea of all-time-zone coverage, some limited flexibility be added to this requirement reflecting technical, cost driven industry standards. More particularly, a revised standard should be in accordance with para. 5.2 of the Requirements Document.

23 *See* aircraft protocol, Art. XIX(4) (and contrast the standard business hours of designated “entry points”).

24 *See* convention, Art. 18(5) and aircraft protocol, Art. XIX(1).

25 *See* convention, Art. 18(2). The effect of this provision is to permit searching parties to rely on their search results. Undisclosed submitted entries will not constitute “registered interests” for priority purposes.

26 The detailed provisions are contained in convention, Art. 19 and aircraft protocol, Art. III. The general rule – applicable to international interests and contracts of sale, including prospective interests and assignments – is that either transaction party may register with the written consent of the other. Subordinations, subrogations and discharges are made by the party divesting itself of rights. Non-consensual rights and interests and notices of national interests are registrable by the holder thereof.

27 A claim that a registration was made by a party lacking the legal entitlement to do so would be a “claim brought under this [c]onvention” for purposes of the jurisdiction provisions. *See* convention, Arts. 41 and 44.

28 *See, e.g.,* convention, Art. 17(2) (no “evidence” that a “consent to registration” is required as a condition to effecting a registration).

29 Whether an object meets the definition of an “aircraft object” (e.g., size requirements), *see supra* note 10 and accompanying text, and whether one of the convention/aircraft protocol's connecting factors has been satisfied (debtor being “situated” in a Contracting State, or, where relevant, actual or contemplated nationality registration therein). *See* convention, Arts. 3 and 4 and aircraft protocol, Art. IV(1).

30 Whether, for example, the debtor has title to the object. If not, an international interest would not be constituted. *See* convention, Art. 6(b).

and (iii) the submissions were made by a party with internal power to act.³¹ Courts will settle these matters, in the case of dispute. Such matters will not be addressed by the registrar as part of its administrative function.

8 Accordingly, the *conditions to registration*, namely, the items to be satisfied prior to registration, are minimal.³² Compliance with the electronic application form,³³ together with a payment of the required fee,³⁴ is all that is required. Registrations that do not satisfy the foregoing conditions will be electronically rejected.

9 A different approach has been taken where a Contracting State declares that registrations may or must be submitted through a designated entry point in its territory.³⁵ It may do for select aircraft objects³⁶ with a required nexus to that State.³⁷ (No such declaration is permitted for searches of the international registry, which may be made by any person, from any location, for any purpose.) Where such a declaration is made, the Contracting State may require that national conditions be satisfied prior to transmission of the registration information by the entry point to the international registry.³⁸

10 Registrations will remain effective until the earlier of (i) their discharge, and (ii) the expiry of the period specified in the registration.³⁹ Discharge is the responsibility of the beneficiary of a registration,⁴⁰ where the underlying obligations have been fully performed.⁴¹ In the case of discharge – and amendment technological systems will be put in place to minimize the risk of unauthorized action by requiring a matching of the electronic signature of the initial registrant and that of the amending or discharging party.

11 The supervisory authority will do all things necessary to ensure that an efficient notice-based registration system exists.⁴² It will own all proprietary rights in the data and archives of the

³¹ Whether, for example, the debtor had received its required internal company or corporate approvals. If not, an international interest would not be constituted. *See id.*

³² This concept (often couched in terms of “efficiency”) has been at the center of all developmental work on the proposed international registry. Its remains a principal objective in finalizing the system. *See paras. 2.3 and 3 of the Requirements Document.*

³³ Limited, additional information (i.e., the initial registration file details) will be required on electronic forms for discharge and amendment.

³⁴ A cost-recovery fee schedule will be set by the supervisory authority. *See convention, Art. 16(2)(h) and aircraft protocol, Art. XIX(3).* Payment mechanism (debit arrangements and/or accounts) are matters of system design and/or of operational regulations.

³⁵ Permitted by convention, Art. 17(4) and aircraft protocol, Art. XVIII. Such entities are not part of the international registry, in particular for purposes of liability, insurance requirements and fee arrangements. More broadly, the operators of the designated entry points are not subject to oversight and supervision by the supervisory authority (but, like any user, would need to comply with applicable use-related regulations).

³⁶ As they lack nationality, aircraft engines are not subject to such a designation.

³⁷ *See id.* (establishing a nexus of nationality registration in, or interests arising under, the laws of that Contracting State).

³⁸ *See supra* note 8 and accompanying text.

³⁹ *See convention, Art. 20.*

⁴⁰ This creditor responsibility is without prejudice to a debtor's right to seek an *in personam* order against the creditor by a court with general jurisdiction under the convention/aircraft protocol, or, in the circumstances and by the court specified in convention, Art. 43, relating to an order directly binding on the registrar.

⁴¹ *See convention, Arts. 19(3) (discharge by the favored party) and 24 (requiring discharge by the party entitled to do so in specified circumstances).*

⁴² *See convention, Art. 16(2)(i).* This standard is simultaneously broad and confined. It is broad in the sense of providing the supervisory authority with plenary powers, subject to its obligation to periodically report to Contracting States. Yet it is confined. That power must be exercised in service of a registry system with certain characteristics: efficiency, electronics and notice-based priorities.

international registry,⁴³ have international legal personality,⁴⁴ and enjoy appropriate immunity from legal or administrative processes.⁴⁵

12 The registrar will ensure efficient operation of the international registry, and perform the functions assigned to it by the convention/aircraft protocol⁴⁶ and the regulations.⁴⁷ It will be liable for compensatory damages for losses suffered by its error or omission or a malfunction of the international registry.⁴⁸ The diplomatic conference will determine whether a *force majeure* exception to this liability is appropriate, and, if so, its contours.⁴⁹ The registrar shall procure full insurance or financial guarantee covering its liability.⁵⁰

13 Courts of the place of the registrar's *centre of administration*⁵¹ have limited but exclusive⁵² jurisdiction over the registrar. It is limited to (i) matters relating to the registrar's liability, (ii) requiring discharges of registrations where parties required to so discharge no longer exist or cannot be found, and (iii) situations where a person fails to comply with an order of a court having jurisdiction under the convention/aircraft protocol.⁵³ Otherwise, and unless waived by the supervisory authority, the registrar will have functional immunity, and its assets and materials will be immune from seizure or other legal or administrative process.

Part III Select Operational Aspects impacting the design of the International Registry

1 In view of the importance of search results, *descriptive, synoptic search certificates* will be issued chronologically summarizing all registrations, amendments and discharges⁵⁴ with respect to the searched aircraft object.

⁴³ See convention, Art. 16(4). Questions relating to rights in the hardware and software will be addressed in the process of establishing the international registry.

⁴⁴ See convention, Art. 26(1). That provision implicitly acknowledges that a potential supervisory authority, for example, ICAO, may already have international legal personality. Where that is the case, it will be acting under the convention/aircraft protocol with that status. The supervisory authority may be required to take juridical action under national law (e.g., contracting or litigating in respect of its proprietary rights in the international registry). Accordingly, it is recommended that, in the event the supervisory authority does not already have domestic legal personality, it be so granted.

⁴⁵ See convention, Art. 26(2). The diplomatic conference will determine whether that immunity is functional or absolute.

⁴⁶ Expressly including the issuance of search results, see Convention, Art.21, which shall constitute *prima facie* proof of their contents. See convention, Art. 23.

⁴⁷ See convention, Art. 16(5).

⁴⁸ The broad allocation of responsibility is designed to establish user confidence in the system, particularly in the start-up phase. See convention, Art. 27(1).

⁴⁹ See *id.* The associated cost implications of a *force majeure exclusion* will be an element considered by the diplomatic conference in the finalization of this provision.

⁵⁰ See convention, Art. 27(2) and aircraft protocol, Art. XIX(5)

⁵¹ See convention, Art. 43(1). This is a functional rather than formal standard (e.g. the statutory seat or place of incorporation), selected in light of the practicalities of the subject litigation.

⁵² In this context, exclusive jurisdiction is required to avoid the prospect of inconsistent orders from different national courts, each purporting to bind the registrar in connection with its treaty-based, international responsibilities. See convention, Art. 43(4).

⁵³ See convention, Art. 43(1)-(3). The limited nature of this jurisdiction reflects the basic philosophy of having courts with jurisdiction under the convention issue *in personam* orders against transaction parties (requiring them to take actions with respect to the international registry), rather than having courts issue orders binding upon the registry. The residual jurisdiction noted in Art. 43 addresses only the identified problems in that regime.

⁵⁴ Whether or not the discharged registration is archived. This approach will permit a complete *history* of registered interests in the object, which may prove useful in the case of subsequent disputes.

2 The system will be designed to ensure chronological processing,⁵⁵ and, correspondingly, sequential numbering of registrations. *Precise* timing information will be electronically contained in registrations and searches.

3 The contemplated wholly electronic, notice-based registry system produces significant efficiencies, including lower registry operating and insurance costs. The feasibility of *multiple electronic signatures/consents* will be explored, and, in any event, appropriate *access and tracing procedures* will be employed. State-of-the-art *preservation and back-up systems, error-correction techniques*, and *security precautions* will be utilized.⁵⁶

4 There is no need for extraneous information in registrations, given the limited function of the international registry (notification and priority). The operational objectives of the international registry will thus be achieved by requiring only ⁵⁷ the (i) names, (ii) contact details, (iii) type of registration (*e.g.*, “international interest” or “contract of sale”) and duration, and (iv) specific description of the object (manufacturer's serial number and manufacturer name and model).

5 Electronic forms will be standardized and formalized, and all registrations, searches and certifications will be made using such forms.

6 Particularly during the start-up phase, there will be the need for an assistance desk to address pressing procedural or technical queries.⁵⁸

7 The question of registry language(s) will be addressed by the diplomatic conference. From an operational perspective, should more than one language be employed, pluri-lingual electronic forms, with standardized translations, are required.

Attachment 2

**Requirements Document
(RD)
for the
International Registry System**

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- 2. GENERAL DESCRIPTION OF THE INTERNATIONAL REGISTRY REQUIREMENTS .**
 - 2.1 Convention and Protocol
 - 2.2 The Authority and Registrar
 - 2.3 Additional Characteristics
- 3. OBJECTIVES AND BUSINESS MODEL**
- 4. TESTING AND IMPLEMENTATION SCHEDULE**

⁵⁵ In line with convention, Art. 17(3).

⁵⁶ The minimum requirements for these items are set out in the paras. 5-7 of the Requirements Document.

⁵⁷ While there is no legal reason to include nationality registration information on the registration form, as the convention/aircraft protocol establishes priority on the basis of registrations by manufacturer's serial number, in line with the text's definition of aircraft objects, certain practical advantages may be obtained from the inclusion of this information even if only for information and research purposes. However, since such information need not be updated, it may become inaccurate.

⁵⁸ See para. 5.4 of the Requirements Document.

- 5. **TECHNICAL REQUIREMENTS**
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- 7. **SYSTEM REQUIREMENTS**
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- 1. **Overview**

This is the baseline Requirements Document (RD) for the International Registry System.

- 2. **General Description of the International Registry Requirements (also see Attachment 2 to the Request for Proposal entitled “Description of the International Registry”)**

- 2.1 **Convention and Protocol**

To facilitate asset-based financing of mobile equipment, particularly aircraft equipment, countries are considering entering into a Convention On International Interest in Mobile Equipment along with a Protocol specific to aircraft equipment including certain large airframes, engines, and helicopters. The Convention and Aircraft Equipment Protocol contemplate the establishment and operation of a modern, electronic International Registry System (hereafter referred to as the System) which will enable lenders, conditional sellers, lessors and others to register their interest electronically. These interests should then be immediately searchable electronically from anywhere.

- 2.2 **The Authority and Registrar**

The Authority has responsibility for the establishment of the System, and except as otherwise provided by the Protocol, appointment and dismissal of the Registrar who in turn will operate and maintain the System.

- 2.3 **Additional Characteristics**

It is anticipated that the System will be responsible for registering thousands of interests in aircraft objects annually. It is anticipated that registrations will contain only minimal information, such as names and addresses of parties, unique description of object, and type of transaction, e.g., security agreement, title reservation, agreement, or leasing agreement. It will be a notice-based, electronic system. The System should be able to accommodate a multiple number of simultaneous entries and reviews. It is extremely important that interests be entered quickly and accurately, and that they be searchable immediately worldwide.

3. Objectives and Business Model

The objectives are to provide an efficient, reliable and secure electronic registration system as contemplated by the Convention and Aircraft Equipment Protocol. States submitting proposals shall set out in detail their business model and methods to achieve these objectives, which shall describe all steps from the requirements analysis (and the assumptions made therein) through the delivery and implementation. Without limiting the foregoing such proposal shall comprehensively address risk assessment and management as well as the financing of the system and expectations for cost recovery.¹

4. Testing and Implementation Schedule

The test phase will be conducted no more than 6 months after contract award/notice to proceed to ensure that the System will meet requirements. Completion of the test phase shall be no more than 8 months after contract award/notice to proceed. Full implementation and commissioning ² of the System will be completed following a successful completion of the test phase no more than 12 months after contract award/notice to proceed.³

5. Technical Requirements

Languages of the Registry ⁴

The following assumptions shall be made in consideration of the language(s) the International Registry System:

- 1 Functions will relate to input, output, and customer services.
- 2 It will be a one-language system, based on the Latin alphabet, or
- 3 The system will support two languages, based on the Latin alphabet.

5.1 The System shall require the implementation of a scaleable, i.e., would provide easy modification without the necessity of redesigning the entire system, Internet or Intranet architecture allowing for powerful servers dedicated to managing disk drives, printers, or network traffic, etc. This involves the construction or lease of a centralized, highly available client/server data center.

5.2 The System will be required to be available 97 percent (which is the industry standard) of the 7-day workweek for full users to accommodate operational facilities in all time zones. The 3 percent non-availability contemplates maintenance, power outages, hardware problems, etc. Maintenance shall not be performed during peak periods. (What constitutes peak periods may be defined at a later time. They will not be so extensive as to interfere with the accomplishment of maintenance.)

5.3 The System shall ensure that data is not manipulated, unauthorized registrations are not added and the data is not altered.

¹ Key terms with respect to cost recovery may include: Cost Recovery Mechanism, Forecast Period, Initial Funding Costs, Operating Funding Costs, Registry Costs, Registry Cost Assumptions, and Registry Use Assumptions.

² Commissioning is likely to involve issuance of a document by the Authority/Registrar, which certifies the System and authorizes the continuing performance of tasks related to the operation of the International Registry. It is understood that commissioning of the System may take up to 3 months after implementation. However, the System must be implemented and operational within 12 months after Contract Award/Notice to Proceed.

³ It is noted that other legal provisions of the Convention and Aircraft Equipment Protocol might take effect before the International Registry System.

⁴ Offerors are invited to comment generally about technical and cost factors related to developing a system in multiple languages, assuming the possibility of at least one non-Latin based alphabet language.

5.4 The minimum requirements for technical support will be to provide a help desk to users 24 hours, 7 days a week via telephone and/or electronic mail. Support will be provided for any problems due to technical difficulties including but not limited to telecommunication failures, software problems, etc.

5.5 The System shall have contingency and data recovery plans that ensure the integrity and restoration of the system. This plan would include, but not be limited to the following:

5.5.1 A document tracking capability for documents entered by users.⁵

5.5.2 A tracking capability to ensure an historical record of information and to allow point-in-time reporting of all data manipulation activities performed by each user, including date and time stamps, user identification, Internet Protocol (IP) addresses and dynamic Internet addresses on every record.

5.5.3 The System shall maintain current and historical tables. In the case of a system failure, the System shall be required to restore records to the point-in-time the system failed.

5.5.4 The System shall have the capability to restore, in accordance with the Regulations one or more records, e.g., accidental release of an interest.

5.5.5 The records will be stored on electronic media in a secure area at a separate location from the hardware and archived in reasonable time intervals for the System.

5.6 Historical records shall be stored in the database. Any records deleted from the database, e.g., interests, which have been released, shall be archived indefinitely.

5.7 The sizing information/requirements identified in Table 1 are approximate.

Table 1 6

Transactions ⁷	Airframes	Aircraft Engines	Helicopters	Totals ⁸
Totals (over a twenty year period)	174,000 filings 196,000 searches 131,000 certificates issued	400,000 filings 450,000 searches 302,000 certificates issued	55,000 filings 61,000 searches 42,000 certificates issued	629,000 filings 707,000 searches 475,000 certificates issued
Totals Per Years (assuming proportionate distribution of total)	8,700 filings 9,800 searches 6,550 certificates issued	20,000 filings 22,500 searches 15,100 certificates issued	2,750 filings 3,050 searches 2,100 certificates issued	31,450 filings 35,350 searches 23,750 certificates issued

6. Operational Requirements

The users of the system will be:

i. the general public including, in particular, airlines and financial institutions and their legal counsel, and,

⁵ The term users, as mentioned throughout the Requirements Document, shall mean either those who register international interests or those conducting searches within the International Registry.

⁶ The estimates in this chart are very tentative and wholly unofficial. They are based on a range of assumptions, including adoption of the Convention/Aircraft Equipment Protocol by States, which take the largest percentages of aircraft equipment deliveries. Other important assumptions address the duration of transactions, the applicable financing practices, and the final transitional rules. In particular, if Alternate B of Article Z of the Convention is selected, the aggregate number of filings will be higher.

⁷ Transactions consist of secured debt financing, financial leases, operating leases, assignments or sales of interests in the foregoing transactions, contracts of sale and voluntary restatements of existing transactions.

⁸ Proposals should consider the effect of increases in total transactions each year. For example, consider a ten percent increase each year for ten years.

ii. civil aviation authorities to the extent declared by States under the Aircraft Equipment Protocol.

The System shall provide:

6.1 A web site for the single point of entry. The system must accommodate Internet browsers released within the past two years.

6.2 Users will have the ability to review accuracy of data entry before the record is saved to the database.

6.3 A means to share information between processes, edit data upon entry, and reject, record, report bad data and prevent it from being stored in the database.

6.4 A method to issue a search certificate for each registration, providing for on-line display and printing by user.

6.5 A means for ensuring data cannot be altered once stored in the database.

6.6 A mechanism for registry personnel to correct errors.

6.7 A provision for multiple screens for data entry related to registration of a single interest.

6.8 The capability to archive records automatically in the database for registrations that are no longer valid in accordance with established criteria (to be determined).

6.9 Currency of the fees to be in 'x' country's currency.

6.10 Entry of information by users connected to an electronic signature having the following characteristics:

6.10.1 Uniqueness and non-repudiation of signature

6.10.2 Irrefutability of signature ⁹

6.10.3 Linkage of signature to document

6.10.4 Inalterability of document

6.10.5 Capable of accommodating (1) one electronic signature (e.g., the creditor), and (2) two electronic signatures (e.g., debtor and creditor). (Alternate proposals should be submitted.)

6.11 Ad hoc reporting capabilities.

6.12 User's ability to download and/or query information, e.g., via file transfers, spreadsheets, for use with other software packages and automated systems.

6.13 The capability for printing information, e.g., reports, documents, certificates, etc.

6.14 An on-line help function to provide documentation for a particular data element on the screen.

6.15 On-line users' assistance to explain the capability of the System, including search and indexing capabilities.

6.16 Training for all users, including but not limited to, web-based tutorial training developed by the Systems, developer, which will guide the user through the process of entering and viewing transactions.

6.17 Validations on a secure system of the user's credit card or direct debit information prior to registration of an interest in an aircraft object.

6.18 A method for collecting fees for viewing, if any.

⁹ e.g. biometrics. Bidder should consider and explain the relationship between higher levels of irrefutability and cost.

7. System Requirements

The following are the minimum system requirements. The developer may add to these requirements by enhancements to the System.

7.1 Environment

7.1.1 Telecommunications

The System shall provide:

7.1.1.1 Accessibility using a current standard telecommunications protocol, e.g., Transmission Control Protocol/Internet Protocol (TCP/IP), and the World Wide Web. The protocol defines a common set of rules and signals that enables computers on the network to communicate.

7.1.1.2 Version-level compatibility between the server operating system (OS), the server Relational Database Management System (RDBMS), and the software.

7.1.1.3 Fault-tolerance, i.e., the ability of a system to respond to an unexpected hardware or software failure.

7.1.1.4 A web-based system, with multi-tiered architecture, having the flexibility to optimize performance and reduce resource bottlenecks. For example, these components may include:

7.1.1.4.1 The presentation processing logic layer (the application code that interacts with a device, e.g., end user's terminal).

7.1.1.4.2 The business processing logic layer (the application code that uses the input data to perform business tasks).

7.1.1.4.3 The data manipulation logic layer (the application code that manipulates data within the application).

7.1.1.4.4 The database management system processing layer (the actual processing of the database data that is performed by the database management system (DBMS)).

7.1.2 Workstation

7.1.2.1 The System shall provide user's access through common Internet browser products, released within the past two years. The Internet browser must be capable of employing data encryption, with the ability to access an Internet or Intranet web site.

7.1.2.2 The System shall be compatible with a workstation or resources found in a typical office automation setting and an upward compatible processor to allow software to run not only on the computer for which it was designed, but also on newer, larger, and more powerful models without converting the data.

7.1.3 Database

The System shall provide:

7.1.3.1 Standard data access methods to ensure adequate system and data availability for system users.

7.1.3.2 Data integrity and processing consistency by defining system level validation rules and business logic at the server database.

7.1.3.3 Capabilities to perform hot backups to ensure high system availability while supporting up-to-the-minute database recovery.

7.1.3.4 Enhanced configuration management support through a centralized implementation of business logic.

7.1.3.5 Flexible access by users needing data access through other commercial-off-the-shelf software packages, e.g., downloads to manipulate data on a spreadsheet.

7.1.3.6 Automated tools to assist in analyzing the data in respect to system performance.

7.1.4 Security

7.1.4.1 The System's security shall provide:

7.1.4.1.1 Firewalls to prevent unauthorized access to or from private networks. For greater security, data will be encrypted.

7.1.4.1.2 Access to authorized users only.

7.1.4.1.3 An automatic feature to logoff users because of inactivity.

7.1.4.1.4 Limitations of access to appropriate system components, i.e., administrative database functions, data entry, views, or reporting of users based on roles, privileges, and access availability.

7.1.4.1.5 Limitation of access for users to the operating system. Access will be only available through the presentation layer.

7.1.4.1.6 Software encryption processing that occurs between the client application layer and the software server. All transactions for registration will utilize data encryption while in transmission.

7.1.4.1.7 An on-line method to create and automatically assign user identifications and passwords.

7.1.4.1.8 The System shall include automated tools to record pertinent data in respect of the security and to provide assistance in analyzing this data.

7.1.4.2 Physical access security shall be required to the central service site.

7.1.5 Maintenance

7.1.5.1 Maintenance will include, but not be limited to hardware, software or telecommunication problems. All maintenance problems are expected to be resolved in a timely manner to ensure system availability in accordance with 5.2. If problems cannot be resolved immediately, users must be notified that the problem is being addressed and the approximate time it will take to resolve it.

7.1.6 Connect Times

Connect times should allow for time outs that tolerate time for States who take more time to download web pages. The System shall provide for Intranet ¹⁰ connect times for an entire action regardless of the number of users, as follows:

7.1.6.1 Direct Connect – less than or equal to 5 seconds (e.g. T1).

7.1.6.2 Remote Dial-Up – less than or equal to 20 seconds (e.g. ISDN or modem).

7.2 Application Infrastructure

7.2.1 Data

7.2.1.1 As will be set out in Regulations, the data elements to be accommodated and maintained in the database may include:

7.2.1.1.1 Names of parties (two or more)

7.2.1.1.2 Addresses of parties

7.2.1.1.3 Description of object by manufacturer's make, model, and serial number

7.2.1.1.4 Date of transaction

7.2.1.1.5 Types of transaction, e.g., security agreement, lease, conditional sale, etc.

7.2.1.1.6 Fees collected (describes the fee and amount in 'x' country's currency)

7.2.1.1.7 Date/time stamps, user identifications, and IP addresses

7.2.1.1.8 Other information ¹¹

7.2.1.2 The System shall provide:

¹⁰ Internet connect time standards will not be imposed on the System.

¹¹ Consideration may be given to permitting parties to provide the Chicago Convention registration number when making filings with respect to airframes and helicopters. That information would be for information-purposes only, as the Convention/Protocol employs a system which distinguishes between airframes and aircraft engines, and contemplates their respective manufacturers serial numbers as the sole identification criterion for registration.

7.2.1.2.1 The flexibility to add new data fields to support changes in the System processes and regulatory requirements without excessive data modification.

7.2.1.2.2 Unlimited capacity for new data elements in the database.

7.2.1.2.3 Configuration management for software releases.

7.2.2 Edits

7.2.2.1 The database shall have editing capability to display guidance when incorrect data is entered using list boxes, text boxes, check boxes or other GUI standards, to ensure compliance with Regulations, e.g., collection of fees, eligibility of aircraft objects, etc.

7.2.2.2 The System shall ensure no interest may be registered until the fee has been paid. The amount of the fee will be determined at a later time. 7.2.2.3 The System shall validate new data to ensure accuracy and consistency with existing data. For example, inconsistency of new data may prevent its entry into the system, such as inconsistency of assignment information with original interest.

7.2.3 Applications

The System shall reliably support on-line transaction processing (OLTP), transaction-based access where the computer responds immediately to user requests, including rollbacks and commits, i.e., rollback is the process of restoring protected resources to the state at the last commit point and commit is the process that causes the changes to the protected resources to become permanent. Data entry locking shall occur at the row level and provide other users and processes read access to “in-transaction” data.

7.2.4 Interfaces

7.2.4.1 The System shall provide the capability for reasonable state-of-the-art interfacing to heterogeneous (unlike) systems and databases.

7.2.4.2 The System shall provide the capability of high-speed data interfaces with the Chicago, Geneva, Non-Geneva Personal Property Registries databases and other databases, if desired.

7.2.5 Reporting

The System shall be capable of generating statistical and ad hoc reports, e.g. statistical reports on peak periods or selected transactions processed in a particular period.

7.2.6 Support

As part of the user’s logon process, a configuration management function shall be included that allows for automatic distribution of software enhancements from servers to client workstations.

8. Technology Enhancements

Technology enhancements are contemplated and encouraged in order for the System to remain current with advancing technology.

9. Technical Terms

- 9.1 DBMS Database Management System
- 9.3 GUI Graphical User Interface
- 9.4 IP Internet Protocol
- 9.5 ISDN Integrated Services Digital Network
- 9.6 KBPS Kilobytes per second
- 9.7 OLTP On-Line Transaction Processing
- 9.8 OS Operating System
- 9.9 RDBMS Relational Database Management System
- 9.10 TCP/IP Transmission Control Protocol/Internet Protocol
- 9.11 T1 Fixed bandwidth service to provide point-to-point links at a constant transmission rate of 1.544Mbps.

Glossary related to funding and cost matters (paper may be provided later).

Cost Recovery Mechanism – mechanism for recovery of Registry Costs through user fees, as adjusted from time-to-time.

Forecast Period – length of time over which Registry Costs will be recovered through user fees.

Initial Funding Costs – costs to create the IR.

Operating Funding Costs – expenses relating to the ongoing operational and supervision of the IR.

Registry Costs – Initial Funding Costs plus Operational Funding Costs.

Registry Cost Assumptions – assumptions relating to Registry Costs used in setting, and, as appropriate, adjusting fee schedules.

Registry Use Assumptions – assumptions relating to the use of the International Registry in setting, and, as appropriate, adjusting fee schedules.

Attachment 3

**INSTRUCTIONS
FOR SUBMISSION OF PROPOSALS
(TECHNICAL AND COST/PRICE)
FOR
INTERNATIONAL REGISTRY SYSTEM**

1. PROPOSAL CONTENT AND FORMAT

a. The overall proposal consists of two physically separate and detachable volumes, individually titled as follows:

VOLUME I – TECHNICAL PROPOSAL – Technical proposals are to be submitted as separate and complete sections for each of the Technical Evaluation Factors outlined in Technical Evaluation Plan (TEP).

VOLUME II – COST/PRICE PROPOSAL – The cost/price proposal is to be submitted separately and will address estimated costs and prices as outlined in paragraph 5 of the RFP.

b. The required number of copies of each proposal volume is as follows:

<u>Volume</u>	<u>Required Number of Copies</u>
I (Technical)	5 copies
II (Cost/Price)	5 copies

c. Offerors are to submit a proposal which is clear and comprehensive without the need for additional explanation or information.¹ The Supervisory Authority may make a final determination of the successful offeror solely on the basis of the proposal as initially submitted without requesting further information. Therefore, offerors are encouraged to provide their best proposal at the time of the initial submission. If it is deemed necessary, however, the Evaluation Team, at its discretion, may request additional information from offerors concerning clarification without substantially changing any proposal as submitted. The Evaluation Team may communicate with one or more offerors at any time during the solicitation and evaluation process.

d. To facilitate the evaluation, proposals are to be written clearly and concisely, neatly organized, indexed (cross-indexed as appropriate), and assembled in a logical manner. The pages of each volume are to be numbered (consecutively) and dated.

2. PREPARATION OF VOLUME I (Technical)

¹ Prior to negotiations with the awardee, no offeror will be permitted to modify its offer without permission with respect to any relevant award factor. No request to modify will be considered until all other offerors have first been notified and been given an opportunity to make similar modification. After the evaluation process is completed and a selection has been made, negotiations with the awardee may be conducted. These negotiations may lead to modifications.

a. The technical proposal must be sufficiently detailed to enable technically oriented personnel to make a thorough evaluation as to both its validity and practicality in order to arrive at a sound determination as to whether the proposed services meet the requirements set out in the Requirements Document (RD), Attachment 1 to the RFP. The proposal must be specific, detailed and complete to clearly and fully demonstrate that the offeror has a thorough understanding of the requirements for, and the technical problems inherent in, providing services of the character, scope and magnitude outlined in the RD.

b. Statements that the offeror understands, can, or will comply with all requirements of the RD, and statements paraphrasing the RD requirements or parts thereof, are considered insufficient. Phrases such as “standard procedures will be employed,” or “wellknown techniques will be used,” etc., will be considered insufficient.

c. Proposals should contain a table of contents and a matrix tracing the requirements in English of the RD to technical proposal content. Proposals shall be in narrative form, typewritten (no smaller than 12 point type), double spaced with 1” margins, on standard 8-1/2” x 11” or 8-1/4” x 11-3/4” (A4) letter size paper, and page numbers and date at the bottom of each page. Unnecessarily elaborate brochures or other presentations beyond that sufficient to present a complete and effective proposal are neither necessary nor desired.

d. The technical proposal will be limited to a total of 100 pages. Two-sided printing will be counted as 2 pages. Fold-outs will be counted as 2 pages.

3. PREPARATION OF VOLUME II (Cost/Price)

a. Each offeror must provide cost/price information to include sufficient details relating to the offeror’s estimated price. As a minimum, cost/price information should address estimated costs and prices as outlined in paragraph 5 of the RFP.

b. In addition to the number of copies set forth in paragraph 1b above, the offeror should submit, on a 3.5” diskette(s), a copy of any spreadsheet(s) containing calculations used to produce the written cost/price information.

Attachment 4

**EVALUATION PLAN
FOR
INTERNATIONAL REGISTRY SYSTEM**

I. OVERVIEW

a. This Evaluation Plan constitutes the guidance to be used by Evaluation Team members in the evaluation of all technical and cost/price proposals received in response to the Request for Proposal (RFP) for an International Registry System.

b. Evaluation Team.

1. An Evaluation Team (ET) will be comprised of individuals possessing both knowledge and expertise in the area in which they will perform their evaluation (i.e., technical or cost/price). No ET member shall have a conflict of interest, objectively assessed, and, without limiting the foregoing, each ET member shall declare that no such conflict exists.

3. The ET will be made up of between ____ to ____ members.

4. The ET will consist of a leader, technical subteam leader, cost/price subteam leader, and evaluators, and will be supported by advisors. The individual identified as the leader of the ET will possess an appropriate level of knowledge and experience with the evaluation process.

5. The ET members will be located at the same physical location during the evaluation process.

c. Proposals submitted in response to the RFP will be evaluated for the purpose of assisting the selection authority, to establish which offer constitutes the overall best value.

d. Summary results of the ET evaluations will be memorialized in the form of a written report. That report will provide a recommendation as to which offer represents the overall best value.

e. Overall best value means that an award may be made to an offeror other than the responsible offeror submitting the lowest cost/price proposal. As a result, best value determinations envision trade-offs between non-cost/price (hereafter collectively referred to as “technical”) factors and cost/price factors. In this instance, technical factors are considered to be more important than cost/price.

II. GENERAL GUIDELINES & RESPONSIBILITIES

a. ET members shall accomplish their respective evaluation in strict accordance with this plan.

b. ET Leader Responsibilities. The ET leader responsibilities and duties include:

1. Exercising oversight of all aspects of the ET;
2. Scheduling and conducting ET meetings;
3. Safeguarding all documentation;
4. Tabulating the results of team members' ratings;
5. Review of all documentation and proposals submitted by the offerors; and
6. Consolidating all comments from the subteam leaders and providing them in the

form of a written report (See I.d).

c. ET Subteam Leader Responsibilities. The ET subteam leaders will assist the leader in accomplishing his or her responsibilities, and will provide the daily direction to members of their subteams. The ET subteam leader responsibilities and duties include:

1. Developing documents (e.g., worksheets) to be used in the evaluation process as well as safeguards to insure against improper disclosure of information and conflicts of interest.
2. Exercising oversight of all procedural and administrative aspects of the ET subteam;
3. Scheduling and conducting ET subteam meetings;
4. Safeguarding all documentation;
5. Evaluating and reviewing all documentation and proposals submitted by the offerors;
6. Providing worksheets for respective area for evaluation;
7. Ensuring that subteam members evaluations are in conformance with the evaluation criteria guidelines;
8. Facilitating discussions to arrive at consensus among subteam members;

(Note: The ET subteam leader will review the appropriate evaluation results. If the worksheets indicate disagreement/inconsistency, the subteam leader will attempt to resolve the disagreement/inconsistency. The subteam leader will consult with evaluators individually or in a group and try to reach consensus. If the subteam leader is unable to reach consensus among the evaluators, the subteam leader will make the final decision. Whenever the subteam leader makes a decision under these provisions, the subteam leader will provide an explanation in the final subteam report as to the rationale for the decision).

9. Consolidating and summarizing all comments from ET subteam members and providing them in a report to the ET leader;

10. Preparing and providing briefings to explain ET subteam findings, when requested.

d. ET Evaluator Responsibilities. The ET evaluator responsibilities and duties include:

1. Assisting the ET in the evaluation process by providing specialized expertise as applicable;
2. Reviewing all proposals and documentation, submitted by the offerors in accordance with instructions of the ET subteam leader;
3. Evaluating proposals and submitting findings in writing to the ET subteam lead;

4. Completing evaluation worksheets for the specific area assigned to them; and
5. Ensuring that the proposals, documentation and evaluation comments in their possession are safeguarded.

e. **Advisors.** Advisors may be appointed to provide expert guidance to the ET and subteams in specialized areas. They will participate in on terms, and in the manner, established by the ET or Subteam leader, as the case may be. Advisors have the same responsibilities concerning safeguarding of documentation and disclosure of information as ET members. They shall declare any conflict of interest. They have no voice in making recommendations.

f. **Rating Process.**

1. ET members are to have read and become familiar with this Evaluation Plan (EP), the RFP and the accompanying Requirements Document (RD) prior to undertaking the evaluation of any proposal.

2. Each ET evaluator shall evaluate and rate each proposal independently.

3. Because of the sensitive nature of information provided in each offeror's proposal, ET members shall safeguard the proposals to insure confidentiality.

4. Each ET evaluator's rating shall be independent and ratings assigned shall not be compared with that of the other ET evaluators. At this point, the offeror's rating is tentative. Each ET evaluator shall keep a record of rating rationale in the "Comments" sheet (see Form B) provided and be prepared to discuss the rationale for ratings assigned.

5. For the final combined subteam rating of each proposal, significant deviations as between individual evaluators will be reconciled during a subteam meeting and a consensus rating determined (See "Note" at II.e.3 above).

6. After completing evaluations of individual proposals, offerors' proposal may be compared with one another.

7. It is most important that individual ET evaluators must make a careful written evaluation of the significant strengths, weaknesses, deficiencies, ambiguities, and risks found in each proposal with respect to each evaluation factor (See IV.a). Such documentation must be made concurrent with the evaluation of each proposal and be made a part of the ET's written report. All evaluations, working papers, worksheets, etc., shall be signed and dated by ET evaluators and shall be retained by the ET leader. The terms strength, weakness, deficiency, ambiguity, and risk are defined as follow:

8. The terms strength, weakness, deficiency, ambiguity, and risk are defined as follow:

(A) **Strength.** A strength is an element of an offeror's proposal that brings added value beyond that of a minimum requirement set out in the RFP (further reference to RFP is intended to include the RD).

(B) **Weakness.** A weakness is an element of an offeror's proposal that, while meeting the minimum requirements of the RFP, is presented in such a manner as to afford the offeror a less than desirable competitive position.

(C) **Deficiency.** A deficiency is a failure to address a substantial requirement of the RFP which, unless corrected, would render the proposal unacceptable.

(D) **Ambiguity.** An ambiguity refers to a relevant proposal statement that is incomplete or otherwise so vague that its intended meaning is unclear and, consequently, complete evaluation of the proposal would not be possible without obtaining a clarification.

(E) **Risk.** Risk represents a potential danger to successful performance of the requirement.

9. Upon conclusion of all evaluations, the ET will provide its recommendation to the Supervisory Authority, who will make the final selection.

III. THE EVALUATION PROCESS

The following items shall be addressed in order, during the evaluation process.

a. Clarifications of Ambiguities. As the initial evaluation is conducted, offers will be reviewed for the purpose of identifying any ambiguities that need clarification before actual initial detailed evaluation begins. Statements in various parts of the proposal, or a description of statement(s) that cannot be understood shall be identified so that any clarifying information can be obtained promptly from offerors. If possible, and to save time, initial detailed evaluations should proceed without responses to ambiguities. Additional clarifications may be made throughout the process, if required. Offeror's responses to the request for clarifications should be considered by the ET in the initial evaluation ratings.

b. Initial Detailed Evaluations. This evaluation is for the purpose of rating each proposal, and identifying weaknesses and deficiencies for possible identification to the offerors should discussions become necessary. In addition, significant strengths should be identified in the ET report.

c. Communications with Offerors. Communications (discussions) with offerors is permitted. Communications with an offeror or offerors may be desired where there is a need to seek clarification of ambiguities or to address weaknesses/ deficiencies and cost/price issues. Communications will be conducted in such a manner that avoids disclosure of the relative strengths and weaknesses of competing offerors, technical information or ideas, or cost/price data from any other offeror's proposal. ET members may be requested to participate in communications. The ET leader shall be the spokesperson for the ET.

d. Prior to negotiations with the awardee, no offeror will be permitted to modify its offer without permission with respect to any relevant award factor. No request to modify will be considered until all other offerors have first been notified and been given an opportunity to make similar modification.

e. Final Evaluation. Following any communications with an offeror resulting in clarification of ambiguities, corrections of weaknesses or deficiencies, or in the case of cost proposals any adjustments of price, the ET will conduct a final evaluation of the proposal. All supplemental information or revision to proposals shall be taken into account. Revised ratings will be accomplished, where appropriate, using the same designated evaluation procedures. All revised ratings shall be supported by notes containing comments and rationale. Results will be summarized and included in the ET's written report. The report shall, for each offeror, provide the evaluation results as determined by the evaluation factors for award.

f. After the evaluation process is completed and a selection has been made, negotiations with the awardee may be conducted. These negotiations may lead to modifications.

IV. TECHNICAL PROPOSAL EVALUATION

a. Each technical proposal submitted will be evaluated and scored by the ET technical subteam. The subteam will consider the following four (4) technical factors.

1. Technical requirements
2. Technical capabilities/capacity
3. Business model
4. Past performance and experience

b. Technical factors shall be equally weighted and shall be given equal consideration. Where sub-factors exist within a factor each sub-factor shall be equally weighted and shall be given equal consideration.

c. Technical evaluation rating. ET evaluators will evaluate and rate (score) each technical proposal using a numerical rating scale corresponding to a 4-point scale (4.0, 3.0, 2.0, 1.0, 0.0). Increments of .25 may be used. Each factor will necessarily be evaluated and scored using the same 4-point scale. In addition to scoring each technical proposal on each of the technical factors, each ET evaluator will descriptively support his/her numerical scoring of each technical factor by stating why

each numerical score (other than 2.0) was given. For the final rating, any significant deviations will be reconciled and a consensus rating determined by the ET. The numerical ratings must support the following described assumptions:

A. Excellent (4.0)

All aspects of the evaluation factor are addressed in a highly competent and logical fashion. Information provided clearly demonstrates that requirements can be met in a manner that far exceeds minimums. Weaknesses are not evident to any degree.

B. Good (3.0)

All aspects of the evaluation factor are addressed in a highly competent and logical fashion. Information clearly demonstrates that requirements can be met in a manner, which exceeds minimums. Weaknesses, if evident, are insignificant.

C. Satisfactory (2.0)

All aspects of the evaluation factor are addressed in a competent and logical fashion. Information indicates that minimum requirements can be met. Any weaknesses will not seriously degrade performance, or can be corrected with reasonable effort.

D. Marginal (1.0)

Most aspects of the evaluation factors are addressed. However, information provided does not demonstrate that minimum requirements can be fully met. Weaknesses are significant and will require considerable effort to correct.

E. Unsatisfactory (0.0)

Fails to address key aspects of the evaluation factor. Information provided indicates that minimum requirements cannot be met. Submittal demonstrates a lack of understanding of requirements in major areas. Weaknesses are significant and will require major correction(s).

d. To facilitate the evaluation and scoring of each technical proposal, an “Individual Rating Sheet” (see Form A) should be used by each evaluator.

e. The ET subteam's consensus ratings will be summarized on the “Summary Rating Sheet” (see Form C) as prepared by the ET subteam leader. The ET Subteam Leader will check worksheets for accuracy and completeness. Consensus ratings of all offeror's will be shown on the “Offeror Summary Scoring Sheet” (see Form D). (Additional worksheets may be developed to facilitate the scoring/rating process).

f. Evaluation Factors. Evaluation Factors 1 through 4 listed below are intended to determine the offeror's capabilities to effectively and efficiently accomplish the performance of the contract.

Factor 1: Technical requirements. Each proposal must demonstrate the offeror's knowledge and understanding of the technical requirements of the International Registry Program as set out in the Requirements Document (RD). Technical requirements involve: Technical Requirements, Operational Requirements, and System Requirements, identified in the RD at paragraphs 5, 6 and 7.

Subfactor 1-1: Technical Requirements – It is critical that the system developed by the offeror represent the latest state-of-the-art technology, e.g. scalable, web-based, 97 percent availability, data integrity, and data recovery. (Reference paragraph 5 of the RD).

Subfactor 1-2: Operational Requirements – It is critical that system developed by the offeror consider the usability of the system, e.g. users, integrity of the system, online help, reports, and other special requirements such as search certificate or electronic signatures. (Reference paragraph 6 of the RD).

Subfactor 1-3: System Requirements – It is critical that the system developers consider latest technology to give optimal performance in developing the system, e.g. telecommunications, database structure, security, system failover, maintenance, system performance, GUI standards, and interfaces. (Reference paragraph 7 of the RD).

Factor 2: Technical Capabilities & Capacity. Each proposal must address the offeror's unique capabilities and capacity necessary to functionally design and implement the International Registry Program contemplated by the RD.

Subfactor 2-1: Technical Capabilities – It is critical that the offeror addresses the capabilities (i.e., unique abilities, skills, competencies, etc.) it will bring to performance of the requirement, e.g., employees with special knowledge, skills and competencies having experience to oversee this type of project.

Subfactor 2-2: Technical Capacity – It is critical that the offeror addresses its capacity to accommodate a modern International Registry Program of the size, magnitude and complexity of that contemplated by the RD, e.g., the offeror has equipment that has the capacity to meet the requirements considering the size of data and state-of-the-art equipment that will enable the system to meet future requirements; offeror has a workforce or ability to provide a workforce necessary to fulfill the requirements of the International Registry System.

Factor 3: Business Model. Each proposal must present a Business Model as referenced in Paragraph 3 of the RD. The proposal should address the financing approach necessary to implement an International Registry Program.

Subfactor 3-1: Business Model – It is critical that the offeror set out, in detail, a business model that achieves an efficient, reliable and secure electronic registration system. The business model must describe all steps from the requirements analysis (and the assumptions made therein) through delivery and implementation of the system. It is critical that the business model comprehensively address risk assessment and management of the system.

Subfactor 3-2: Financing Approach – It is critical that the offeror set out a financing approach necessary to implement the International Registry. The offeror's financing approach must address expectations for cost recovery to include any reimbursement as may be appropriate for start-up costs as well as the need, if any, for establishment of transaction fees to be charged users of the International Registry.

Factor 4: Past Performance and Experience. Each proposal should identify all relevant past and present performance and experience involving implementing efforts similar to those anticipated with the International Registry.

Subfactor 4-1: Past Performance – It is critical that the offeror demonstrate/possess relevant past performance in the successful development of web-based electronic systems similar to the system described using the latest technology available. Past performance may be shown by references to past performance provided by persons who may associate with the offeror to provide contract services.

Subfactor 4-2: Experience – It is critical that the offeror's key personnel and any contract personnel possess the capability and experience in the development of webbased systems, knowledge of telecommunication protocols, system security, system failover, and integration. A distinction must be made between past performance and experience. Past performance represents "how well" an offeror accomplished the effort. Experience means an offeror has "done it." Of additional importance is that past performance and experience must be current and relevant as well as comparable in scope and magnitude to that described in the PWS.

V. COST/PRICE PROPOSAL EVALUATION

a. The ET cost/price subteam will review, analyze and evaluate each cost/price proposal. Cost/price items described in paragraph 5 of the RFP may be helpful as to what to look for. Review, analysis and evaluation will be conducted to determine whether each offeror's proposal reflect both cost/price realism and cost/price reasonableness.

b. Cost/price realism means the costs/prices in an offeror's proposal: (1) are realistic for the work to be performed; (2) reflect a clear understanding of the requirements; and (3) are consistent with the various elements of the offeror's technical proposal.

c. Cost/price reasonableness represents a cost/price that does not exceed that which would be incurred by a prudent person in the conduct of competitive business.

d. Determination by the subteam that the cost/price proposal does not reflect cost/pricing realism and cost/pricing reasonableness may be the basis for rejecting any proposal.

VI. RISK ASSESSMENT

a. A risk assessment will be accomplished by the respective ET subteam for each offer based upon perceived risks associated with both the technical and cost/price proposal to ensure the satisfactory performance of any resultant contract for the International Registry System. At the conclusion of the overall evaluation process (i.e., a qualitative evaluation of Factors 1, 2, 3 and 4 as well as related pricing), an overall risk assessment will be made by the ET.

b. Categories to be used in assessing risk are:

1. Little or no apparent risk
2. Low risk
3. Medium risk
4. High risk

Form A

Individual Rating Sheet Technical Evaluation Team

Offeror: _____ Evaluator: _____ Date: _____

Rating

Factor 1: Technical Requirements

Subfactor (1-1) Technical Requirements _____

Subfactor (1-2) Operational Requirements _____

Subfactor (1-3) System Requirements _____

Factor 2: Technical Capabilities & Capacity

Subfactor (2-1) Technical Capabilities _____

Subfactor (2-2) Technical Capacity _____

Factor 3: Business Model

Subfactor (3-1) Business Model _____

Subfactor (3-2) Financing Approach _____

Factor 4: Past Performance and Experience

Subfactor (4-1) Past Performance _____

Subfactor (4-2) Experience _____

Form B

Comments Technical Evaluation Team

Offeror: _____

Evaluator: _____

Form C

Summary Rating Sheet
Technical Evaluation Team

Offeror: _____

Date: _____

	Rater 1	Rater 2	Rater 3	Total (1+2+3)	Avg Rating	Final Rating *
Factor 1 Technical Requirements						
Subfactor 1-1						
Technical Requirements						
Subfactor 1-2						
Operational Requirements						
Subfactor 1-3						
System Requirements						
Factor 2 Technical Capabilities and Capacity						
Subfactor 2-1						
Technical Capabilities						
Subfactor 2-2						
Technical Capacity						
Factor 3 Business Model						
Subfactor 3-1						
Business Model						
Subfactor 3-2						
Financing Approach						
Factor 4 Past Performance and Experience						
Subfactor 4-1						
Past Performance						
Subfactor 4-2						
Experience						

Form D

Offeror Summary Scoring Sheet
Technical Evaluation Team

TET Lead: _____		Date: _____			
Category Scores		Offeror	Offeror	Offeror	Offeror
Factor 1	Technical Requirements	_____	_____	_____	_____
Factor 2	Technical Capabilities and capacity	_____	_____	_____	_____
Factor 3	Business Model	_____	_____	_____	_____
Factor 4	Past Performance and Experience	_____	_____	_____	_____

* Final rating will be a consensus rating and may vary from the average rating. This will take into account discussion and agreement with respect to disparities in ratings among individual evaluators.

DCME – IP/2
English & French only
11/5/01

**DRAFT [UNIDROIT][UNIDROIT] CONVENTION ON INTERNATIONAL INTERESTS
IN MOBILE EQUIPMENT AND DRAFT PROTOCOL THERETO
ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT**

EXPLANATORY REPORT AND COMMENTARY

(Submitted by the Secretariats)

This document consists of an overview of the draft Convention and the draft Protocol, followed by an Article-by-Article commentary on the individual provisions of the two draft instruments. No comments have been added where the text of an Article appears self-explanatory.

The document is intended for information purposes only and is therefore presented as an information paper (DCME-IP). It is not an exhaustive analysis of the two draft instruments, but is intended for the information of Governments and delegates, in particular those who have not so far participated in the three Joint Sessions or in the 31st Session of the ICAO Legal Committee.

The two Secretariats are indebted to Sir Roy Goode (United Kingdom), Rapporteur to the Joint Sessions of the UNIDROIT Committee of Governmental Experts and the ICAO Legal Sub-Committee, who has drafted this document, which was finalised under the guidance of the two Secretariats.

I INTRODUCTION

1. The draft Convention on International Interests in Mobile Equipment is designed to establish an international legal regime for the creation, enforcement, perfection and priority of security interests and interests held by conditional sellers and lessors in three categories of high-value, uniquely identifiable mobile equipment, namely (a) airframes, aircraft engines and helicopters (which for brevity will be collectively referred to as aircraft equipment), (b) railway rolling stock, and (c) space property. The draft Convention is not itself equipment-specific and is to be applied by separate Protocols for each of the three categories. Three draft Protocols have been prepared but only that relating to aircraft equipment is ready for submission to the forthcoming Diplomatic Conference, which is to be hosted by South Africa and co-sponsored by the International Institute for the Unification of Private Law (UNIDROIT) and the International Civil Aviation Organization (ICAO).
2. In relation to aircraft equipment the Convention and Protocol are the product of close collaboration between UNIDROIT and ICAO. The first text of the Convention was prepared by a Study Group established by the Governing Council of UNIDROIT in collaboration, as regards aircraft, with an Aviation Working Group (AWG) and the International Air Transport Association (IATA). A Protocol relating specifically to aircraft equipment was subsequently prepared by an Aircraft Protocol Group established by invitation of the President of UNIDROIT. The Aircraft Protocol Group included representatives of ICAO, IATA and the AWG. A Steering and Revisions Committee, consisting of representatives of the Governing Council of UNIDROIT and of the ICAO Secretariat, IATA and the AWG, was set up by the UNIDROIT Governing Council to finalise, from a technical perspective, the texts of the Convention and Protocol so as to make them suitable for transmission to Governments. The Study Group and Steering Revisions Committee were chaired by this Reporter.
3. The two texts were then examined at three successive Joint Sessions of the UNIDROIT Committee of Governmental Experts and the Sub-Committee of the ICAO Legal Committee (hereinafter referred to as “Joint Sessions”) held in Rome from 1st to 12th February 1999, in Montreal

from 24th August to 3rd September 1999 and in Rome from 20th to 31st March 2000. The texts of the two instruments were then considered by the ICAO Legal Committee at its 31st Session held * in Montreal from 28th August to 8th September 2000, when various changes were made. The amended texts were approved by the Governing Council of UNIDROIT and the Council of ICAO for submission to the Diplomatic Conference which is to be co-sponsored by the two intergovernmental organisations.

4. In relation to aircraft equipment Mr. Gilles Lauzon (Canada), Rapporteur to the 31st Session of the Legal Committee, whose Report * provided the focus of its work, has prepared a consolidated text which combines the provisions of the Convention and the Aircraft Equipment Protocol and will be included in the documents distributed to the Diplomatic Conference (see DCME Doc No. 5).

5. This Explanatory Report is not an exhaustive analysis of the two instruments but is designed to provide a guide for Governments and members of delegations, including in particular those who have not so far participated in any of the Joint Sessions or in the work of the ICAO Legal Committee. The Report consists of an overview of the draft Convention and Protocol followed by an Article-by-Article commentary on the individual provisions of the two instruments. No comments have been added where the text of an Article appears self-explanatory.

II AN OVERVIEW OF THE CONVENTION

Objectives

6. A basic objective of the Convention is the efficient financing of transportation equipment. Such financing will assist in the development of cost-effective modes of transport utilising modern technologies. The financing of aircraft equipment, railway rolling stock and space property takes three principal forms: a loan secured by a charge (security interest) over the equipment; a sale in which the seller reserves ownership until payment; and a lease, which may be either a finance lease or an operating lease. These financing instruments need to be underpinned by a sound legal regime if they are to function efficiently so as to induce the assumption of risk and the release of funds by the private sector. The huge outlays involved in the financing of such equipment make it essential for the creditor (the financier, seller or lessor) to be able to have confidence that if the debtor defaults in payment or other performance the relevant legal regime will respect the creditor's contractual and proprietary rights and provide the creditor with efficient and effective means to enforce those rights.

7. Traditional conflict of laws rules apply the *lex rei sitae* as the law governing proprietary rights, but such a principle is unsuited to mobile equipment which are constantly moving from one country to another. Moreover, even if it were possible to devise a uniform conflicts rule, this would not overcome the disadvantage of dependence on national laws, which vary widely from one country to another and which in some jurisdictions are highly supportive of security interest while in others they may be more hostile. This may discourage potential financiers from extending credit or may lead to substantially increased credit costs. Hence the need for an international set of rules governing security and related interests in such equipment which will provide creditors with the necessary safeguards, while at the same time incorporating measures for the protection of debtors.

8. The Convention and its supporting Protocols are designed to fulfil five key objectives:

- To provide for the creation of an international interest which will be recognised in all Contracting States

The Rapporteur is indebted to Mr. Jeffrey Wool, Chairman of the Aircraft Protocol Group, Mr. Gilles Lauzon, Chairman of the Legal Committee of ICAO and Rapporteur to its 31st Session, and Mr. Martin Stanford, Principal Research Officer of the UNIDROIT Secretariat, for their helpful comments on a draft of this Explanatory Report and Commentary.

* *Report on International Interests in Mobile Equipment (Aircraft Equipment)*, July 2000. Section 2C of this Report provides a helpful guide to the context of international aviation finance.

- To provide the creditor with a range of basic default remedies and, where there is evidence of default, a means of obtaining speedy interim relief pending final determination of its claim on the merits
- To establish an electronic international register for the registration of international interests which will give notice of their existence to third parties and enable the creditor to preserve its priority against subsequently registered interests and against unregistered interests and the debtor's insolvency administrator
- To ensure through the relevant Protocol that the particular needs of the industry sector concerned are met
- By these means to give intending creditors greater confidence in the decision to grant credit, enhance the credit rating of equipment receivables and reduce borrowing costs to the advantage of all interested parties.

The two-instrument approach

9. As stated above, the Convention is not equipment-specific. Its provisions will in principle apply equally to any of the three categories of mobile equipment to which it relates. However, the Convention will not be brought into force as regards any category of equipment until a Protocol has been made relating to that equipment and will take effect subject to the terms of that Protocol. This two-instrument approach, endorsed by the third Joint Session and by the ICAO Legal Committee, results in a uniform set of rules for those provisions of the Convention that do not attract equipment-specific considerations coupled with a modification of those rules by the Protocol to meet the particular needs of the industry sector involved in the category of equipment to which the Protocol relates.

Underlying principles

10. The Convention and Aircraft Equipment Protocol are governed by five underlying principles:
- **Practicality** in reflecting the salient factors characteristic of asset-based financing and leasing transactions
 - **Party autonomy** in contractual relationships, reflecting the fact that parties to a high-value cross border transaction in equipment of the kind covered by the Convention will be knowledgeable and experienced in such transactions and expertly represented, so that in general their agreements should be respected and enforced
 - **Predictability** in the application of the Convention, a feature which is specifically mentioned in the interpretation provisions of Article 5(1) and is reflected in the concise and clear priority rules, which give pre-eminence to certainty and simplicity and a rule-based rather than standards-based approach
 - **Transparency** through rules which provide for registration of an international interest in order to give notice of it to third parties and which subordinate unregistered international interests to registered international interests and to the rights of purchasers
 - **Sensitivity** to national legal cultures in allowing a Contracting State to weigh economic benefits against principles of national law considered of fundamental importance, and to make declarations to exclude, wholly or in part, select provisions of the Convention it considers incompatible with these, for example, the exercise of extra-judicial remedies or the ready availability of judicial relief prior to a hearing on the merits.

Sphere of application

11. In order for the Convention to apply the following conditions must be satisfied:
- (a) The parties have entered into a security agreement, a conditional sale agreement or a lease (art. 2(1),(2))
 - (b) The agreement relates to equipment which is:

- (i) an airframe, an aircraft engine or a helicopter,
- (ii) railway rolling stock, or
- (iii) space property (e.g. a satellite);
- (c) The equipment falls within a category designated in the relevant Protocol and is uniquely identifiable (art. 2(2),(3))
- (d) The agreement is constituted in accordance with the formalities prescribed by the Convention (arts 2(2), 6)
- (e) The debtor is situated in a Contracting State at the time of conclusion of the agreement providing for the international interest (arts 3, 4).

12. Legal systems outside North America distinguish sharply between security agreements and title-retention and leasing agreements, treating a conditional seller or lessor as the full owner. By contrast in North American jurisdictions the law adopts a functional and economic approach, treating conditional sale agreements and certain types of leasing agreement as forms of security and the title of the conditional seller or lessor as limited to a security interest. Given these widely contrasting approaches it was recognised at an early stage that it would not be possible to reach agreement on a uniform Convention characterisation. Accordingly the solution adopted was to leave this to be dealt with under the applicable law as determined by the *lex fori* (which in many jurisdictions will be the *lex fori* itself), so that national courts will be able to apply their own national law to determine the characterisation issue.

13. Aircraft engines are treated separately from airframes since they are highly valuable, mobile independent units and are increasingly dealt in and financed separately and frequently interchanged. They are therefore unsuited to traditional legal rules by which ownership of an object annexed to a larger object passes to the owner of the latter by the principle of accession.

14. The ingredients of mobility and internationality are not expressly prescribed by the Convention but are considered inherent in the nature of the equipment. The Convention thus leaves open the possibility of taking and registering an international interest in equipment which never leaves its State of origin. However, the creditor needs to be able to protect itself against the possibility of such movement and is usually not well placed to know whether or not it has taken place. The Convention nevertheless allows Contracting States to exclude it as regards purely internal transactions (see paragraph 31(3)).

15. The provisions of the Convention describing the three categories of equipment to which it is applicable are qualified in important respects by the relevant Protocol,¹ for example, by giving definitions which are designed both to describe the type of object covered and to limit the coverage to equipment of high unit value,² and by specifying the method or methods by which the requirement of unique identifiability may be satisfied, e.g. in the case of aircraft objects the manufacturer's serial number, manufacturer's name and model designation of object.³ Registration is effected against an identified object. Accordingly the Convention does not apply to future property or to proceeds other than insurance and other loss-related proceeds.

Creation of international interest

16. All that is needed to create an international interest is an agreement which conforms to the requirements of Article 6. This is so whether or not the international interest has any counterpart in national law or fulfils the requirements for the creation of an interest under national law. But national

¹ In the rest of this Explanatory Report, except where otherwise indicated, references to "the Protocol" are to the Aircraft Equipment Protocol.

² For aircraft engines by reference to engine-power and for airframes by reference to their carrying capacity.

³ See Aircraft Equipment Protocol, art. VII.

law continues to play a role, for example, in determining whether an asserted agreement fulfils the essential requirements (such as consensus and legal capacity) required for a valid contract or whether the chargor, conditional seller or lessor has power to dispose of the object.

Relationship between Convention interests and national interests

17. In most cases a domestic security or title-retention interest will simultaneously constitute an international interest, so that the two will co-exist. However, the international interest will usually give the creditor stronger rights than a purely national interest. In particular a registered international interest has priority over a national interest which is not registered under the Convention, even if it is of a kind not registrable.

Default remedies

18. The availability of adequate and readily enforceable default remedies is of crucial importance to the creditor. Chapter III of the Convention provides a chargee with a set of basic remedies in the event of the debtor's default. For this purpose it is not necessary for the international interest to have been registered; since registration is required only to protect the priority of the international interest against third parties. A distinction is drawn between the remedies of a chargee, which are specified in Articles 7 and 8, and the less detailed rules needed for the remedies of a conditional seller or lessor, which are the subject of Article 9.

19. Articles 7 and 8 empower the chargee, to the extent that the chargor has at any time so agreed, to:

- take possession or control of any object charged to it
- sell or grant a lease of any such object ⁴
- collect or receive any income or profits arising from the management of the object
- apply for a court order authorising or directing any of the above
- take ownership of the object in satisfaction of the debt.

However, the chargor and other interested persons, such as subsequent chargees and guarantors, are provided with a number of safeguards. Remedies are required to be exercised in a commercially reasonable manner. Notice of a proposed sale or lease must be given to interested persons. Vesting of ownership in satisfaction of the debt can occur only with the consent of all the interested persons or on an order of the court and, in the latter case, only if the court is satisfied that the amount of the secured obligations to be discharged is commensurate with the value of the object. The default must be substantial unless otherwise agreed. Additional remedies permitted by the applicable law, including any remedies agreed by the parties, may be exercised to the extent that they are in conformity with the mandatory provisions listed in Article 14.

20. In the case of a conditional sale agreement or leasing agreement, the only remedies designated (by Article 9) are termination of the agreement, possession or control of the object or a court order authorising or directing either of the above. The provisions are much simpler because in contrast to the chargee, who has merely a security interest, the conditional seller or lessor is the owner. However, in North American jurisdictions conditional sale agreement and certain types of leasing agreements are characterised as security agreements, so that a court in such a jurisdiction will apply the Convention rules governing security agreements.

21. Article 12 provides the creditor who adduces evidence of default with the right to speedy relief, pending final determination of its claim, in the form of an order for preservation of the object or its value, possession, control or custody of the object, immobilisation of the object or lease or management of the object and the income from it but not sale and application of the proceeds of sale.

⁴ But a Contracting State may, by a declaration under Article 52(1), exclude the power to lease agreement while on its territory.

Certain safeguards are provided for the debtor. By Article 53 a Contracting State may make a declaration excluding Article 12, wholly or in part.

The registration system

22. The registration system lies at the heart of the Convention's system of priorities. Registration gives public notice of the existence of an international interest and enables the creditor to preserve its priority and the effectiveness of the international interest in insolvency proceedings against the debtor. Registration is against the individual object, not against the debtor; hence the requirement that the object must be uniquely identifiable and the restriction of proceeds claims to insurance and other loss-related proceeds. It is envisaged that there will be different registration systems for different types of equipment. The Registry will be administered by a Registrar – conceived as an independent operator rather than an employee – under the superintendence of a Supervisory Authority, which will be a body having international legal personality and immunity from process. By contrast the Registrar will be strictly liable for compensatory damages for loss suffered from errors, omissions or system malfunction, subject to any qualifications that may be decided at the Diplomatic Conference.

23. The registration provisions are predicated on the assumption that the system will be electronic and available on-line, so that registration and responses to searches will be effected automatically by computer and will not involve human intervention. Pursuant to Article 17(4) of the Convention, Article XVIII of the Protocol empowers a Contracting State to designate an entity as the national access point through which applications for registration are to be transmitted. A Contracting State may wish to do this in order to marry the requirements for registration of a national interest with those for transmission of the application for registration of the international interest, so that an applicant could simultaneously register a national interest and effect registration in the international registry via the national link to it.

24. The registration system will accommodate registrations of international interests, prospective international interests, and registrable non-consensual rights and interests (explained in paragraphs 27 *et seq.*), as well as assignments, subordinations, and certain other rights. The system will also receive registrations of notices of national interests, that is, interests arising under a purely local transaction (i.e. where all the parties and the object are in the same Contracting State) and which the Contracting State in question has, pursuant to Article 48(1), declared will not be governed by the Convention. But under Article 48(2) this exclusion will not preclude registration of notice of the national interest in the International Registry, giving it the same priority as if it were a registered international interest. The detailed requirements for registration are prescribed by the Protocol and by regulations to be made under it. Article 19 states who is to be entitled to effect, modify or discharge a registration.

Priorities

25. The priority rules are set out in Article 28 and are simple and few in number. A registered interest has priority over a subsequently registered interest and over an unregistered interest. This priority applies even if the holder of the registered interest took with actual knowledge of the unregistered interest, a rule necessary to avoid factual disputes as to whether a holder did or did not have knowledge, and even as regards value given by the holder of a registered interest after knowledge of a subsequent interest, a rule designed for simplicity. There are two exceptions to the general priority rules. The interest of an outright buyer is not registrable;⁵ accordingly the buyer takes free from an international interest not registered prior to the buyer's acquisition of its interest (art. 28(3)). In addition, the priority rules may be varied by agreement between the holders of the competing interests (art. 28(4)). Any priority extends to proceeds as defined by Article 1(w). There is also a rule governing items that are installed on an object (Article 28(6)). Where a prospective international interest is registered and later becomes a completed international interest it is deemed to

⁵ However, the Protocol extends the registration and priority provisions of the Convention to outright sales, so that the special rule in Article 28(3) of the Convention is not required as regards aircraft objects.

have been registered at the time of registration of the prospective international interest and ranks for priority accordingly (Article 18(3)). Until that time the prospective debtor has the right to have the registration discharged unless the prospective creditor has given value or committed itself to so doing (Article 24(2)). The priority of an international interest carries through to its proceeds. However, the term “proceeds” is confined by Article 1(w) to insurance and other loss-related proceeds. General proceeds, such as receivables arising from the sale of an object, are not covered.

Effect of insolvency

26. The general rule is that in insolvency proceedings against the debtor an international interest is effective if registered prior to the commencement of the proceedings (art. 29(1)). However this provision does not impair the effectiveness of an international interest which is effective under the applicable law (art. 29(2)). The general rule does not protect a registered international interest from rules of insolvency law relating to the avoidance of preferences and transfers in fraud of creditor or from rules of insolvency procedure relating to the enforcement of rights to property under the control or supervision of an insolvency administrator, for example, rules which, with a view to facilitating a reorganisation of the debtor, restrict enforcement of a security interest.

Assignments

27. Chapter IX of the Convention deals with the formality, effect and priority of assignments of international interests. The formal requirements track those applicable to the creation of an international interest. An assignment transfers to the assignee all the interests and priorities of the assignor under the Convention, to the extent agreed between the parties, and all associated rights to payment or other performance secured by the object (in the case of a security agreement) or associated with it (in the case of a conditional sale agreement or a leasing agreement). However, the assignee’s priority with regard to associated rights (as opposed to the priority to which the assignee succeeds as regards the international interest itself) is limited to purchase-money/rental rights and does not cover, for example, rights to payment under a separate agreement relating to other equipment. The default remedies available to an assignee under a security assignment, the priority of assignments and the effect of the assignor’s insolvency follow, *mutatis mutandis*, the rules applicable to the international interest itself. Nothing in the Convention affects legal or contractual subrogation.

Non-consensual rights or interests

28. A Contracting State may make a declaration that specified categories of non-consensual right or interest shall be registrable as if they were international interests (Article 38). One might envisage, for example, the registration of a judgment debt or of a repairer’s lien. Registration of such a non-consensual interest would give it the same status and priority as an international interest.

29. A Contracting State may also specify the types of non-consensual interest which, under that State’s law, have priority over an interest equivalent to that of the holder of the international interest (“an equivalent interest”) and are to have priority even over a registered international interest (Article 39). Typical examples are preferential claims for taxes and for wages due from an insolvent employer. It will not be necessary for a Contracting State to list all such types of non-consensual interest individually. It could simply make a declaration that all claims having priority over an equivalent interest under its existing law or acquiring such priority in the future are to enjoy priority over a registered international interest. But it is for the Contracting State to decide which of such claims should have priority over a registered international interest. The categories covered by its declaration could be fewer than the categories which under its national law have priority over equivalent interests.

Extension to outright sales

30. The Convention does not apply to outright sales, for these do not involve the assertion of any security or proprietary interest vis-à-vis the debtor. However, Article 40 provides for an extension of the Convention to outright sales as provided for in the Protocol.⁶

Jurisdiction

31. Articles 41 to 44 contain rules as to jurisdiction which may be summarised as follows:

(a) Except in relation to the grant of interim relief under Article 12 or the making of orders against the Registrar, exclusive jurisdiction is given to the courts of a Contracting State chosen by the parties.

(b) The courts of the territory on which the debtor is situated have concurrent jurisdiction to make orders for relief pending final determination, other than orders for the lease or management of the object and the income from it.

(c) The courts of the territory on which the object is situated have concurrent jurisdiction, pending final determination of the claim, to make orders for the lease or management of the object and income from it.

(d) The courts of the place in which the Registrar has its centre of administration have exclusive jurisdiction to award damages against the Registrar (e.g. for loss caused through error or failure of the registration system) and to make orders requiring a registration to be discharged in certain circumstances. Such courts also have a discretion to direct amendment or discharge of a registration where a person fails to comply with an order of a court of another State having jurisdiction under the Convention, for example, an order to procure the removal of a registration improperly made.

Final provisions

32. Chapter XIV of the Convention is not intended to set out a comprehensive set of final provisions (this traditionally being the prerogative of the Diplomatic Conference) but only those provisions needed to show the relationship between the Convention and the Protocol and to address the special issues arising in relation to interests in mobile equipment.

(a) *Protocol controls Convention*

The Convention takes effect as regards any category of equipment only when a Protocol has been made in relation to that category and subject to the terms of that Protocol. So in the case of aircraft equipment the general provisions of the Convention are modified in certain respects by the Aircraft Equipment Protocol to meet the particular needs of the aviation industry.

(b) *Ratifications*

Given that the Convention and the Protocol are to be read and interpreted as a single instrument (Article 47(2)), the Diplomatic Conference will no doubt consider whether it is either desirable or practicable to allow for independent ratification of the Convention. Also for consideration will be the number of ratifications required for entry into force.

(c) *Internal transactions*

Though in principle the Convention applies even where all the elements of a transactions are located in one jurisdiction, Article 48 permits a Contracting State, when adopting the Protocol, to make a declaration excluding the application of the Convention to a transaction which is internal in relation to that State, that is, where the centre of the main interests of all parties to the transaction is situated, and the relevant object located, in that State at the time of conclusion of the transaction (Article 1(n)). But under Article 48(2) such a declaration does not affect the application to internal transactions of Articles 7(3) and 8(1) and the provisions relating to registration and priority of international interests.

⁶ See Aircraft Protocol, Article III.

(d) *Procedure for additional Protocols*

Article 49, which is in square brackets, provides a procedure for the adoption of Protocols on railway rolling stock and space property. A draft Protocol on Railway Rolling Stock and a preliminary draft Protocol on Space Property are currently being reviewed by UNIDROIT. Article 50 empowers UNIDROIT to create working groups to assess the feasibility of extending the Convention to other categories of high-value mobile equipment through one or more Protocols. It will be for participating States to determine the procedure for the adoption of such a Protocol.

(e) *Transitional provisions*

Article 55 offers two alternative forms of transitional provision. The short form, Alternative A, provides that the Convention is not to apply to a pre-existing right or interest, which will retain the priority it enjoyed before the Convention entered into force. Under this provision pre-Convention interests neither enjoy nor are adversely affected by the Convention, and retain the priority they enjoy under the applicable law. Alternative B preserves the pre-Convention priority enjoyed under the applicable law by an interest of a kind to which the Convention applies but only if the interest is registered in the International Registry within 10 years after the Convention enters into force. An interest so registered will preserve its priority under the applicable law even against an international interest registered earlier. If the interest is not registered before expiry of the ten-year period its priority is determined by the Convention priority rules in Article 28, so that it will be subordinated to an international interest registered first. In no case will the Convention affect a right or interest in an object created or arising under the law of a non-Contracting State.

III AN OVERVIEW OF THE AIRCRAFT EQUIPMENT PROTOCOL

Introduction

33. As its Preamble recites, the Aircraft Equipment Protocol is designed to supplement and modify the Convention to meet the particular requirements of aircraft finance. Its provisions reflect the use of structured financing by sophisticated parties, including many state-owned airlines. It builds on the principle of party autonomy while at the same time giving Contracting States the right to weigh other considerations against economic benefits and to exclude or modify certain provisions of the Protocol felt to be incompatible with the State's legal culture and tradition. It seeks to adopt a practical approach to key issues in international asset-based civil aviation financing. Thus although outright sales are outside the scope of the Convention, which is directed at credit and leasing transactions, the provisions of the Protocol extending the registration and priority rules to sales of aircraft objects reflect civil aviation laws and practice in a number of States, address the problem created by the lack of any fixed *situs* of such objects and ensure a complete priority system.

Sphere of application

34. The Convention and Protocol treat airframes and aircraft engines separately for the reason previously given (paragraph 13). However, the term "aircraft" is used at points of reference to the 1944 Chicago Convention on International Civil Aviation, a public law convention dealing, among other things, with the establishment of an international system addressing the nationality of aircraft and their safe and secure operation. The Convention provisions as they relate to aircraft objects are limited by the definitions of airframes and aircraft engines given in Article I(2) of the Protocol. These definitions both define airframes and aircraft engines and limit the Convention and Protocol to items of high unit value by embodying, in the case of aircraft engines, a minimum thrust or horse-power and, in the case of airframes, a minimum carrying capacity, the intention being to confine the Convention to dealings in high-value civil aviation aircraft by experienced parties. Following the Geneva Convention on the International Recognition of Rights in Aircraft, aircraft objects are excluded to the extent that they are used in military, customs or police services.

35. The Protocol extends the Convention to cover outright sales of aircraft objects to the extent that the Convention provisions are relevant to such sales. In contrast to agreements within the scope of the Convention, which are designed for the protection of the international interest, the extension to sales

is to enable the outright buyer to obtain the benefit of the registration facility and the priority rules and to avoid the *lex situs* problem. Hence Chapter III, relating to default provisions, will not apply to outright sales. On the other hand, the Convention provisions as to registration and priorities will apply, except for the special priority rule as to buyers in Article 28(3), which is not needed in this context since the buyer will be able to protect its rights by registration, a facility not open under the Convention. The Protocol prescribes formalities for a contract of sale matching those for an international interest which is not a charge and also states the effect of the contract.

Description

36. Article VII of the Protocol sets out the identification elements for an aircraft object, namely manufacturer's serial number, manufacturer's name and its model designation. No other means of identification suffice or are necessary.

Choice of law

37. By Article VIII the parties are free to choose the law to govern their relationship.

Default provisions

38. The Protocol provides the creditor with two additional default remedies: to procure de-registration of the aircraft (that is, to remove the Chicago Convention nationality registration), thus permitting re-registration in another Contracting State in accordance with the applicable law, and to procure the export and physical transfer of the aircraft to the territory of another State.

39. The default rules of the Convention are modified by the Protocol in certain respects to meet the particular needs of the aviation industry. The duty imposed on a chargee to exercise remedies in a commercially reasonable manner is extended to cover all types of agreement, not merely security agreements, but an agreement between the debtor and the creditor as to what is a commercially reasonable manner is conclusive (Article IX). The provisions for speedy relief pending final determination of the creditor's claim are modified by Article X so as to provide for a decision within the time specified in a declaration of the Contracting State, to add the remedy of sale and application of the proceeds of sale and to permit the parties to exclude the application of some of the provisions of Article 12(2) of the Convention. However, Article X will apply only where a Contracting State has made a declaration to that effect and only to the extent of that declaration.

Remedies on insolvency

40. Article XI introduces special rules designed to strengthen the creditor's position vis-à-vis the insolvency administrator in the event of the debtor's insolvency. Two alternative versions are offered. It is open to a Contracting State to adopt one of these or to adopt neither and simply apply its ordinary domestic law. The "hard" version, Alternative A, requires the insolvency administrator either (a) to give possession within the earlier of a waiting period specified in a Contracting State's declaration or the date on which the creditor would otherwise be entitled to possession or (b) within the above time to cure all defaults and agree to perform all future obligations under the agreement. Alternative A also precludes the court from preventing or delaying the exercise of the creditor's remedies beyond the above time period and from modifying the debtor's obligations without the creditor's consent. Thus under Alternative A the court will be precluded from exercising some of the powers it would normally have to grant a stay or to modify a secured creditors' rights or remedies, the justification being the economic benefits anticipated from a clear and unqualified rule. The "soft" version, Alternative B, requires the insolvency administrator, upon the creditor's request and within the period specified in the declaration of the Contracting State, to state whether it will cure all defaults and perform all future obligations or give the creditor the opportunity to take possession of the aircraft object. If the insolvency administrator does not give the required statement or give up possession after stating it will do so, the court may permit the creditor to take possession upon such terms as the court thinks fit. So under this version of Article XI the court's discretion is substituted for the creditor's entitlement to take possession.

Priorities

41. Article XIV includes a provision designed to give the outright buyer of an aircraft object the same priority on registration as is enjoyed by the holder of an international interest. There are also minor modifications to some of the priority rules in Article 28.

Assignment

42. Article XV introduces a requirement for the debtor to give its consent to an assignment. Such a requirement is not usually found in national laws on assignment of claims but is designed to avoid disputes as to the efficacy of an assignment.

Registration

43. The Protocol will identify the Supervisory Authority. The organisation which is to act as Supervisory Authority has yet to be determined. Following recommendations by the second and third Joint Sessions and by the ICAO Legal Committee, the Council of ICAO has indicated that if invited to do so by the Diplomatic Conference it would be prepared in principle to assume this role as regards aircraft equipment. The Protocol introduces various other provisions relating to registration as this affects aircraft equipment.

Jurisdiction

44. Article XX provides for concurrent jurisdiction to be exercisable by a Contracting State which is the State of registry of the aircraft. However, this will not apply where a court has exclusive jurisdiction by party agreement under Article 41, nor will it confer jurisdiction to entertain a claim against the Registrar.

IV COMMENTARY ON THE DRAFT [UNIDROIT][UNIDROIT] CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

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

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:

Comment

The Preamble identifies the primary object of the Convention as being to facilitate the asset-based financing and leasing of mobile equipment of high value or particular economic significance by providing an international regime for the enforcement, registration and protection of international interests in such equipment. The emphasis is therefore on an approach which responds to the practices and needs of the providers and users of asset-based financing and leasing in relation to aircraft objects, railway rolling stock and space property. The Preamble reflects the importance attached to predictability through clarity of rules (see also Article 5(1)) and party autonomy.

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;
- (b) “assignment” means a contract which, whether by way of security or otherwise, confers on the assignee rights in the international interest;
- (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;
- (d) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;
- (e) “conditional buyer” means a buyer under a title reservation agreement;
- (f) “conditional seller” means a seller under a title reservation agreement;
- (g) “contract of sale” means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above;
- (h) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;
- (i) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;
- (j) “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;
- (k) “insolvency administrator” means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;
- (l) “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;
- (m) “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;
- (n) “internal transaction” means a transaction of a type listed in Article 2(2)(a) to (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;
- (o) “international interest” means an interest to which Article 2 applies;
- (p) “International Registry” means the international registration facilities established for the purposes of this Convention or the Protocol;
- (q) “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;
- (r) “national interest” means an interest in an object created by an internal transaction;

(s) “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) “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 48(1);

(u) “object” means an object of a category to which Article 2 applies;

(v) “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;

(w) “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;

(x) “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;

(y) “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;

(z) “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;

(aa) “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;

(bb) “registered” means registered in the International Registry pursuant to Chapter V;

(cc) “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;

(dd) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 38;

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

(ff) “regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol;

(gg) “sale” means a transfer of ownership of an object pursuant to a contract of sale;

(hh) “secured obligation” means an obligation secured by a security interest;

(ii) “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;

(jj) “security interest” means an interest created by a security agreement;

(kk) “Supervisory Authority” means, in respect of the Protocol, the Supervisory Authority referred to in Article 16(1);

(ll) “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;

(mm) “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; and

(nn) “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.¹

Comment

1. This section contains a comprehensive list of defined terms. A number of these are self-explanatory; those meriting particular attention are explained in the following paragraphs.
2. "agreement" – a term covering all three types of agreement to which the Convention applies and used in those provisions where it is not necessary to distinguish one type from another, e.g. Articles 10 and 12.
3. "airframes, aircraft engines" – the Convention does not use the term "aircraft" since aircraft engines are highly valuable and mobile, are frequently interchanged and are increasingly dealt in and financed separately from airframes. They are currently subject to unsatisfactory and conflicting rules of national law governing the accession of objects to larger objects.
4. "associated rights" – these are rights to payment or other performance which under Article 31(1)(b) pass to an assignee of an international interest. Associated rights are "secured by" a security agreement or "associated with" a conditional sale or leasing agreement. They include rights to repayment of a loan or to payment of the price under a conditional sale agreement or rentals under a leasing agreement. They also include rights to other forms of performance, such as insurance and repair of the object, and the observance of negative obligations, such as a prohibition on the disposal of leased objects without the lessor's consent. The Convention provisions are designed to ensure that the assignment of an international interest and the transfer of associated rights go together, thus minimising the risk of conflict with conventions relating to general receivables financing, such as the 1988 UNIDROIT Convention on International Factoring and the draft UNCITRAL Convention on Assignments in Receivables Financing.
5. "conditional buyer" – a buyer under a title reservation agreement; to be contrasted with "buyer", which denotes an outright buyer under a contract of sale (see comment 5).
6. "court" includes an administrative or arbitral tribunal established by a Contracting State but does not include private administrative or arbitral tribunals.
7. "contract of sale" – this phrase denotes an outright sale, as opposed to a title reservation agreement.
8. "insolvency administrator" – the inclusion of a "debtor in possession" reflects the bankruptcy laws of some States by which the conduct of the business of an insolvent debtor undergoing reorganisation is left in the hands of its management.
9. "interested persons" – this phrase denotes the persons who (a) have to be notified under Article 7 of an intended sale or lease of the charged object by the chargee or (b) in the absence of a court order, have to give their consent under Article 8(1) to the vesting of the object in the chargee in satisfaction of the debt or (c) qualify for possible protection by a court which is proposing to make an order under Article 12 for relief pending final determination of the creditor's claim.
10. "international interest" – a key phrase, meaning an interest to which Article 2 applies, and therefore an interest arising under an agreement which conforms to the formalities prescribed by Article 6. Registrable non-consensual rights or interests are not international interests but may be registered in the International Registry and then rank for priority as if they were international interests. The interest of an outright buyer is not an international interest but is brought within the registration and priority provisions of the Convention by Articles III and XIV of the Aircraft Equipment Protocol in relation to aircraft objects.

¹ It was noted that this definition should be further reviewed.

11. “internal transaction” – a transaction where all parties and the object are located in the same Contracting State when the agreement is concluded. This is significant only as regards a Contracting State which makes a declaration under Article 48(1) excluding the application of the Convention to internal transactions. But even where such a declaration is made the registration facilities established under the Convention will be available, and the priority rules embodied in Article 28 will apply, so that it will be open to the person holding the national interest to protect it internationally by registering a notice of the national interest in the International Registry under Article 15(1)(e), in which case the national interest will rank for priority in accordance with the rules set out in Article 28. However, the default provisions of Chapter III of the Convention will not apply.
12. “leasing agreement” – this covers leases and sub-leases, with or without an option to purchase.
13. “national interest” – an interest created by an internal transaction. See comment 11.
14. “proceeds” – narrowly defined so as to be limited to proceeds arising from total or partial loss or destruction of the object (e.g. insurance proceeds) or total or partial confiscation, condemnation or requisition. General proceeds, such as receivables arising from sale of an object subject to a security agreement, are not within the Convention, since this would broaden its scope beyond aircraft objects, railway rolling stock and space property, as well as cutting across the draft UNCITRAL Convention on Assignment in Receivables Financing.
15. “prospective international interest” – an interest intended to be created or provided for as an international interest in the future. Article 15(1)(a) enables a person intending to take security over an existing and identified object to register a prospective international interest and thereby preserve a priority position, in that if the international interest later comes into being under the relevant agreement it is treated for priority purposes as registered at the time of registration of the prospective international interest (Article 18(3)).
16. “registrable non-consensual right or interest” – a right or interest created by the law of a Contracting State, as opposed to agreement, which by virtue of a declaration made by that State under Article 38 can be registered in the International Registry as if it were an international interest. Possible examples are judgment creditors’ liens.
17. “security agreement” is widely defined so as to cover security by title transfer as well as a pledge or charge.
18. “unregistered interest” means any interest, whether consensual or non-consensual, which has not been registered in the International Registry, whether or not it is registrable, except for a non-consensual interest which a Contracting State declares under Article 39 is to have priority even over a registered international interest. The essential point is that under Article 28(1) a registered international interest has priority over an unregistered interest. The fact that the unregistered interest may not itself be capable of protection by registration is irrelevant; the superior ranking of the registered international interest lies at the heart of the protection which the Convention is designed to provide. There are two major exceptions: under Article 28(3) an outright buyer of an object takes free from an international interest not registered at the time of the purchase; and a non-consensual interest covered by a declaration under Article 39 has priority even though not registered in the International Registry.
19. “writing” is defined widely so as to embrace not only documents but also electronic and other forms of teletransmission. However, the teletransmission must be authenticated by an indication of a person’s approval of the record and must be capable of reproduction in tangible form on a subsequent occasion. So a message which appears on a computer screen but is not saved as a sent message will not constitute writing for the purposes of the Convention.

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
- (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.

Comment

1. Article 2 defines an international interest. For an interest to qualify as an international interest four conditions must be satisfied:

(a) The interest must relate to an aircraft object, railway rolling stock or space property as designated in the relevant Protocol

(b) The interest must be granted by the chargor under a security agreement or be an interest which is vested in a person who is the conditional seller under a title reservation agreement or a lessor under a leasing agreement (Article 2(2) is framed in this way to reflect the fact that whilst a chargee's interest derives from the security agreement, the title of a conditional seller or lessor is not created by the title reservation or leasing agreement but arises from some prior and independent transaction)

(c) The interest must be duly constituted under Article 6, which sets out the formal requirements for the agreement creating or providing for the interest.

(d) The debtor must be situated in a Contracting State at the time of conclusion of the agreement (Article 3).

2. The Convention does not specify any requirements of mobility or internationality. These elements are considered to follow from the nature of the object. See further the Comment to Article 48.

3. The Convention does not determine whether an agreement is a security agreement, a title reservation agreement or a leasing agreement. North American jurisdictions characterise conditional sale agreements and certain types of leasing agreements as security interests. Other legal systems treat conditional sellers and lessors as full owners and draw a sharp distinction between security agreements and title retention and leasing agreements. Given the impracticability of securing agreement on a uniform approach to characterisation, this is left to the applicable law as determined by the rules of private international law of the forum, which may categorise the agreement either by reference to the *lex causae* or (more usually) by reference to its own law after ascertaining the scope and purpose of the relevant rule of the *lex causae*. Characterisation is primarily relevant to determine which of the provisions of Chapter III of the Convention (relating to default remedies) apply. Most of the other provisions of the Convention apply equally to all three forms of agreement.

Illustration 1

S in Paris agrees to sell an aircraft object to B in New York under an agreement to which the Convention applies. A New York court would apply New York law to

characterise the agreement and would treat it as a security agreement. A Paris court would apply French law to the characterisation issue and would treat the agreement as a title reservation agreement. Accordingly if a question were to arise under Chapter III of the Convention relating to default remedies, then on the assumption that the United States and France had adopted the Convention a New York court would apply Articles 7 or 8, as appropriate, while a French court would apply Article 9.

4. Since in the preceding example the title reservation agreement is also an agreement for sale with a reservation of title it is necessary to provide in Article 2(2) that since it falls within the security agreement category it is not to be treated as a title reservation agreement for the purposes of the Convention. In other words, once category (a) of Article 2(2) is found to be applicable, neither (b) nor (c) can be applied.

5. An international interest in an object extends to its proceeds, though this term is narrowly defined by Article 1(w) (see comment 14 to Article 1). In consequence any priority enjoyed by the holder of the international interest under Article 28 covers the proceeds, a point expressly made by Article 28(5).

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.

Comment

Paragraph 1 of this Article is to be read with Article 4. The relevant time for determining whether the requirement of the present Article is satisfied is the time the agreement is made. If the debtor is then situated in a Contracting State the requirement is met, and the Convention does not cease to apply merely because the debtor moves to a non-Contracting State.

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.

Comment

1. Article 3 provides the requisite connecting factor to a Contracting State, namely the fact that the debtor is situated in that State at the time the agreement is concluded. If this condition is not met, the Convention does not apply.

2. Article 4 enables the requirement to be satisfied in any one of four different ways, thereby facilitating the application of the Convention. The terms "statutory seat" and "registered office" are equivalents, the former featuring in some national laws and international instruments, the latter in others.

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.

Comment

1. Paragraphs 1 and 2 expresses what have become standard principles of interpretation as exemplified by Article 7(1) of the Convention on Contracts for the International Sale of Goods except that predictability has been substituted for good faith, which in high value cross-border financing transactions is considered to create unacceptable uncertainty.
2. Where there are matters which are not settled by the express terms of the Convention or the principles on which it is based, these must be settled by the applicable law, by which is meant the *domestic* law of the State whose law is applicable by the rules of private international law of the forum, so that problems of *renvoi* are avoided. Recourse may also be made to the objects set out in the Preamble in identifying the principles underlying the Convention.
3. Paragraph 3 provides for the determination of the applicable law in the case of a State comprising several territorial units, or law districts.

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.

Comment

1. Article 6 prescribes the formalities for an agreement creating or providing for the international interest. These are designed to be as simple as possible, but if they are not complied with then the interest is not validly constituted as an international interest under the Convention (see Article 2(2)).
2. The constitution of the international interest derives from the Convention, not from national law. It follows that an international interest comes into existence where the conditions of Article 6 are satisfied even if these would not be sufficient to create a security interest under the otherwise applicable law and even if the international interest is of a kind not known to that law. Conversely, if

the conditions of Article 6 are not satisfied, no international interest is created even if the conditions for the creation of a comparable interest under the applicable law are fulfilled. However, the applicable law governs capacity to contract, the material validity of the agreement and the question whether the object is one of which the chargor, conditional seller or lessor (the creditor) has power to dispose. The creditor may have such a power either because it is itself the owner or other holder of a disposable interest in the object or because it has actual or ostensible authority from the holder to dispose of the object.

3. Given the relatively simple requirements of Article 6, it is likely that in many cases an interest validly created under national law will also constitute an international interest, so that the two interests will come into being at the same time. The creditor will continue to enjoy the rights given to it by national law in relation to the national interest, subject only to the qualification that if the interest is not also registered as an international interest the creditor risks loss of priority under Article 28(1).

4. A security agreement must enable the secured obligations to be determined but need not state a sum or maximum sum secured. It is common for security agreements to secure all sums from time to time advanced, since the amount to be advanced is not necessarily known at the outset. Any requirement to state a maximum sum would merely induce the creditor to play safe by stating a sum wildly in excess of the amount likely to be required. A third party wishing more information should ask the chargee.

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(m)(i) and (ii); and
- (b) interested persons specified in Article 1(m)(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.

Comment

1. This Chapter prescribes the basic default remedies of a chargee (Articles 7 and 8), a conditional seller or lessor (Article 9) and any of them (Article 12). These are available only to the extent agreed by the parties but they can do this at any time. “Default” means a substantial default except where the parties otherwise agree (Article 10). Parties can exercise additional remedies given by the applicable law so far as not inconsistent with the mandatory provisions of Chapter III (Article 11).
2. In principle, all the remedies listed in Articles 7 and 9 may be exercised by extra-judicial means or by recourse to the court, as the creditor chooses. But to accommodate the concerns of those States where extra-judicial remedies are considered objectionable, Article 52(2) empowers a Contracting State to declare whether or not any remedy which under the Convention does not require application to the court is to be exercisable only with leave of the court. Moreover, the Convention does not affect rules of criminal law or tort law in national legal systems.
3. Articles 7 and 8 are more detailed than Article 9 because a chargee, unlike a conditional seller or lessor, is not the full owner of the object but has merely a security interest. It should, however, be borne in mind that in North American jurisdictions conditional sale agreements and certain types of lease are treated as security agreements, so that in proceedings in any such jurisdiction the court will apply Articles 7 and 8, not Article 9.
4. Of the four remedies available to a chargee under this Article one, the right to grant a lease of the object, is subject to Article 52(1), by which a Contracting State may declare that the chargee shall not grant a lease of the object while it is situated within or controlled from that State’s territory.
5. The remedies specified in Article 7 are not automatic; they are given only to the extent that the chargor has at any time so agreed. The chargor’s consent may be given in the security agreement itself or at any time thereafter.
6. Remedies must be exercised in a commercially reasonable manner, but if the mode of exercise conforms to a provision of the security agreement which is not manifestly unreasonable the exercise of the remedy is deemed to fulfil this requirement (Article 7(2)).
7. The sale or lease of the object by the creditor concerns not only the debtor but other “interested persons” as defined by Article 1(m), namely guarantors and other persons having rights in or over the object, such as other chargees. Accordingly before exercising the remedy of sale or lease the creditor must give reasonable prior notice to those of whose interests the creditor is aware. The creditor will always be aware of the interest of the debtor, any sureties and any charges registered prior to its own registration, and will have to give notice to them, but it will not necessarily be aware of subsequent charges. Accordingly the creditor is not obliged to give notice to a subsequent chargee or holder of any other interest subsequent to its own unless the later chargee or other holder gives notice of its rights to the chargee within a reasonable time prior to the sale or lease.
8. To underline the security nature of the international interest and to prevent the chargee receiving a windfall from the exercise of the remedies given by Article 7, any surplus goes to the holder of the next ranking registered interest or, if there is none, to the chargor (Article 7(5)). Where there are two or more interests ranking after that of the chargee, the intention is that the chargee pays each subsequent secured creditor in order of priority. It is a question for consideration whether this should not be made more explicit.

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 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.

Comment

1. This Article provides machinery by which the object given in security can be vested in the chargee in satisfaction of the secured obligations. For the protection of the debtor and interested persons, particularly in cases where the object exceeds the value of the secured debt, this remedy is exercisable only with the agreement of all the interested persons, including the chargee itself, or alternatively on an order of the court. Such an order can be made only if the court is satisfied that the amount of the secured debt is commensurate with the value of the object. If the amount of the secured debt exceeds the value of the object, a creditor acquiring the object under this Article has no claim to the deficiency, for the vesting of the object in the creditor extinguishes the debt. A creditor wishing to preserve a right to the deficiency should exercise the remedy of sale given by Article 7(1), not the remedy of vesting under the present Article.

2. The chargor continues to have a right to redeem the object by paying the amount of the secured debt in full before the chargee has exercised its power of sale. On sale the right to redeem is lost. It is not, however, extinguished by the chargee's lease of the object. In such a case the chargor can still discharge the security interest, and redeem the object, subject to the rights of the lessee.

3. Upon sale of the object by the chargee or its vesting in the chargee, the buyer or the chargee (as the case may be) takes free from any interest subordinate to that of the chargee but subject to the interest of any prior chargee.

Illustration 2

The chargee has a charge over a railway wagon to secure a debt of one million euro. The wagon has a value of five million euro. The chargee wishes to take the wagon in satisfaction of the debt but the chargor objects. The court must refuse to make an order under Article 8, since the value of the wagon greatly exceeds the amount of the debt.

Illustration 3

D charges an airframe successively to A, B and C, whose interests are registered as international interests in that order. D defaults in its obligations to B, who sells the airframe to T in accordance with Article 7. T obtains ownership free from C's charge but subject to the charge given to A. The position would be otherwise if A had not registered its charge until after B's registration, for B would then have priority under Article 28(1).

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.

Comment

1. As owner of the object the conditional seller or lessor needs only the remedies of termination of the agreement and possession. Other remedies, such as sale or lease, do not require consent, nor does the conditional buyer or lessee have any interest in any surplus resulting from sale except so far as the parties agree. This Article will not be applied in jurisdictions such as those of North America which treat a conditional sale agreement, or the particular leasing agreement, as a security agreement.

2. The Convention does not determine the effect of termination of a conditional sale agreement or leasing agreement on a derivative interest, such as a lease by the conditional buyer or a sub-lease by the lessee. That is left to the applicable law and the terms of the head agreement.

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.

Comment

In the absence of agreement to the contrary “default” means a substantial default. The word “substantial” was chosen deliberately to avoid the differing terms currently used in national legal systems, such as “material” or “fundamental”. The parties can agree in writing as to what constitutes a default and may also agree that the remedies provided by this Chapter may be exercised on an event which is not technically a default at all, such as the onset of insolvency where the chargor has not undertaken to remain solvent or some other external event the risk of which is on the debtor.

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.

Comment

Where the applicable law confers additional remedies, or permits the additional remedies agreed by the parties, then those remedies may be exercised in addition to the Convention remedies, but only to the extent that they are not inconsistent with the provisions of Articles 7(2)-(5), 8(3) and (4), 12(2) and 13.

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.

Comment

1. This Article builds on forms of interim relief commonly available in national legal systems. Where the creditor's right to exercise a default remedy under the Convention is disputed by the debtor, it may take some considerable time before the court is able to make a final determination on the merits of the claim. Meanwhile the creditor risks loss or deterioration of the object and is deprived of the opportunity to obtain income from it. This Article is intended to provide speedy judicial relief pending such final determination. The creditor has to show evidence of the debtor's default. If the court is satisfied that there is such evidence it must grant the creditor such one or more of the orders listed in Article 12(1) as the creditor requests. However, there are two qualifications designed for the protection of the debtor and other interested persons. First, the court may impose such terms as it considers necessary to protect them where the creditor:

- (a) in implementing any order, fails to perform an obligation under the Convention, e.g. by selling the object at a gross undervalue or otherwise in a manner which is not commercially reasonable; or
- (b) fails to establish its claim, wholly or in part, on the final determination of the claim, as where the court concludes that the debtor was not in default at all.

Secondly, the court may require notice of the creditor's request to be given to any of the interested persons before making the order.

2. The remedies listed in Article 12(1) do not include sale of the object and application of the proceeds of sale.
3. This Article does not dispense with the duty on a chargee to act in a commercially reasonable manner pursuant to Article 7(2), for example, in the way it makes a sale pursuant to the order of the court.
4. The creditor remains entitled to invoke any other form of interim relief that may be available under the *lex fori*, e.g. an order for interim payment by the debtor.
5. Under Article 53 a Contracting State may declare that it will not apply the present Article, wholly or in part.
6. As with other provisions of Chapter III, this Article may be excluded by agreement between the debtor and the creditor.

Article 13 – Procedural requirements

Subject to Article 52(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.

Comment

Any remedy provided by Chapter III is to be exercised in accordance with the procedural law of the place of exercise. This Article is concerned with procedure, not with substantive law, and therefore does not affect the exercise of extra-judicial remedies under Article 7. However, a remedy in respect of which a Contracting State has made a declaration under Article 52(2) may be exercised only with leave of the court even if (as provided by Article 7) it would otherwise be available under the Convention without such leave.

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) to (5), 8(3) and (4), 12(2) and 13.

Comment

1. This Article embodies the general principle of party autonomy. The parties are free to exclude or vary any of the provisions of this Chapter except for those listed in the present Article as mandatory, namely those relating to:

- (a) exercise of chargee's remedies in a commercially reasonable manner (Art. 7(2));
- (b) required notice of intended sale by chargee (Art. 7(3));
- (c) application of proceeds of sale by chargee (Art. 7(4));
- (d) application of surplus (Art. 7(5));
- (e) restrictions on vesting of charged object in chargee (Art. 8(3));
- (f) imposition by court of terms for speedy judicial relief (Art. 12);
- (g) exercise of remedies in accordance with procedural law of place of exercise (Art. 13).

2. The power of derogation is limited to the relations between the parties, who cannot, of course, make an agreement which affects the rights of third parties. So the debtor's consent to vesting of ownership of the object in the chargee under Article 8(1) does not dispense with the need for the consent of other interested persons or alternatively an order of the court. Similarly, while the parties can vary the priority rules as between themselves (a point reinforced by Article 28(4)), they cannot by their agreement affect the priority of other parties.

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; and
 - (e) 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.

Comment

1. Article 15 provides for the establishment of the International Registry, which occupies a central role in the Convention. It is envisaged that different registries will be established for different categories of object (as provided by paragraph 2) and that each will have its own Supervisory Authority and Registrar.
2. The registration system envisaged is an electronic system in which prescribed particulars will be entered on the register, but no contract documents or copies will be filed or presented for filing. A person searching the register will obtain any further information it requires by enquiry of the registrant. These factors facilitate a system which is both efficient and economic in cost terms. See also Comment 2 to Article 17.
3. Sub-paragraphs (a)-(d) of paragraph 1 list the types of agreement that may be entered in the International Registry. As to the registration of prospective international interests, see comment 4 to Article 18. Sub-paragraph (e) provides for the registration of notices of national interests, that is, interests arising under internal transactions which by a declaration of a Contracting State will in general have been excluded from certain provisions of the Convention, while remaining subject to the rules governing registration (in this case, registration of notice of their existence under paragraph (e) and Article 19(6)) and priorities. See Article 48 and comment thereon.
4. A registration may be amended, extended or discharged as provided by this Chapter, and references to “registration” are to be construed accordingly.

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) ensure that any rights required for the continued effective operation of the International Registry are such as may be assigned in the event of a change of Registrar;
 - (d) 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;
 - (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
 - (f) supervise the Registrar and the operation of the International Registry;
 - (g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;
 - (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
 - (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and
 - (j) 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 Supervisory Authority shall own all proprietary rights in the data and archives of the International Registry.
5. 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.

Comment

1. The International Registry will be operated by a Registrar under the superintendence of a Supervisory Authority. Though the Registrar will be appointed by the Supervisory Authority it is envisaged that it will be an independent entity, as opposed to an individual serving as an employee.
2. The Supervisory Authority, which will be a body having international legal personality and immunity from process, will have power to supervise the Registrar and the operation of the International Registry but will not be entitled to give directions to the Registrar to change any data relating to a registration. This is a matter exclusively for the Registrar and, as regards relief sought against the Registrar, for the courts of the country where the Registrar has its centre of administration (see Article 43). The principal functions of the Supervisory Authority are to appoint, supervise and (where necessary) dismiss the Registrar, to set and review fees of the International Registry, to secure the efficiency of the registration system, to make or approve regulations pursuant to the Protocol, and to make periodic reports to Contracting States.
3. The Supervisory Authority is also given power to enter into an agreement with the host State under Article 26(3) as to [exemption from taxes and] [other] privileges.
4. The Registrar is responsible for the efficient operation of the International Registry in conformity with the Protocol and of regulations made under it.
5. Paragraph 2(c) is designed to ensure that on a change of Registrar the new Registrar will be able to enjoy all the rights, including intellectual property rights, needed for the continued efficient operation of the International Registry. The Supervisory Authority is in a position to ensure this not only by contract but by reason of its ownership of proprietary rights in the data under paragraph 4 of this Article.
6. See also Comment 1 to Article XVI of the Aircraft Equipment Protocol.

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.
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.

Comment

1. While the ensuing Articles prescribe various matters relating to registrations and searches in the International Registry, the detail is left to be supplied by the Protocol and regulations made under it. It can be expected that, among other matters, these will deal with the registration of derivative interests in such a way as to show their derivative character, e.g. by notation of an assignment of a registered

international interest against the registration or by notation of a registered sub-lease against the registration of the lease from which it derives .

2. The registration system envisaged is a low-cost system in which all registration applications, entries and searches will be effected by computer without the need for human intervention. Accordingly the system will be based on “notice filing”, that is, the filing of particulars which give notice to third parties of the existence of a registration, leaving them to make enquiries of the registrant for further information, as opposed to a system which requires presentation and/or filing of agreements or other contract documents or copies. A further consequence of the electronic nature of the system is that in principle the International Registry cannot be concerned with facts external to the transmitted data. In particular, paragraph 2 provides that the registration rules are not to include a requirement to furnish evidence that a consent to registration has been given. Articles 18(1) and 19(1) together protect the debtor from the consequences of a registration made without the debtor’s written consent.

3. Under paragraph 3 registration is to be effected in chronological order, the computer recording the exact time of registration. Registration takes effect when the registered data become searchable (art. 18(1)), and this will determine the priority of the international interest under Article 28, as well as the priority of other interests appearing on the register, i.e. registered national interests and registrable non-consensual interests registered under Article 38.

4. Under paragraph 4, the Protocol may empower a Contracting State to decide whether to allow registration to be effected directly into the International Registry or to designate an entity as the national entry point. For example, a Contracting State may wish to utilise an existing national registration system, modified to enable the holder of a national interest which also constitutes an international interest to make one input to the national entry point that will simultaneously procure registration of the national interest and transmission of details of the international interest to the International Registry. It will, of course, be necessary to ensure a suitable connection to the Contracting State in question. Thus Article XVIII of the Aircraft Equipment Protocol gives the power of designation as regards airframes and helicopters to a Contracting State which is the State of registry. Designated entities are not part of the International Registry and their operations are governed exclusively by national law, which will determine the conditions for use of the designated entry point.

5. The designation of national entry points is limited to registrations. Searches will be able to be made direct from any access point available to the searcher.

6. The registration system is open to all those who comply with the registration requirements, a point underlined by Article 25.

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.

Comment

1. The effect of paragraph 1 is that a registration is valid only if made in conformity with Article 19. This important control has the effect that a registration made by a person not entitled to do so is invalid and consequently is incapable of affecting the rights of third parties. This will be the position where, for example, the creditor registers an international interest without the debtor's written consent.

2. There are other controls against improper registration. An interest cannot be validly registered as an international interest if no agreement has been made creating or providing for the interest or if the interest has not been constituted as an international interest in accordance with Article 6. In either case registration will have no effect.

3. A registration takes effect only when the required information has become searchable. Registration takes effect not from the time of transmission of the data or receipt of the data by the International Registry but from the time the registration is searchable. This rule is necessary in order to prevent third parties from being misled by a clear search. In the ordinary way the interval between transmission of data and entry in searchable form is likely to be short. If registration is delayed through a systems failure, the intending registrant, if suffering loss (e.g. through a loss of priority) may have a claim against the Registrar under Article 27.

4. Article 15(1) allows registration of a prospective international interest, that is, an interest which 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, for example, the debtor's acquisition of an interest in the object (Article 1(y)). Given that registration is effected against identified assets, a prospective international interest can be registered only in relation to an existing and identifiable object and with the written consent of the prospective debtor. The purpose of Article 18(3) is to allow an intending creditor to protect its priority pending the creation of the international interest, so that when that interest comes into being its priority will run from the time of registration of the prospective international interest.

Illustration 4

D is negotiating with C for a loan on the security of an aircraft object owned by D, the object being identified by the parties in accordance with Article VII of the Aircraft Equipment Protocol. On April 1 2001, with D's written consent, C registers its interest in the object as a prospective international interest. On May 1 C charges the object to X as security for an advance by X. On June 1 D concludes a security agreement with C by which C acquires an international interest in the object. C's interest is to be treated as if registered on April 1, with the result that C has priority over X. Having had notice of C's prospective international interest by reason of its registration X should have been aware that its initial priority was liable to be displaced and should have sought an agreement from C to subordinate its interest, wholly or in part.

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 either party with the consent in writing of the other.

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.

Comment

1. This Article states the person or persons by whom a registration may be effected. This differs according to the nature of what is to be registered. International interests and prospective international interests, together with assignments and prospective assignments of such interests, may be registered by a party only with the written consent of the other party. This provides an important safeguard against improper registration. By contrast, registration of a subordination may be effected either by the subordinated party or, with that party's written consent, by the beneficiary of the subordination. Discharge of a registration must be done by or with the written consent of the party in whose favour the registration was made, e.g. the creditor. The idea linking the treatment of all these situations is that the person whose interests would be adversely affected by the entry on the register must either effect the entry itself or give its written consent to this being done by the other party. In relation to the remaining three categories, only the holder of the right or interest may register it.

2. The Convention does not itself create rights of subrogation; what it does do, in Article 37, is to make it clear that nothing in the Convention prevents the acquisition of an international interest, whether by operation of law or by agreement, under the applicable law; and the present Article empowers the subrogee to register the international interest so acquired.

Illustration 5

G has guaranteed a loan by C to D secured by a charge on a fleet of railway wagons. D defaults and G pays off the debt pursuant to its guarantee. Under the applicable law G acquires the benefit of C's charge to the extent of the payment and is entitled to be registered in place of C as the holder of the international interest created by the chargee.

3. National interests are interests arising under internal transactions which the relevant Contracting State has elected to exclude from the Convention by making a declaration under Article 48(1). But such a declaration does not exclude the whole of the Convention; its main effect is to disapply (with two exceptions) the provisions of Chapter III dealing with default remedies. The registration and priority rules will continue to apply. So the holder of a national interest may secure the benefit of the registration provisions and priority rules by registering a notice of its national interest, in which event the national interest will prevail over a subsequently registered international interest under Article 28(1) as applied by Article 48(2).

Article 20 – Duration of registration

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

Comment

The effect of this Article is to leave it to the parties to agree on the duration of registration and to incorporate this into the registered data.

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.

Comment

1. The International Registry is to be a public registry to which all those complying with the rules of the Registry are entitled to have access, whether to make a registration or a search. However, while it is envisaged that registrations will be effected via a national entry point, searches will be able to be made directly from any point of computer access to the International Registry. See also Article 25.
2. As to the evidentiary value of certificates and purported certificates, see Article 23.

Article 22 – List of declarations and declared non-consensual rights or interests

The Registrar shall maintain a list of declarations, withdrawals of declaration and 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 or withdrawal of 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.

Comment

The Convention contains several provisions entitling a Contracting State to exclude or qualify the Convention in relation to specified matters. The list referred to in this Article is a list of such declarations and withdrawals of them and of non-consensual rights or interests which a Contracting State, pursuant to Article 39, declares would have priority under its law over an interest equivalent to that of the holder of an international interest – in other words, an interest equivalent to that held by a chargee or by a person who is a conditional seller or lessor of equipment. Under Article 39 non-consensual rights or interests so declared have priority even over a registered international interest to the extent stated in the declaration (see Comment 2 to Article 39). The purpose of the present Article is to make the International Registry a central point which users can consult to ascertain the existence of such rights and interests instead of their having to make a separate search through the declarations held by the depositary State. Hence the machinery envisaged is that the depositary State will supply the Registrar with details of all declarations deposited with it so that these can be accessed through the International Registry.

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.

Comment

1. A person holding a document which purports to be a certificate issued by the International Registry need not adduce evidence that it was in fact so issued and is factually correct, unless the authenticity of the document is challenged and the *prima facie* presumption displaced by evidence which shifts the burden of proof to the holder of the document.
2. A certificate issued by the International Registry is *prima facie* proof of the facts recited in it, including the date and time of registration, but evidence is admissible to show that the certificate does

not correctly state the facts. A person reasonably misled by an erroneous certificate may be entitled to pursue a claim against the Registrar, as where the certificate wrongly states that there is no registered international interest against an object, thereby leading the person to whom the certificate is issued to advance funds in the belief that it will be the first registered holder of an international interest.

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.

Comment

1. The effect of paragraph 1 is that where the obligations secured by a registered interest have been performed the debtor may require the holder of the interest to procure discharge of the registration. Discharge does not mean removal of an entry from the International Registry but a notation to the effect that the registered interest no longer exists.

2. Paragraph 2 deals with the case where a registration of a prospective international interest or a prospective assignment has been registered. If the intending creditor or assignee has neither given value nor incurred a commitment to give value, the prospective debtor or assignor is entitled to have the registration discharged. The position is otherwise where such value has been given or promised in a binding undertaking.

Illustration 6

D is negotiating a loan from C to be secured on a space satellite. With D's written consent C registers a prospective international interest. Subsequently D decides not to proceed with the transaction. D is entitled to require C to procure discharge of the registration.

Illustration 7

C agrees to lend FF10 million to D on the security of an identified airframe which D is in the course of acquiring and advances FF1 million of this sum immediately. With D's written consent C registers an international interest. Before D has completed its acquisition of the airframe it decides not to proceed with the loan transaction as regards the balance of FF9 million and requests C to arrange for discharge of the registration. C, having value to the extent of FF1 million, is entitled to refuse.

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.
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.
5. – The Supervisory Authority may waive the immunity conferred by paragraph 4.

Comment

1. The Supervisory Authority will be designated in the relevant Protocol. It may or may not be a body already enjoying international legal personality. If it is not, it will be given international legal personality by virtue of its designation.
2. The Supervisory Authority and its officers and employees will enjoy immunity from process. The extent of such immunity will be decided by the Diplomatic Conference, which could also leave aspects of this to be dealt with in the host State agreement referred to in paragraph 3. Functional immunity denotes immunity of the Supervisory Authority from process in the exercise of its functions. Full immunity would extend this to the acts of employees of the Supervisory Authority outside the scope of their employment, for example, negligent driving while not engaged on business of the Supervisory Authority.
3. Functional immunity is to be given to the Registrar and its officers and employees except in relation to (a) claims under Article 27(1) for loss suffered through errors and omissions of the Registrar or staff of the International Registry or system malfunction or (b) orders against the Registrar under Article 43(2) and (3) affecting registrations.
4. Paragraph 5 enables the Supervisory Authority to waive any immunity that would otherwise be enjoyed by the Registrar.

CHAPTER VII – LIABILITY OF THE REGISTRAR

Article 27 – Liability and insurance

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 and its officers and employees or from a malfunction of the international registration system [except ...]
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.

Comment

1. In principle the liability of the Registrar is not dependent on fault, so that it is imposed not only for errors or omissions but for system malfunction. It is for the Diplomatic Conference to decide, in the light of the work of the Registry Task Force, what qualifications, if any, should be imposed on this liability in respects of events of *force majeure*.
2. The Registrar's liability is limited to compensatory damages for loss suffered. This excludes an award of punitive or exemplary damages.

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.
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 an object and the holder of an international interest in that object.

Comment

1. This Article lays down a set of priority rules governing a registered interest. By virtue of the definition of “registered interest” in Article 1(cc) these rules apply not only to an international interest but also to a registrable non-consensual right or interest and a national interest notice of which has been registered in the International Registry. Given the size of transactions within the scope of the Convention, the aim is to provide a very small number of simple, objective and comprehensive rules, and to avoid some of the complexities found in national legal systems.
2. Paragraph 1 embodies two priority rules. First, as between registered interests priority goes to the first to be registered. Registration is therefore a priority point, not merely a perfection requirement. Where a registered prospective international interest becomes an actual international interest it is deemed to have been registered at the time of registration of the prospective international interest and to have priority from that time (see Article 18(3), text, Comment and Illustration 4). Secondly, subject to paragraph 3, a registered interest has priority over an unregistered interest. This is so whether or not the unregistered interest is registrable under the Convention (see the definition of “unregistered interest” in Article 1(mm)).
3. A registered interest has priority over an earlier unregistered interest even if this was known to the holder of the registered interest at the time of registration. The purpose of this rule, which finds its counterpart in a number of legal systems, is, first, to reflect the principle that all creditors are deemed to know of a registered interest and, secondly, to avoid factual disputes as to whether the second creditor did

or did not know of the earlier interest. For the same reason, a registered interest securing further advances has priority over a subsequent interest (whether registered or not) even as regards advances made with knowledge of the later interest.

4. This Article does not deal specifically with derivative international interests, e.g. those arising under a sub-lease. It is, however, assumed that the holder of a derivative interest cannot, by being the first to register, obtain priority over the international interest from which it is derived. In other words, the priority rules deal with ranking of international interests of the same degree.

5. Paragraph 3 introduces an exception to the general rule that even an unregistrable interest is displaced by a subsequent registered interest. The case of purchase by an outright buyer (as opposed to a conditional buyer as defined in Article 1(e)) is considered so common and important as to justify a special rule providing for the buyer's interest to have priority over an interest not registered until after the time of the buyer's acquisition of the object.

6. Holders of competing interests may vary the priority between themselves by agreement but an assignee of a subordinated interest is not bound by the subordination unless it was registered prior to the assignment.

7. Any priority given by this Article extends to proceeds as defined by Article 1(w), which in effect confines the priority to insurance and other loss-related proceeds, as opposed to proceeds of a disposition of the object. See paragraph 24 of the overview.

8. This Article does not regulate priority between competing unregistered interests. That is left to the applicable law, though any priority given by the applicable law is liable to be displaced if the holder of one such interest subsequently registers it.

9. Paragraph 6 deals with the case where an item (which may or may not be an object within the scope of the Convention) becomes installed on an object. For example, a valuable item of space property supplied by C1 to D under a conditional sale agreement is incorporated into a satellite owned by C2 and leased to D. Paragraph 6 makes it clear that the Convention does not determine the priority between C1 and C2 but leaves this to the applicable law, which may, for example, have a rule that ownership of an item which becomes incorporated as an accessory to a larger object is extinguished.

Illustration 8

D gives a charge over a railway wagon to C1 on 1st February and to C2 on 2nd March. C2 registers its charge on 3rd March, while C1 registers its own charge on 6th March. C2 has priority and this is so even if it knew of the charge in favour of C1.

Illustration 9

D is the owner of an aircraft of which the nationality registration is Ruritania. Under Ruritanian law X has a non-possessory lien to secure a judgment debt. Subsequently D charges the airframe and engines to C to secure an advance and C registers the charge. C's registered international interest has priority over X's earlier lien even though this is not registrable under the Convention. The position would be otherwise if Ruritania had made a declaration providing for the registration of judgment debts and X had registered its judgment debt before C had registered its charge.

Illustration 10

D charges a space satellite to C1 to secure present and future advances. C1 advances DM 20 million and registers the charge. Subsequently D charges the satellite to C2, which advances DM 15 million and gives notice of its charge to C1. Later C1 makes a further advance to D of DM 5 million. C1 has priority over C2 both as to the DM 20 million advance and as to the DM 5 million advance. C2 could avoid this situation by negotiating a subordination of C1's charge to the extent of C2's advance.

Illustration 11

O, the owner of a railway engine, leases it to L. Before O has registered its interest L wrongfully sells the equipment to B. Subsequently O registers its interest. O has priority over B, since the interest which B acquired from L is a derivative interest which is therefore subordinate to the higher-degree interest held by O (see Comment 4).

Illustration 12

D gives a charge on an aircraft object to C1, who registers it, and a second charge to C2. Later C1 agrees to subordinate its charge to that of C2. However, C2 fails to register the subordination agreement. Subsequently C1 assigns its charge to A. A has priority over C2 and this is so whether or not A knew of the subordination agreement.

Illustration 13

D charges a railway wagon to C1 and C2 in succession, C1's charge being registered first. Subsequently the wagon, which was insured against loss, is destroyed in an accident. C1 has a prior claim to the insurance proceeds. If these exceed the amount of the debt owed to C1, the balance is payable to C2 to the extent of its claim, any surplus being payable to D.

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.

Comment

1. An international interest is in principle effective in insolvency proceedings against the debtor if registered prior to the commencement of the insolvency proceedings, that is, the time at which those proceedings are deemed to commence under the applicable insolvency law (Article 1(d)). But by paragraph 2 even an international interest not so registered may be effective under the applicable law. In other words, paragraph 1 provides a rule of validation, not of invalidation. "Effective" means that the international interest will be recognised as proprietary in nature and therefore in principle ranking ahead of the claims of unsecured creditors.
2. Paragraph 3 preserves the effect of certain specific rules of insolvency law, namely those relating to the avoidance of preferences and transfers in fraud of creditors, and of rules of insolvency procedure designed to limit the enforcement of security or other property rights in the interests of the general body of creditors, for example, in order to facilitate a reorganisation.

Illustration 14

C, an unsecured creditor of D for a loan of 1 million euro, is concerned that D may be insolvent and takes a charge to secure the loan. A month later a court in Urbania makes a winding up order against D on the ground of insolvency and appoints an insolvency administrator. Under Urbanian insolvency law a security interest given for past value within a period of six months prior to the commencement of the insolvency proceedings will be set aside on the application of the insolvency administrator. If D's insolvency

administrator applies to set aside the charge given to D, paragraph 1 of the present Article will not provide a defence to the application.

Illustration 15

C, which has leased some railway engines to D, registers its interest in the engines in the International Registry as an international interest. Subsequently an insolvency administrator is appointed with a view to a reorganisation of D. Under the applicable law the effect of the appointment is to stay all enforcement measures against D. C cannot exercise its normal remedy of repossession under Article 9 so long as the stay continues in force.

**CHAPTER IX ² – 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.

Comment

1. This Chapter provides for the assignment of an international interest.
2. An assignment is registrable under Article 15(1)(b).
3. Paragraph 2 tracks the formal requirements laid down in Article 6 for the creation of an international interest. Failure to comply with paragraph 2 has the effect that the assignment is not valid under the Convention, though it may well take effect as an assignment of a national interest under the applicable law.

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.

² 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 was discussed but there was insufficient time to give the alternatives full consideration. 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. This matter was not further discussed at the 31st Session of the ICAO Legal Committee.

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.

Comment

1. An assignment transfers to the assignee not only the international interest itself, with any priority it enjoys under the Convention, but also all associated rights, that is, rights to payment or other performance by a debtor which are secured by or associated with the object (Article 1(c)). The intention is to ensure that an assignment of an international interest and a transfer of the associated rights go together, so that the associated rights cannot be assigned under the Convention independently of the international interest. To allow such independent assignment would broaden the Convention well beyond its intended scope and create inconsistency with the draft UNCITRAL Convention on Assignment in Receivables Financing. The present text ensures that an assignment of the international interest carries with it a transfer of the associated rights but does not cover the converse position where the assignment is expressed to relate solely to the associated rights. This is one of the matters to be addressed by the informal Working Group on assignment.

2. The character of the transfer of the associated rights follows that of the assignment of the related international interest. So if the latter is an assignment by way of security, the transfer of the associated rights will also be by way of security.

3. The Convention does not itself contain any provisions as to defences or rights of set-off other than waiver (see paragraph 3 of this Article); these are left to the applicable law. However, this paragraph must be read in conjunction with Article 32(1), which sets out the formalities that are both necessary and sufficient to entitle the assignee to payment or other performance. If those formalities are complied with, the fact that the applicable law prescribes different or additional formalities for an assignment is irrelevant. Accordingly paragraph 2 of the present Article is confined to substantive defences (and rights of set-off).

4. Paragraph 3 of the present Article recognises the common practice of including a provision by which the debtor waives defences against the assignee, in order to make claims more readily transferable.

5. Where an assignment is by way of security and the secured obligations are discharged, any of the assigned rights still in existence revert in the assignor without the need for any instrument of reassignment.

Illustration 16

O, the owner/lessor of an aircraft object, registers its international interest and subsequently assigns the interest to A by way of an outright assignment. The effect of the assignment is that A acquires the ownership rights previously vested in O and becomes entitled to be registered as assignee of the international interest and to collect the rentals under the lease, subject to any defences or rights of set-off available to the lessee under the applicable law, e.g. for non-conformity of the equipment with the specifications in the leasing agreement.

Illustration 17

The facts are as in Illustration 16 except that the assignment is by way of security. After A has collected some of the rentals outstanding under the leasing agreement O discharges its debt to A, whereupon the aircraft object and the right to the remaining rentals become revested in O.

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.

Comment

1. This Article sets out the conditions in which the debtor comes under a duty to make payment or give other performance to the assignee. It is to be read subject to the debtor’s right to raise substantive defences and rights of set-off under Article 31(2) to the extent that this has not been displaced by a waiver of defences under Article 31(3). See comment 2 to Article 31.

2. The debtor must have been given notice of the assignment in writing identifying the international interest. For consideration at the Diplomatic Conference is the way in which the debtor’s receipt of a prior notice of assignment shall be dealt with. Under the second of the bracketed alternatives this constitutes a defence to the assignee’s claim to payment or other performance. The first alternative does not address this issue, leaving it to be dealt with under the applicable law pursuant to Article 31(2). However, defences under the applicable law may have been waived. The first alternative is designed to give a modicum of protection to the debtor in this situation by requiring that the debtor shall have given a written consent to the assignment. Under most national laws contractual rights are assignable without the debtor’s consent.

3. A debtor who pays or performs when so required by paragraph 2 obtains a good discharge from liability. The debtor may also obtain a good discharge on payment or performance where the conditions of paragraph 2 have not been satisfied. The effect of paragraph 2 is simply that the debtor cannot be *required* to perform if the conditions of that paragraph have not been fulfilled. But this does not disable the debtor from performing in other cases, though if it is found that the person claiming to be the assignee does not have the best right to payment or performance the debtor may then have to perform again in favour of the person having the best right.

4. Even where the debtor does give a valid performance in favour of an assignee this does not affect the rights of another assignee who has priority. In such a case the latter would be able to pursue whatever remedy was available against the junior assignee under the applicable law.

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.³

Comment

1. This Article is confined to assignments by way of security and confers on the assignee default remedies corresponding to those given by Chapter III to the holder of an international interest on the debtor's default. So on the assignor's default the assignee may, for example, sell or lease the object and sub-assign the right to sums payable under the assigned agreement.
2. However, the default provisions apply only in the relations between assignor and assignee and do not affect the rights of the debtor unless the latter also has defaulted or has agreed to subordinate its rights to those of the assignee. Accordingly in the absence of such default or agreement any sale or lease by the assignee will take effect subject to the rights of the chargor, conditional buyer or lessee.

Illustration 18

O leases railway engines to L, registers an international interest in the engines and then assigns that interest to A by way of security for a loan from A repayable by instalments. O defaults in payment of an instalment and A thereby acquires the right to sell or lease the equipment. If A sells the engines, the purchaser acquires it subject to L's rights as lessee in possession and becomes entitled to collect the rentals while the lease is current and thereafter to take possession of the engines. The position is similar if A leases the engines. The lessee is then interposed between A and L and becomes L's lessor, with the consequent right to collect rentals from L.

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.

Comment

1. The rules in Article 28 governing competition between a registered international interest and a subsequently registered interest or an unregistered interest apply *mutatis mutandis* to competing assignments. Accordingly a registered assignment has priority over a subsequently registered assignment and over an unregistered assignment.
2. As between a registered assignee and a person other than a competing assignee – for example, an outright buyer from the debtor – the assignee has the same ranking as its assignor (Article 31(1)(a)), so that the assignment does not affect existing priorities.

³ The Drafting Committee of the third Joint Session noted that this provision would require further technical consideration. However, this matter was not discussed by the third Joint Session Plenary, nor by the 31st Session of the ICAO Legal Committee.

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).

Comment

Under Article 31(1)(a) an assignment of an international interest transfers all the assignor’s interests under the Convention and all priorities enjoyed by those interests. By Article 31(1) (b) an assignment of an international interest transfers all associated rights to payment or other performance. However, the priority of the assignee in relation to the associated rights is dealt with not under Article 31 but under the present Article, which limits such priority to rights to sums related to the acquisition or rental of the object and the reasonable costs referred to in Article 7(5). The purpose of this restriction is to avoid giving the assignee a Convention priority to rights to payment which, though secured on the object, are unrelated to its acquisition or rental, as, for example, an advance on the security of equipment already acquired by the chargor with its own or a third party’s funds. The priority between two such assignees will be determined not by the Convention but by the applicable law, including any applicable provisions of what is currently the draft UNCITRAL Convention on Assignment in Receivables Financing.

Illustration 19

D charges a space satellite to C to secure repayment of (a) an advance by C for the purchase of the satellite and (b) money previously advanced by C to D. C registers the charge as an international interest in the International Registry. Subsequently D charges the same satellite to T to secure an existing indebtedness, and T registers its charge. C assigns its international interest to A; T assigns its international interest to U. Since C’s international interest was the first to be registered, it has priority over T’s international interest both as to C’s purchase-money advance and as to its non-purchase-money advance. A succeeds to such priority and its interest thus ranks ahead of that held by U. However, in relation to the associated rights, to which both A and U are claimants, A’s priority over U is limited to the sum outstanding in respect of C’s purchase-money advance. Priority between A and U as to the two non-purchase-money advances is determined by the applicable law, not by the Convention.

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.

Comment

The effect of this Article is that if insolvency proceedings are instituted against the assignor then in principle the assignee’s title to the assigned international interest is to be treated as effective in the proceedings, subject, however, to the rules of insolvency law and procedure specified in Article 29. If, for example, the assignment were made in fraud of the assignor’s creditors, nothing in the present Article would preclude the assignment from being set aside under a provision of the applicable insolvency law invalidating assignments in fraud of creditors.

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.

Comment

The Convention deals only with transfers of an international interest by way of assignment. However, national laws commonly allow transfer by subrogation, typically as the result of a payment to the creditor by a third party such as a guarantor, who then stands in the shoes of the creditor to the extent of the payment. Subrogation may occur either by operation of law (as in the case of a discharge of the debtor's secured obligations by a guarantor) or by contract between the creditor and the third party. This Article makes it clear that the rights of the subrogee under the applicable law are unaffected. To the extent that those rights include succession to the international interest previously held by the creditor the subrogee becomes entitled to have such rights entered in the International Registry (see Article 15(1)(c)).

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. Such a declaration may be modified from time to time.

Comment

1. This Article enables a Contracting State to extend the application of the Convention so as to allow designated categories of non-consensual right or interest to be registered as if they were international interests. The type of non-consensual right or interest envisaged by this Article is one which is susceptible to a first-to-file rule and which would otherwise be subordinate to a registered international interest, as opposed to a right or interest within Article 39. An example is the interest arising from the attachment of the debtor's equipment by way of execution of a judgment debt.
2. Where a non-consensual right or interest within a registrable category is registered in the International Registry it has effect thereafter in all respects as if it were an international interest, and therefore has priority over a subsequently registered international interest or an unregistered interest (Article 28(1)). If it is not registered it will be subordinate to a registered international interest. Its priority as against an unregistered interest is not governed by the Convention and is to be determined by the applicable law.
3. A Contracting State may at any time modify a declaration, as by adding, removing or altering categories.

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.

Comment

1. This Article is confined to non-consensual rights or interests in respect of which the relevant Contracting State has not made a declaration under Article 38 and which are therefore not registrable in the International Registry. The non-consensual rights or interests capable of a declaration under the present Article are those which, under the law of the Contracting State, have priority over an interest equivalent to that of the holder of an international interest, that is, equivalent to the interest of a chargee, conditional seller or lessor. Such non-consensual rights or interests may be in respect of either secured or unsecured claims. An example of the former is a non-consensual lien on an aircraft for airport dues. Examples of the latter are claims for unpaid taxes and for wages due from an insolvent employer, which, though usually unsecured, are in some States given priority over the claims even of a secured creditor. In such a case, the Contracting State, if it has not included such claims in a declaration under Article 38, may by declaration under the present Article ensure that such claims, though not registered in the International Registry, have priority even over a registered international interest.

2. The purpose of requiring the declaration is to alert holders and prospective holders of international interests to categories of non-consensual right or interest which, contrary to the general rule in Article 28(1), will have priority even though unregistered and, indeed, even if unsecured. Two conditions are necessary to attract the application of this Article. First, the equivalent consensual interest must be one over which the non-consensual right or interest has priority under the applicable law. Secondly, the Contracting State must declare the non-consensual right or interest as one which is to have priority over a registered international interest. It is therefore open to a Contracting State to preserve or narrow its existing priorities for non-consensual rights or interests but not to expand them.

3. It is not necessary for a declaration to list such categories individually. It would, for example, be open to a Contracting State to declare that all non-consensual rights or interests which under the law of that State have priority over the rights of secured creditors are to have priority over registered international interests.

4. A declaration may be modified from time to time, for example, by adding, removing or modifying categories of non-consensual right or interest specified in the declaration prior to its modification.

5. The deposit of a declaration or modification of a declaration cannot affect the priority of international interests already registered. However, it is open to a Contracting State to make a declaration that is expressed to cover not only categories of non-consensual right or interest then having priority under its national law but any new categories that are created in the future. This avoids the need to deposit a new declaration, or a modification of an existing declaration, to add a new category each time there is a change in the law.

Illustration 20

Under the law of Domitia, a Contracting State, claims for unpaid wages and taxes have priority, within specified limits, over the claims of secured creditors. Before Domitia has deposited a declaration under this Article, D gives C1 a charge over identified items of railway rolling stock and C1 registers the charge as an international interest. Later Domitia makes a declaration under this Article that claims for unpaid wages and taxes, so far as having priority over secured claims under Domitia's national law, are to have priority over a registered international interest. Later D gives a second charge over the same equipment to C2, who registers the charge as an international interest. Some time afterwards D goes into

insolvent liquidation. The preferential claims for unpaid wages and taxes are subordinate to the charge in favour of C1 but have priority over the charge to C2.

CHAPTER XI—APPLICATION OF THE CONVENTION TO SALES

Article 40 – Sale and prospective sale

This Convention shall apply to the sale or prospective sale of an object as provided for in the Protocol with any modifications therein.

Comment

The purpose of this Article is to enable a Protocol to allow outright buyers of equipment to obtain the benefit of the registration system and the priority secured by registration. However, some parts of the Convention – in particular, the provisions of Chapter III dealing with default remedies – are not appropriate to outright sales. Thus the Aircraft Equipment Protocol, in extending the Convention to sales and prospective sales (Article III), does not include Chapter III in the list of applied provisions.

CHAPTER XII – JURISDICTION

Article 41 – Choice of forum

Subject to Articles 42 and 43, the courts of a Contracting State chosen by the parties to a transaction have exclusive jurisdiction in respect of any claim brought under this Convention, unless otherwise agreed between the parties, whether or not the chosen forum has a connection with the parties or the transaction.

Comment

1. This Article embodies the general principle that exclusive jurisdiction is given to the courts of a Contracting State chosen by the parties. It is, however, open to the parties to agree that the jurisdiction selected is to be non-exclusive. Moreover, this Article does not exclude any jurisdiction conferred by Article 42, nor does it empower the parties to confer jurisdiction (exclusive or non-exclusive) to make orders against the Registrar where the court selected is not in a place where the Registrar has its centre of administration.
2. The parties are free to confer jurisdiction on the courts of any Contracting State, whether or not it has a connection with the parties or the transaction.

Article 42 – Jurisdiction under Article 12(1)

1. The courts of a Contracting State chosen by the parties and the courts on the territory of which the object is situated may exercise jurisdiction to grant relief under Article 12(1)(a), (b), (c) and Article 12(4) in respect of that object.
2. The courts of a Contracting State chosen by the parties and the courts on the territory of which the debtor is situated may exercise jurisdiction to grant relief under Article 12(1)(d) and Article 12(4) if the enforcement of such relief is limited to the territory of the forum.
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 Contracting State or in an arbitral tribunal.

Comment

1. This Article is confined to jurisdiction to entertain claims by a creditor to speedy judicial relief under Article 12 pending final determination of the creditor's claim. The forms of relief set out in Articles 12(1)(a),(b) and (c) and 12(4) are seen as being of an *in rem* nature, and thus dependent on party agreement or on the object being within the territory of the Contracting State from whose courts relief is sought. By contrast, relief under Article 12(1)(d) is conceived as operating *in personam*, so that in the absence of party agreement what is required is that the debtor be situated in the territory of the forum State and the enforcement sought limited to that territory. In either case the jurisdiction is concurrent with that chosen by the parties under Article 41.

2. It is not necessary that the court from which relief is sought under Article 12 shall be the tribunal making the final determination of the claim. This may be a court or arbitral tribunal in another Contracting State.

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.

Comment

1. In general the Registrar enjoys functional immunity from legal process (Article 26(4)). However, there are three types of court order to which the Registrar may be subject:

(a) Orders under Article 27 for payment of compensatory damages for errors, omissions and system malfunction

(b) Orders under Article 43(2) directing the Registrar to discharge a registration where the discharge is one to which a debtor or prospective debtor is entitled under Article 24(1) or (2) and the creditor fails to take the necessary action or has ceased to exist or cannot be found

(c) Orders under Article 43(3) to amend or discharge a registration following the failure of the registrant to comply with an order of a foreign court to effect the amendment or discharge.

2. There are various reasons why it would be inappropriate to allow courts outside the country where the Registrar has its centre of administration to make orders against the Registrar. In the first place, the Registrar would *ex hypothesi* be outside the territorial jurisdiction and control of those courts. Secondly, to allow such orders would be incompatible with the international character of the Registrar's functions. Thirdly, there would be the risk of conflicting orders by courts in different jurisdictions. Accordingly this Article confers exclusive jurisdiction on the courts of the place where the Registrar has its centre of administration. However, where a court having jurisdiction under the Convention or, in the case of a national interest, a court of competent jurisdiction, has made an *in personam* order requiring a person to procure amendment or discharge of a registration (e.g. because under the applicable law the debtor had no power to dispose of the object to which the registration

relates) the court where the Registrar has its centre of interest may (but is not obliged to) make the order of the foreign court effective by directing the Registrar to make the appropriate amendment or discharge entry.

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.

Comment

This Article is a residuary provision which, subject to Articles 41 to 43, confers general jurisdiction on any court having jurisdiction under the *lex fori*. Such a court may accordingly entertain a claim under the Convention, other than a claim under Article 12 or against the Registrar, where:

- (a) the parties have not chosen a forum; or
- (b) the forum selected under Article 41 is non-exclusive.

CHAPTER XIII – RELATIONSHIP WITH OTHER CONVENTIONS

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).]⁴

CHAPTER XIV – FINAL PROVISIONS

Article 47 – 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 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.

Comment

1. This Article reinforces the controlling power of the Protocol.

⁴ This provision may be modified or deleted depending on the final form of the future UNCITRAL Convention.

2. It will be for the Diplomatic Conference to decide on the number of ratifications required to bring the instrument into force.
3. It is for consideration whether it is either appropriate or practicable to allow ratification of the Convention independently of ratification of the controlling Protocol.

Article 48 – 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.

Comment

The requirements of mobility and internationality are considered inherent in the nature of the equipment covered by the Convention and are not specifically stated. This allows the possibility of the Convention applying to a transaction which is purely internal in that all the parties and the object itself are situated in the same Contracting State at the time of conclusion of the contract (see Article 1(q)). Such a situation will not occur as regards objects in space, and is unlikely to occur in the case of aircraft objects but could arise as regards railway rolling stock. The practical problem is that a transaction which is internal when the agreement is made may become international the next day as the result of movement of the object from one country to another. Moreover, the creditor may have no means of knowing whether or not this has occurred. Further, a transaction which is international can derive from one which is internal, as where a leasing agreement is domestic but the lessee grants a sub-lease to a party in another Contracting State. Hence the Convention takes a practical approach in covering all transactions within Article 2 even if in some cases this catches internal transactions. Nevertheless it is open to a Contracting State to make a declaration under Article 48(1) excluding the application of the Convention to a transaction which is an internal transaction in relation to that State. This will not, however, affect the application of the registration provisions of Chapter IV or the priority rules in Article 28. Provision is made for registration of a notice of a national interest created by an internal transaction covered by a declaration made under this Article.

[Article 49 – 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 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.]

Comment

The only Protocol ready for examination at the Diplomatic Conference is the Aircraft Equipment Protocol. This and the ensuing Article are designed to allow additional Protocols to be concluded pursuant to a procedure to be determined by the States participating in the preparation of the Protocols. The present Article remains in square brackets.

Article 50 – 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 49.

Comment

This Article allows for additional categories of equipment of a kind not specified in Article 2(3). See also the Comment to Article 49.

Article 51 – Determination of courts

A Contracting State may 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.

Comment

Article 1(h) defines a court as a court of law or an administrative or arbitral tribunal established by a Contracting State but not a private administrative or arbitral tribunal. The present Article empowers a Contracting State to declare the relevant court or courts which are to have jurisdiction under the Convention.

Article 52 – 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.

Comment

1. One of the default remedies conferred on the chargee by Article 7(1) and on any creditor by Article 12(1) is the granting of a lease of the object. Paragraph 1 of the present Article empowers a Contracting State to make a declaration excluding this remedy while the charged object is situated

within or controlled from its territory. The phrase “controlled from” is primarily directed at satellites, which though in space are controlled from earth.

2. Paragraph 2 enables a Contracting State to make a declaration excluding extra-judicial remedies that would otherwise be available (for example, possession and sale) and to require the creditor to obtain leave of the court.

Article 53 – 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 54 – 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.

Comment

No reservation or declaration may be made by a Contracting State except as expressly authorised in the Convention and Protocol. But reservations or declarations made by a Contracting State in conformity with the Convention or Protocol are binding on other Contracting States in their relations with the reserving or declaring State even if those other Contracting States have not themselves made a similar reservation or declaration. Accordingly no principle of reciprocity applies in regard to reservations and declarations.

Article 55 – 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*⁵

[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 [10 years] after the entering 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.]

⁵ The ICAO Legal Committee, while maintaining both alternatives A and B, expressed the view that in case alternative B was selected, the fees charged with respect to these transactions should be nominal.

Comment

1. This Article contains alternative sets of transitional provisions. The Diplomatic Conference will be asked to select one or the other. Alternative A offers a simple solution to the transitional problem by providing that the Convention does not apply to a pre-existing right or interest (defined in Article 1(v)) and that this is to retain its pre-Convention priority status. Two consequences follow from this. First, it is neither necessary nor possible for the holder of a pre-Convention right or interest to protect it by registration in the International Registry. Secondly, priority between a pre-Convention right or interest and a registered international interest will be determined by the applicable law, not by the rules set out in Article 28 of the Convention.
2. Paragraph 1 of Alternative B adopts the same principle as Alternative A except as provided by paragraph 2. The latter relates only to priorities. Accordingly the effect of paragraph 1 of Alternative B is that other provisions of the Convention, in particular the default provisions of Chapter III, do not apply in relation to a pre-Convention right or interest even if it falls within the definition of an international interest under Article 2.
3. Paragraph 2 of Alternative B preserves the priority of a pre-Convention right or interest under the applicable law provided that this is registered within the period of 10 years from the time the Convention enters into force in the Contracting State under the law of which the right or interest was created or arose. So if under the applicable law the holder of the pre-Convention right or interest has priority over an international interest, registration of the former within the 10-year period preserves that priority after the expiry of that period even if the international interest was registered first.
4. Paragraph 3 excludes the application of paragraph 2 to a right or interest created or arising under the law of a State which at the relevant time has not become a Contracting State. Hence the holder of an interest created or arising under the law of a non-Contracting State retains whatever priority it enjoys under the applicable law without the need to register. The effect of paragraph 3 is that, by virtue of paragraph 1, the holder of the right or interest in question is and remains wholly unaffected by the Convention and is neither bound by its priority rules nor entitled to register the right or interest so as to enjoy the benefit of those rules.

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

**V COMMENTARY ON THE DRAFT PROTOCOL TO THE [UNIDROIT][~~UNIDROIT~~]
CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON
MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT**

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

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the [UNIDROIT][~~UNIDROIT~~] Convention on International Interests in Mobile Equipment as it relates to aircraft equipment, 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,

HAVE AGREED upon the following provisions relating to aircraft equipment:

Comment

The Preamble reflects the primary purpose of a Protocol, which is to adapt the Convention to the particular requirements of the industry sector affected while otherwise leaving it unchanged. The Protocol, like the Convention, is based on the policy of a high degree of party autonomy and the need to provide the creditor with adequate safeguards in the event of default. However, it also incorporates provisions enabling a Contracting State to balance its legal philosophy on key issues against the economic advantages of particular provisions and to make a declaration excluding such provisions, wholly or in part.

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;

(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 lb 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;

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

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

(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;

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

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

(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;

(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;

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

(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;

(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;

(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;

(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) “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; 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.

Comment

Article I provides a series of definitions additional to those provided in Article 1 of the Convention. The following require to be noted:

1. “aircraft” – this is not a term used in the Convention, since aircraft engines are highly mobile and frequently interchanged and dealt in and financed separately. However, while the Protocol provisions for the most part reflect this through the definition of “aircraft objects”, a definition of “aircraft” is also required for the purposes of the Protocol because of the following provisions:

(a) Article IV, which extends the scope of the Convention to cover aircraft registered in an aircraft register of a Contracting State;

(b) Articles IX and XIII, which respectively provide the additional remedies of de-registration of the aircraft and action to be taken by the relevant authorities;

(c) Article XX, which confers jurisdiction additionally on courts of a Contracting State which is the State of registry;

(d) Article XXII, dealing with the relationship between the Convention and the 1948 Geneva Convention on the International Recognition of Rights in Aircraft;

(e) Article XXIII, dealing with the relationship between the Convention and the 1933 Rome Convention on the Precautionary Attachment of Aircraft.

2. “aircraft engines” – the definition incorporates a minimum engine capacity as a way of reflecting that the Convention and Protocol are intended to be confined to objects of high unit value. The Protocol follows the Geneva Convention on the International Recognition of Rights in Aircraft in excluding engines used in military, customs or police services.

3. “aircraft objects” – a compendious phrase to describe all three of the categories mentioned in Article 2(3)(a) of the Convention.

4. “airframes” – airframes used for military, customs or police services are excluded.
5. “common mark registering authority” – the Chicago Convention provides not only for nationality registration of aircraft but also for the performance of a number of functions by a common mark registering authority established by two or more Contracting States. The phrase “registry authority” covers both national and common mark registering authorities (see Article I(o)).
6. “de-registration of the aircraft” – this denotes removal of the aircraft from its register (Article I(i)). Article IX of the Protocol provides the creditor with the additional default remedies of de-registration and export and physical transfer of the aircraft from one territory to another. These additional remedies pave the way for re-registration in another country pursuant to the terms of the agreement and in conformity with the rules of the applicable law.
7. “guarantee contract”, “guarantor” – these terms cover not only suretyship guarantees, which are accessory to the principal contract, are dependent upon its validity and are triggered by the default of the principal debtor, but also guarantees which are issued as independent payment undertakings and are payable on written demand and presentation of any other specified documents irrespective of performance or default in performance of the underlying transaction, for example, documentary credits, demand guarantees and standby credits.
8. “helicopters” – defined in such a way as to encompass a minimum carrying capacity, again capturing the high-unit-value element.
9. “insolvency-related event”, “primary insolvency jurisdiction” – relevant to Article XI.

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] ~~[UNIDROIT]~~ Convention on International Interests in Mobile Equipment as applied to aircraft objects.

Article III – Application of Convention to sales

The following provisions of the Convention apply in relation to a sale and shall do so as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a contract of sale, a prospective sale, the seller and the buyer respectively:

Articles 3 and 4;
 Article 15(1)(a);
 Article 17;
 Article 18(3);
 Article 19(1) (as regards registration of a contract of sale or a prospective sale);
 Article 24(2) (as regards a prospective sale); and
 Article 29.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 28 (other than Article 28(3) which is replaced by Article XIV(1)), Chapter X, Chapter XII (other than Article 42), Chapter XIII and Chapter XIV (other than Article 55) shall apply to contracts of sale and prospective sales.

Comment

The Protocol extends the Convention to outright sales and prospective sales but only so far as the Convention provisions are appropriate to these. The effect of the present Article is to place the Convention provisions into three categories as regards sales and prospective sales: those that apply with modifications; those that are general in nature and thus apply; and those that do not apply – for

example, Article 2, concerning the international interest, and Chapter III dealing with default remedies of creditors, since asset-based default remedies do not feature in sales transactions.

Article IV – Sphere of application

1. – 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. And in such circumstances the application of the Convention shall be from the earlier of:

- (a) the date the aircraft is so registered; and
- (b) the date of an agreement providing that the aircraft shall be so registered.

2. – 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.

3. 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 Article IX (2)-(4).

Comment

1. The connecting factor prescribed by Article 3(1) of the Convention is that the debtor is situated in a Contracting State at the time of conclusion of the agreement. As regards aircraft the present Article provides an alternative connecting factor, namely registration of the aircraft in the aircraft register of a Contracting State from the earlier of the date of registration and the date of an agreement for registration.

2. An internal transaction (which a Contracting State may for certain purposes exclude from the Convention by declaration) is one where all the elements – situation of all parties and location of the equipment – are located in the same Contracting State (Convention, Article 1(n)). Paragraph 2 of the present Article gives precision to the concept of location of each of the three kinds of aircraft object.

3. Paragraph 3 enables the parties, by agreement in writing, to exclude Article XI (which strengthens the powers of the creditor on the debtor’s insolvency) and to derogate from or vary the effect of any of the provisions of the Protocol except for the restrictions on default remedies specified in Article IX(2)-(4).

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. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

Comment

1. This Article is confined to contracts of sale, that is, to contracts under which title passes to the buyer immediately, as opposed to conditional sale agreements (see Convention, Article 1(g)).
2. Paragraph 1 prescribes in relation to contracts of sale formalities which track the provisions of Article 6 of the Convention.
3. The reason for indefinite registration of a contract of sale is that since title passes to the buyer outright the seller has no residual interest of the kind that may, in the case of an agreement within the Convention, lead to the discharge of the registration.

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.

Comment

A person entering into an agreement as agent, trustee or other representative of the creditor or seller may register the international interest or contract of sale itself and assert rights and interests in its own name. This Article reflects the central role of representation arrangements in aircraft financing, where the sums involved often require syndicated lending and the conferment of representation powers on a trustee or agent. The Article also facilitates fractional ownership, an increasingly common feature in business jet acquisitions, use and financing.

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 Articles 6(c) and 30(2)(b) of the Convention and Article V(1)(c) of this Protocol.

Comment

This Article specifies three elements as necessary to satisfy the requirements of the Convention and Protocol as to identifiability of an aircraft object. If any of those elements is lacking no interest is validly constituted under the Convention, whether as an international interest or as a contract of sale. The manufacturer's serial number is chosen as the key identifier because of its permanence and its compatibility with the separate treatment of airframes and aircraft engines.

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.

Comment

The Convention makes no express provision for choice of law by the parties. That is left to the rules of private international law of the forum State, which in some jurisdictions may impose certain restrictions, as by excluding selection of the law of a State which has no connection with the parties or the transaction. The present Article, which is intended to apply only where a Contracting State has made a declaration to that effect (Article XXVIII(1)), allows the parties to choose a law without

restrictions of this kind. The law selected is deemed to be the domestic law of the designated State, not its conflict of laws rules. This is in line with the usual conflict of laws approach in relation to commercial transactions and avoids problems of *renvoi*. But party choice is limited to *contractual* rights and obligations. Proprietary rights prospectively affect third parties and rights of creditors on the debtor's insolvency, and are outside the scope of this Article.

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.

Comment

1. Paragraph 1 adds two remedies to those given in the Convention, namely de-registration and export and physical transfer of the object to a different territory. This enables the creditor to change the nationality of an aircraft, in accordance with the terms of the agreement and the applicable law.

2. However, this can only be done with the written consent of any holder of an interest ranking in priority to that of the creditor.

3. Article 7(2) of the Convention requires that the extra-judicial remedies given by Article 7(1) be exercised in a commercially reasonable manner. Paragraph 3 of the present Article disapplies Article 7(2) in relation to aircraft objects and instead extends the requirement of commercial reasonableness to embrace all remedies given by the Convention. However, it also makes an agreement between the parties as to what is commercially reasonable conclusive, whereas Article 7(2) adds the caveat that the contractual provision must not be "manifestly unreasonable."

4. Paragraph 4 crystallises the meaning of "reasonable prior notice" in Article 7(3).

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”,

and Article 42(2) applies with the insertion after the words “Article 12(1)(d)” of the words “and (e)”.

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. – With regard to the remedies in Article IX(1):

(a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than [five] working days after the creditor notifies such authorities that the relief specified in Article IX(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with this Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

Comment

1. This Article strengthens the position of the creditor in certain respects as regards relief sought by the creditor under Article 12 of the Convention. However, it applies in a Contracting State only if and to the extent that the Contracting State has made an affirmative declaration to that effect. A Contracting State which makes such a declaration is required by Article XXVIII(2) to specify a time-period for the purpose of paragraph 2 of the present Article.

2. Paragraph 3 adds sale and application of the proceeds of sale to the speedy relief that can be sought under Article 12(1), and as a corollary paragraph 4 adds provisions matching those of Article 8(5) of the Convention.

3. The provisions of Article 12(2) can be excluded as regards aircraft objects by agreement of the relevant parties under paragraph 5.

4. Paragraph 6 requires the authorities responsible for de-registration and approval of exports to give co-operation and assistance to facilitate exercise of the creditor’s remedies under Article IX(1).

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. With regard to the remedies in Article IX(1) :
 - (a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with this Convention; and
 - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.
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.

Comment

1. This Article, which modifies Article 29(3) of the Convention, is designed to provide in relation to aircraft objects a special insolvency regime to govern the creditor's rights where the debtor becomes subject to insolvency proceedings. The underlying purpose is to facilitate capital market financing by ensuring as far as possible that the creditor either secures recovery of the object within a limited time or obtains from the insolvency administrator the curing of all past defaults and a commitment to perform the debtor's future obligations. There are two alternative texts of this Article, Alternative A, the "hard" version, and Alternative B, the "soft" version. It is open to a Contracting State to select one of these alternatives (but only in its entirety) or to select neither (see Article XXVIII(3)), leaving the insolvency issues to be dealt with by the applicable insolvency law.

2. Alternative A requires the insolvency administrator either (a) to give possession of the aircraft object within the waiting period specified in the declaration of the relevant Contracting State or (b) within the waiting period to cure all defaults and agree to perform all future obligations under the agreement. Meanwhile the insolvency administrator must preserve the aircraft object and its value and, subject to this, may allow its use. Alternative A further restricts the operation of the relevant insolvency law by precluding any order or action which prevents or delays the exercise of remedies after expiry of the waiting period or would modify the obligations of the debtor without the creditor's consent. Accordingly under this Alternative it would not, for example, be open to the insolvency courts of a Contracting State to suspend the enforcement of a security interest over an aircraft object, or vary the terms of the security agreement, without the consent of the creditor. The underlying rationale of Alternative A is to give aircraft object financiers and lessors the assurance of a clear and unqualified rule.

3. Alternative B requires the insolvency administrator or the debtor, as the case may be, within the time specified in a declaration by the Contracting State, to notify the creditor whether it will (a) cure all defaults and perform all future obligations or (b) give the creditor the opportunity to take possession of the aircraft object, in the latter case subject to any additional step or the provision of any additional guarantee that the court may require as permitted by the applicable law. If the insolvency administrator or debtor does not either give the notice as to performance or give the creditor possession, the court may (but is not obliged to) permit the creditor to take possession on such terms as the court may order.

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.

Comment

This Article is intended to be applied only where a Contracting State has made a declaration to that effect. See Article XXVIII(1).

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.

Comment

This Article is intended to be applied only where a Contracting State has made a declaration to that effect (Article XXVIII(1)). The de-registration mechanism envisaged by this Article is that the debtor issues a de-registration and export request authorisation substantially in the form annexed to the Protocol, and submits the request to the registry authority (i.e. the authority maintaining the register in which the aircraft is registered), which then records the authorisation. Thereupon the person in whose favour the authorisation has been issued (typically the creditor) becomes entitled to procure de-registration of the aircraft and its export. This Article thus provides the means of implementing the remedies given in Article IX(1)(a) and (b).

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. The provisions of Article 28(1) – (4) of the Convention shall determine the priority of the holders of interests in an aircraft engine and Article 28(6) shall not apply.

3. Ownership of an aircraft engine shall not pass by virtue of its installation on, or removal from, an airframe or an aircraft.

Comment

1. Paragraph 1 applies the general priority rule in Article 28(1) to contracts of sale registered in accordance with the Protocol.

2. Paragraph 2 applies the priority rules of Article 28(1)-(4). Although on a literal construction this has the effect of retaining Article 28(3), it is clear that it is intended to be displaced by paragraph 1 of the present Article. Article 28(3) lays down a special rule governing the position of an outright buyer, whose interest is not capable of protection by registration. But the Protocol, in extending the scope of the Convention priority rules to include outright sales, enables even an outright buyer to register its interest in the International Registry, so that the special rule in Article 28(3) becomes unnecessary, and the buyer of a registered interest is given the same priority under paragraph 1 as the holder of an international interest enjoys under Article 28(1).

3. Article 28(6) of the Convention provides that it does not determine priority as between the holder of an interest in an item held prior to its installation on an object and the holder of an international interest in that object. That would be left to the applicable law. Paragraph 2 of the present Article disapplies Article 28(6) as regards aircraft objects and instead paragraph 3 provides

that ownership of an aircraft engine does not pass by virtue of its installation on, or removal from, an airframe or aircraft. The effect is that the title of the owner of the aircraft engine is preserved even if it would have passed to the owner of the airframe or aircraft under the applicable law, for example, under a rule of accession by which title to an article which becomes an accession to a larger object passes to the owner of the larger object. In consequence of paragraph 2 of the present Article registration of an international interest in the airframe does not by itself affect the priority of an unregistered interest in an aircraft engine installed on the airframe, since the subject-matter of the two interests is different. This paragraph responds to the common practice by which aircraft engines are moved from one airframe to another, and adopts the principle of “title tracking” rather than “title transfer”.

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.”¹

[2. Article 35 of the Convention applies as if the words following the phrase “under Article 28” were omitted].

Comment

1. Paragraph 1 of this Article adds a requirement, not usually found in national laws governing the assignment of rights, that the debtor shall have given its consent to the assignment. If the first of the two alternative bracketed provisions in Article 32(1)(c) is adopted, paragraph 1 of the present Article becomes redundant. If the second alternative is adopted, the debtor has to pay or otherwise perform only if it has not been given prior notice in writing of an assignment in favour of another person.

2. The effect of paragraph 2 is that any priority of the holder of a registered international interest under Article 28 to which an assignee succeeds under Article 31(1)(a) carries over to associated rights without being restricted to the sums specified in paragraphs (a), (b) and (c) of Article 35.

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 Y .

2. 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 Supervisory Authority.

Comment

1. Following recommendations by the second and third Joint Sessions and by the ICAO Legal Committee that the Council of ICAO should consider taking on the responsibility of Supervisory Authority, the Council has indicated that it was prepared in principle to accept the function of Supervisory Authority if so requested by the Diplomatic Conference.

¹ The removal of square brackets in Article 32(1)(c) Convention may have implications for this provision.

2. The Diplomatic Conference will need to consider paragraph 2 in the context of the work of the Registry Task Force established to examine practical questions relating to the International Registry and its operation.

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:

- (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.

Comment

It is for each Contracting State to decide whether to make a declaration designating a national entry point for the transmission of registration applications. Paragraph 2 identifies the Contracting State entitled to make such a designation in relation to aircraft objects. It is envisaged that a Contracting State which designates an entity pursuant to this Article will be free to add such additional requirements as it considers necessary for transmission of data to the International Registry, though in so doing it will need to have regard to Article 25 of the Convention. The registration will take effect as provided by Article 18 of the Convention. By contrast searches will be able to be made on-line from any point connected to the International Registry.

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.

3. The fees referred to in Article 16(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 16(2) of the Convention.

4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated 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.

Comment

Paragraph 3 sets out the basis on which registration and search fees are to be determined. The twin approaches of an electronic system and, in consequence, notice filing (as opposed to presentation or filing of contract documents) are designed to ensure that costs are kept down.

CHAPTER IV – JURISDICTION

Article XX – Modification of jurisdiction provisions

For the purposes of Articles 42 and 44 of the Convention and subject to Article 41 of the Convention, a court of a Contracting State also has jurisdiction where that State is the State of registry.

Comment

This Article confers concurrent jurisdiction on courts of the State of registry of an aircraft to make orders under Article 42 (speedy judicial relief) and Article 44 (general jurisdiction) of the Convention. However, it cannot exercise jurisdiction where, under Article 41, the parties have chosen another Contracting State as the exclusive forum. Moreover, although the present Article does not specifically refer to Article 43 it is clear that it is subject to that Article also, so that the courts of a State of registry which is not the State where the Registrar has its centre of administration have no jurisdiction to make orders against the Registrar.

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.

Comment

The reason for this Article is that many airlines are owned or controlled by States or State entities, and while under the law of many States it is considered an aspect of State sovereignty that a State can waive its immunity, this is not universally true. This Article makes it clear that a waiver of immunity is binding, though only where it is in a writing that describes the aircraft object. The waiver may relate to immunity from jurisdiction, enforcement or both. The instrument of waiver should make clear its extent. The general rule of international law is that waiver of immunity from suit does not by itself constitute waiver of immunity from enforcement.

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.

However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

Comment

This Article establishes the primacy of the present Convention as regards matters within its scope relating to the creation, enforcement, perfection and priority of international interests in aircraft and aircraft objects, while retaining the provisions of the Geneva Convention relating to the recognition of rights and interests other than those “covered or affected by” the present Convention, a phrase intended to be read widely.

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.

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.

CHAPTER VI – FINAL PROVISIONS

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 Protocol to the [UNIDROIT] ~~[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.

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 the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Comment

The number of ratifications required reflects what has become the norm in private law conventions. See Comment to Article 47 of the Convention.

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 the Protocol 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 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 six 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.

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.

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.

Comment

This Article provides the mechanism for periodic review of the Convention and Protocol in order to ensure that their provisions continue to be responsive to the needs of the aviation industry as regards aircraft objects.

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, accession, declaration or withdrawal of a declaration, so that the information contained therein may be made publicly accessible; and

(d) perform such other functions customary for depositaries.

Annex

**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 manufacturers 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] ~~[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 *Convention on International Civil Aviation*, signed at Chicago, on 7 December 1944; 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]

By: [insert name of signatory]
Its: [insert title of signatory]

[insert relevant notational details]

* Select the term that reflects the relevant nationality registration criterion.

DCME – IP/3
English only
12/10/01

**MINUTES ON ITEM 3 OF THE 31ST SESSION
OF THE ICAO LEGAL COMMITTEE**

LEGAL COMMITTEE – 31ST SESSION

**SUMMARY MINUTES OF THE SECOND MEETING
(CONFERENCE ROOM 1, MONDAY, 28 AUGUST 2000, AT 1400 HOURS)**

Third Vice-Chairman of the Legal Committee: Mr. G. Lauzon

Secretary: Dr. L.J. Weber, Director, Legal Bureau

Agenda Item 3: International Interests in Mobile Equipment (Aircraft Equipment)

1. The Secretary presented LC/31-WP/3 “Introductory Note”, which provided background information on the *[Preliminary] draft [UNIDROIT] Convention on International Interests in Mobile Equipment* and the *[Preliminary] draft Protocol to the [Preliminary] draft [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment*, the texts of which were set forth in Appendices 1 and 2, respectively, thereof.

2. In introducing LC/31-WPs/3-1, 3-2 and 3-6, the Chairman of the Legal Sub-Committee, Dr. E. Chiavarelli (Italy), highlighted the report of the Third Joint Session of the Sub-Committee of the ICAO Legal Committee and the Committee of Governmental Experts of the International Institute for the Unification of Private Law (UNIDROIT) (Rome, 20 to 31 March 2000), indicating that it should form a basis for the current discussion which would be addressing such issues as the possible inclusion of State aircraft, insolvency remedies, aspects relating to registration of international interests in mobile equipment (aircraft equipment), in particular, the liability of the Registrar and competent jurisdiction. She noted that the said report superseded the reports of the First and Second Joint Sessions (Rome, 1 to 12 February 1999 and Montreal, 24 August to 3 September 1999). In her capacity as Delegate of Italy, the Chairman of the Legal Sub-Committee expressed confidence that this project would facilitate financing for the purpose of modernizing air fleets, which would in turn promote the safety of international civil aviation. She voiced full support for all efforts aimed at the finalization of the texts of the draft Convention and draft Protocol and their expeditious submission to a Diplomatic Conference for consideration and adoption.

3. The Delegate of Uruguay then presented LC/31-WPs/3-7, 3-8, 3-9, 3-10 and 3-11 which proposed amendments to: Article 1 (*Definitions*), paragraph (n), of the draft Convention and footnote 1 relating thereto and harmonization of that Article with Article XI of the draft Protocol; Article XIII (*De-registration and export authorization*) of the draft Protocol; Article 15 (*The International Registry*) of the draft Convention; Article III (*Sphere of application*), paragraph 4, of the draft Protocol; and Article 7 (*Remedies of chargee*) of the draft Convention. He underscored, with regard to Article III, paragraph 4, of the draft Protocol, that the autonomy given to the parties to decide to derogate from the provisions of the Protocol was too broad, as were the rights of the chargee under Article 7 of the draft Convention.

4. In commenting on the proposed (LC/31-WP/3-7) replacement of the expression “insolvency administrator” with the expression “trustee in bankruptcy” in Article 1, paragraph (n), of the draft Convention, the Delegate of the United States observed that the former expression had been chosen by the Third Joint Session so as to avoid using specialized bankruptcy terminology. He observed that, while that was a drafting matter, the other two proposed amendments were substantive in nature. With regard to related footnote 1, the Delegate of the United States considered that it would be

inappropriate, given the current practice in a number of States, to exclude the “debtor in possession” concept in the context of the term “person” under applicable insolvency law, averring that that would significantly limit the ability to achieve reorganization following bankruptcy. Referring to the proposed deletion of the words “reorganization or” from the phrase “authorized to administer the reorganization or liquidation” appearing in Article 1, paragraph (n), he emphasized that it would be an unfortunate step backwards to thus indicate that the potential for reorganization was not fully supported. The Delegate of the United States recalled that a number of successful reorganizations of air transportation interests had been effected at points of financial instability. He affirmed the importance of conveying the message to the international community, through the two draft instruments, that reorganization as well as liquidation was supported and promoted, as appropriate in each given case.

5. The Delegate of the United Kingdom noted, on the basis of information provided by INSOL International, that the expression “insolvency administrator” in the English language was more universal in nature than the expression “trustee in bankruptcy”, and, unless used in the context of a particular legal system, was therefore more appropriate in international instruments such as the ones now under consideration. He favoured retention of the current wording of Article 1, paragraph (n), and footnote 1 in light of the need for the expression “insolvency administrator” to apply across a number of legal systems, some of which might not encompass all of the concepts which were included in the definition of that expression. It was also necessary to recognize those concepts in the terminology used in the instruments when they were found in a particular legal system.

6. The Delegate of France recalled that the issue raised in LC/31-WP/3-7 had been discussed at length by the Insolvency Working Group. Averring that it was not merely a matter of drafting but one of substance, he observed that the proposed amendment to Article 1, paragraph (n), did not take into account the fact that various legal remedies could be implemented upon default and that only in the event of their failure would it become necessary to resort to a “trustee in bankruptcy”. The Delegate of France highlighted, in this regard, the role played by French judicial administrators in overseeing the application of such remedies. In maintaining that the words “reorganization or” should not be deleted from the phrase “authorized to administer the reorganization or liquidation” in paragraph (n), he suggested that the entire matter be reviewed by the Delegate of Uruguay together with the members of the Insolvency Working Group to determine the appropriateness of retaining the current wording of that paragraph.

7. In noting that, under Uruguayan law, trustees had, in addition to procedural functions, administrative functions such as the seizure of property, collection of proceeds arising from the sale of such property, the preservation of an estate’s rights, the lifting of mortgages after a judgement and acceptance, following judicial authorization, of a bankrupt’s renounced inheritance, the Delegate of Uruguay contended that the Spanish term “administración” encompassed both reorganization and liquidation, enabling the deletion of the words “reorganization or” in Article 1, paragraph (n).

8. The Third Vice-Chairman indicated that the Drafting Committee would review the use of terms to the extent that they were related to drafting matters and that the Legal Committee would return to substantive issues raised in LC/31-WP/3-7 at a later stage.

9. To a query made by the Delegate of Uruguay during his introduction of LC/31-WP/3-9, the Delegate of Italy indicated that it was her understanding that under Article 15, paragraph 2, different international registries would exist for different categories of object, such as aircraft objects and space objects.

10. Drawing attention to paragraph 58 of the Report of the Rapporteur (LC/31-WP/3-4), of which he was the author, the Third Vice-Chairman indicated that he shared the concern expressed by the Delegate of Uruguay in LC/31-WP/3-10 that the drafting of Article III, paragraph 4, of the draft Protocol was excessively broad.

11. There being no further comments, the Legal Committee noted LC/31-WPs/3-8, 3-9, 3-10, and 3-11.
12. The meeting adjourned at 1630 hours.

LEGAL COMMITTEE – 31ST SESSION

SUMMARY MINUTES OF THE THIRD MEETING (CONFERENCE ROOM 1, TUESDAY, 29 AUGUST 2000, AT 0930 HOURS)

Third Vice-Chairman of the Legal Committee: Mr. G. Lauzon

Secretary: Dr. L.J. Weber, Director, Legal Bureau

Agenda Item 3: International Interests in Mobile Equipment (Aircraft Equipment)

1. In presenting LC/31-WP/3-12 containing observations on the *[Preliminary] draft [UNIDROIT] Convention on International Interests in Mobile Equipment* and the *[Preliminary] draft Protocol to the [Preliminary] draft [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* (cf. LC/31-WP/3, Appendices 1 and 2), the Delegate of the United States indicated that his State shared the view of many other States that the current process was one which could bring very substantial financial benefits to the overall interests that all shared in the international aviation industry, as well as to the provision of air transportation services throughout the world. He anticipated that it would have a significant effect on the upgrading of safety and navigational capabilities. The régime would serve the important function of making the large resources of the private sector capital markets available to the infrastructure development of all States, especially the developing and emerging States in all regions of the world. This could be achieved by supporting the basic principles of modern asset-based financing as contained in the draft Convention and draft Protocol. In emphasizing the need to retain those basic principles which conformed to the financial legal standards of the capital markets, the Delegate of the United States recalled that, from the outset, the process had not been focussed on trying to establish some type of traditional harmonization or common denominator as the outcome might ultimately have failed to meet the standards of the capital markets and, consequently, to realize any economic value. It was necessary to concentrate on the fundamental purpose of the entire project, which was to develop financial standards required to work with the capital markets. He noted that the draft Convention and draft Protocol were not dependent on the provisions of any national legal system and could accommodate changes in limited areas of transactions, certain key provisions being drafted in an optional fashion so as to accord States a degree of flexibility. Drawing attention to paragraph 6.1 of the paper, the Delegate of the United States emphasized the need for the process to be implemented without delay.
2. During his introduction of LC/31-WP/3-13, the Delegate of Sweden affirmed his State's strong support of the project of establishing a world-wide system for registration of international interests in aircraft objects and of the adoption of an international instrument setting out the corresponding rules. He noted that, in a spirit of compromise, his State had, in the negotiating process, accepted a much higher degree of party autonomy than what prevailed in the Swedish legal system. It was now proposing amendments to Article 8 (*Vesting of object in satisfaction; redemption*), paragraph 3, and Article 28 (*Priority of competing interests*), paragraphs 2 and 3, of the draft Convention with a view to enhancing the ratifiability of that instrument and expediting its entry into force. The principle of good faith which it wished to have reflected in the latter Article should also be incorporated into Article XIV (*Modification of priority provisions*), paragraph 1, of the draft Protocol, for the same reason.
3. In the course of presenting LC/31-WP/3-14, the Observer from the International Institute for the Unification of Private Law (UNIDROIT) emphasized the fruitful cooperation which had taken place between ICAO and UNIDROIT in the development of the project. He expressed UNIDROIT's gratitude

for the Report of the Rapporteur (LC/31-WP/3-4), which reflected the flexible and result-oriented working methods of the Legal Committee which were critical in approaching two draft instruments as ambitious as the ones now under consideration. As Secretary of the UNIDROIT Governing Council, he then elaborated on the explanations provided in the paper regarding the appended Resolution on the holding of a diplomatic Conference for the purpose of concluding a Convention on International Interests in Mobile Equipment and an Aircraft Protocol to that Convention adopted by the said Governing Council in April 2000, a Resolution which had been misunderstood by some. The Resolution had not been meant to be egocentric or disrespectful to ICAO; on the contrary, the Governing Council did not wish to encroach on the ICAO decision-making process. He noted, in this context, that UNIDROIT bore responsibility for the project in its entirety, not only as it related to the financing of aircraft equipment but also as it related to the financing of other equipment sectors. UNIDROIT was anxious to have the benefit of ICAO's input on issues relating to the proposed international registration system and to the role of ICAO as the Supervisory Authority. In highlighting the new work which had been done after the Third Joint Session of the Sub-Committee of the ICAO Legal Committee and the UNIDROIT Committee of Governmental Experts (Rome, 20 to 31 March 2000), the Observer from UNIDROIT indicated that its consideration by the Legal Committee would benefit any future Diplomatic Conference convened for the conclusion and adoption of the draft instruments. He expressed the hope that ICAO and UNIDROIT would continue to work together to ensure good progress.

4. In commending the excellent work of the Joint Sessions of the Sub-Committee of the ICAO Legal Committee and the UNIDROIT Committee of Governmental Experts, the Observer from the Aviation Working Group (AWG) voiced agreement with the comments made by the Delegate of the United States and the Observer from UNIDROIT, as well as with the excellent analysis made by the Rapporteur in his Report (LC/31-WP/3-4), which the Legal Committee should take full advantage of in its deliberations. Presenting his Group's approach to this complicated subject as set forth in LC/31-WP/3-15, he noted that established international financial practices had certain distinct characteristics and that an international legal régime which reflected those characteristics would achieve the economic benefits outlined in the 1998 economic impact assessment prepared under the auspices of the Institut européen d'administration des affaires (INSEAD) and the New York University Salomon Center. The draft instruments' system of optional provisions seemed appropriate, being consistent with facilitating modern asset-based financing and economic benefits while addressing sensitive issues by permitting States in the exercise of their sovereignty to opt out of certain aspects. Although that came at the cost of added complexity, such a structure was necessary to avoid the lowest common denominator approach which would not achieve stated objectives. The Observer from AWG endorsed the comments made principally by the ICAO Secretariat over time with respect to the need to have documents which would facilitate comprehension and to minimize the number of declarations to the extent consistent with modern asset-based financing (*cf.* footnotes 3 and 4 to LC/31-WP/3-15). He noted that, while it had not been possible for AWG and the International Air Transport Association (IATA) to submit joint comments on the draft instruments as it had done in the past in order to reflect an appropriate balance between debtor and creditor issues, the current paper had the explicit endorsement of IATA.

5. The Observer from IATA, noting that of its 270 member airlines which carried in excess of 98 per cent of scheduled international air traffic the majority were small- and medium-sized, with many being from developing States, underscored that it was those airlines which would benefit the most from the adoption and widespread acceptance of the proposed treaty régime at the earliest possible date. IATA thus saw an urgent need for new treaty law to govern the purchase and leasing of specific high-value mobile assets such as aircraft engines, the more so as it was anticipated that, over the next two decades, airlines would order and integrate into their fleets over a trillion dollars worth of new aircraft, as well as spend hundreds of millions of dollars for additional aircraft engines. Commenting on the above-mentioned economic impact assessment which had been commissioned by his Association and the AWG, the Observer from IATA noted that it envisaged impressive savings in

the order of USD 5 billion annually on the basis of a 20-year projection of aircraft deliveries. That study also concluded that, in select cases, the cost savings arising from the implementation of the draft Protocol would be infinite. Credit would be extended where previously none had been available. Such issues were of extreme significance and often spelled the difference between viability and bankruptcy or State bail-out. As the Rapporteur had indicated in his Report (*cf.* LC/31-WP/3-4, paragraph 27), “International aviation financing is the lifeblood of international civil aviation, in particular in respect of fleet renewal.” The absence or shortage of financing might have an immediate and direct impact on an aircraft operator’s ability to participate in industry development and to remain fully focussed on safety. The subject was therefore of major interest to those governments involved in guaranteeing loans, especially for State-owned airlines. The costs of financial and legal transactions associated with aircraft purchase contracts were high, and those which would arise in connection with the acquisition of more than a trillion dollars worth of aircraft in the next twenty years would be significant. Even a modest reduction in the total price would represent billions of dollars of potential savings to airlines per year. For governments already struggling with heavy or over-extended sovereign debt, for those committed to privatizing their national airlines, for those who wished to divert more of their budgets to other social and economic priorities, that would be a significant factor in facilitating fleet renewal at an affordable cost. The Observer from IATA emphasized, in this regard, that developing States and economies in transition would benefit far more proportionally than developed States when asset-based financing principles became treaty law and were reflected in national legal systems. In noting that LC/31-WP/3-18 containing the text of a letter from the Vice-President, Legal Affairs and Corporate Secretary of IATA to the ICAO Secretary General endorsing the comments of AWG on this subject (LC/31-WP/3-15) would be issued shortly, the Observer from IATA stressed that the Legal Committee should resist making changing to the draft instruments which would undermine the facilitation of asset-based financing under the proposed international régime. He affirmed IATA’s strong support for the convening of a Diplomatic Conference for the adoption of the draft Convention and draft Protocol as early as possible in 2001, and expressed appreciation for the Report of the Rapporteur (LC/31-WP/3-4) and its significant contribution to the advancement of the negotiating process.

6. In presenting LC/31-WP/3-17, the Delegate of Japan indicated that, in light of the lengthy and sometimes very difficult negotiations which had already taken place and the procedural requirements identified by UNIDROIT in LC/31-WP/3-14, it would not be productive to make further significant changes to the draft instruments prior to their being considered by a Diplomatic Conference. While voicing support for the papers presented by the United States and the AWG (LC/31-WPs/3-12 and 3-15), he observed that the draft Protocol appeared ambiguous as to who may register a sale. His Government was of the view that it should explicitly state that the buyer may register a sale with the consent in writing of the seller. In indicating his Government’s support for Alternative “A” of Article Z of the draft Convention on transitional provisions, whereby pre-existing transactions would be wholly unaffected by the Convention and the Protocol, the Delegate from Japan emphasized the importance of avoiding the additional burdens and costs, as well as potential uncertainties, associated with requiring pre-existing interest holders to register their interests under the new system.

7. The Delegate of Uruguay then introduced LC/31-WP/3-16 containing proposals to amend the following Articles of the Convention: Article 2 (*The international interest*), paragraphs 2, 4 and 5; Article 3 (*Sphere of application*), paragraphs 1 and 2; Article 4 (*Where debtor is situated*); Article 8 (*Vesting of object in satisfaction; redemption*); and Article 31 (*Effects of assignment*). He wished to reserve the right to raise these issues later in the deliberations when they could be discussed in substance.

8. In offering general comments, the Delegate of Brazil highlighted the importance of the draft Convention and draft Protocol in providing a sound basis for the facilitation of access to international capital markets. Underscoring the need for the interests of the various parties concerned to be better balanced in the draft instruments, he indicated that that could be achieved by, *inter alia*, not providing

a priori that a debtor may waive its defences, the debtor being, in the majority of cases, the weaker party. In addition to advocating that a low number of ratifications be specified so as to accelerate the entry into force of the Convention, the Representative of Brazil spoke in favour of the forum State being chosen from among the States parties to the Convention so as to avoid the unpredictability of too open a legal system that would create uncertainty, especially for the weaker party. Such a provision would expedite rapid and widespread acceptance of the Convention. He also suggested that the Legal Committee review the provisions relating to speedy relief since in most States, including Brazil, it was not possible to interfere with the powers of the judiciary.

9. In his capacity as Rapporteur, the Third Vice-Chairman introduced his Report (LC/31-WP/3-4), outlining the project's historical background (*cf.* paragraphs 4 to 8 of the paper) before proceeding with a description of the project itself and its contexts, including its general thrust and principal features (*cf.* paragraphs 9 to 14); the context of the international financial architecture (*cf.* paragraphs 15 to 19), in particular, certain framework features such as creation of security interests, priority, registration of security interests and enforcement; and the context of international aviation finance (*cf.* paragraphs 20 to 26), including equity financing, debt financing and lease financing. He underscored that asset-based financing presupposed the application of three key principles: the transparent priority principle, the prompt enforcement principle and the bankruptcy law enforcement principle. The Rapporteur indicated that, within the context of international aviation finance, he had also examined financing participation in civil aviation industry development and aviation safety.

10. With regard to the texts of the draft Convention and draft Protocol, the Rapporteur noted that he had made suggestions, observations and sometimes proposals for modification in respect of each chapter heading, as enumerated in the list of "Suggested Items for Consideration by the Legal Committee" appended to his Report.

11. The Legal Committee noted the Rapporteur's Report, which, together with the draft Convention and draft Protocol, would serve as a basis for discussion as the Committee progressed its review of this item.

12. The Third Vice-Chairman then invited proposals on the method of proceeding further with Agenda Item 3. The Delegate of Italy, citing the Council's guidance (160/5) to the Legal Committee that, in its review of the draft Convention and draft Protocol, it should take into account what had been achieved at the Third Joint Session, and with reference to paragraph 2 c) of the *Constitution of the Legal Committee* (Doc 7669), suggested that the Legal Committee use, as a working tool, the Rapporteur's aforesaid list of "Suggested Items for Consideration by the Legal Committee". The Delegates of Indonesia, Germany, France, Ireland, Greece, Singapore, Japan, and Egypt endorsed this proposal, which was subsequently unanimously accepted by the Legal Committee.

13. During the ensuing review of the list of "Suggested Items for Consideration by the Legal Committee", it was agreed to defer consideration of **item 1** (*Consider the structure of the instruments*) until later in the discussion.

14. The Legal Committee then agreed that those items identified in the list as being pure drafting points (**items 2, 5, 6, 7, 8, 14, 22, 23, 27, 28, 30, 33 and 38**) would be referred directly to the soon-to-be established Drafting Committee.

15. With regard to **item 2** (*Review the definitions to determine the need for them and their drafting, and also determine whether "insolvency administrator" should include a debtor in possession and whether the definition of "authorised party" should be struck out*), the Delegate of the United States, reiterating his earlier comments (*cf.* LC 31/2, paragraph 4), averred that the inclusion of the concept of "debtor in possession" in the expression "insolvency administrator" in Article 1 (*Definitions*), paragraph (n), of the draft Convention was vital given developments in aircraft finance and in cross-border insolvency cases and procedures. Recalling that in several important restructuring cases the inclusion of that concept had permitted the survival of economically distressed air transportation companies, he recommended that that more modern approach be reflected in the draft Convention.

With the Delegates of Italy and Canada expressing support for the recommendation, the Legal Committee agreed to so include the concept of “debtor in possession” in the expression “insolvency administrator”.

16. Attention then turned to **item 3** (*Decide whether to allow the option of using the Convention/Protocol to finance State aircraft objects*), with the Observer from AWG, at the invitation of the Third Vice-Chairman, elaborating on the Group’s views thereon as set forth in LSC/ME/3-WP/8, a paper which it had prepared on that subject for the Third Joint Session. The general conclusion reached by the AWG was that, while the slight trend towards the private financing of some categories of State aircraft and the issues associated with the classification of State and civil aircraft would point in favour of including State aircraft in the proposed treaty régime on an optional basis, the disadvantages associated therewith outweighed the benefits at this stage in the negotiating process. It had been considered that the inclusion of State aircraft would have required significant additions to the proposed treaty régime to address the particular needs of such aircraft, namely, restrictions on enforcement; export restrictions on certain types of State aircraft, of relevance for certain of the remedy provisions; and the inapplicability of normal commercial practices in the context of national emergencies. Moreover, in encompassing State aircraft, the treaty régime would no longer simply involve private transactions among private parties, even if there were some form of government ownership and support – it would involve elements of public international air law, security and defence. While the AWG had included in its paper a draft Annex with opt-in provisions addressing some of these issues, it had concluded that it was preferable not to address the question of State aircraft at this stage. It had, however, considered it to be a sufficiently important issue to recommend that the first review conference, envisaged in the draft Protocol to take place five years after its entry into force, be specifically tasked with assessing whether or not the treaty régime should be expanded to include State aircraft in the context of the possible addition of an opt-in Annex. Keeping the issue open until that time would allow experience to be gained in the application of the treaty régime in the context of private international air law and would allow further insight to be gained regarding practices for financing the acquisition of State aircraft.

17. The Delegate of Italy was of the opinion that State aircraft should not be excluded from the scope of the proposed treaty régime whose objective was to facilitate access to financial markets. In view of concerns expressed by some Delegates, he favoured the addition of an opt-in Annex as referred to by the Observer from AWG as being a balanced approach to the issue.

18. The Third Vice-Chairman drew attention to paragraph 54 of the Report of the Rapporteur (LC/31-WP/3-4) in this regard, which stated that “Realistically, the options available to the Committee are to provide a régime that States can opt into (in this connection LSC/ME/3-WP/8 could, once properly discussed, constitute a basis for action) or leave the matter to be dealt with in a future instrument.”.

19. In voicing support for the view expressed by the Observer from AWG, the Delegate of the United Kingdom maintained that the inclusion of State aircraft was too complex an issue to be addressed at the present time and that discussion thereof would slow the progress of work. He thus agreed that consideration of the issue be deferred for the time being and possibly returned to as some later stage. The Delegates of Singapore, France, the Netherlands, and Cuba were of the same opinion. The Delegate of Italy agreed with this majority view.

20. The Delegate of Brazil supported the possible future addition of an opt-in Annex as referred to by the Observer from AWG.

21. In light of the discussion, the Legal Committee decided to leave this matter aside for the time being on the understanding that, in due course, consideration could be given to developing an instrument which would include State aircraft in the proposed treaty régime.

22. The meeting adjourned at 1230 hours.

LEGAL COMMITTEE – 31ST SESSIONSUMMARY MINUTES OF THE FOURTH MEETING
(CONFERENCE ROOM 1, TUESDAY, 29 AUGUST 2000, AT 1400 HOURS)

Third Vice-Chairman of the Legal Committee: Mr. G. Lauzon

Secretary: Dr. L.J. Weber, Director, Legal Bureau

Agenda Item 3: International Interests in Mobile Equipment (Aircraft Equipment)

1. To queries raised by the Delegates of France and the United Kingdom regarding **item 4** (*Determine whether the Convention should apply when an aircraft is intended to be but is not yet registered on a Contracting State's Register*) of the list of "Suggested Items for Consideration by the Legal Committee" appended to the Report of the Rapporteur (LC/31-WP/3-4), the Delegate of Canada clarified that the item would cover pre-delivery financing in respect of aircraft not yet registered, as well as aircraft due to change registry. With regard to the first case, he noted that an aircraft might not be registered immediately after completion of its construction for reasons relating to its certification or for financial reasons, *inter alia*. Currently, the only security which could be taken for pre-delivery financing was an assignment of the purchase agreement. The bracketed wording of Article III, paragraph 2, of the draft Protocol would enable a mortgage on a completed or almost-completed aircraft to be given as collateral to lenders who had already provided funding to cover a portion of the aircraft's cost. With regard to the second case, the Delegate of Canada observed that the situation could arise where the owner of an aircraft was not in a Contracting State. The said bracketed wording would allow the benefits of the treaty régime to be extended to such aircraft prior to their delivery and registration in a Contracting State.
2. In supporting the application of the proposed treaty régime to aircraft prior to their registration, the Delegate of the United States indicated that the registration of aircraft in his State might, in some instances, take several months, for the reasons cited by the Delegate of Canada. In his view, that should not prohibit the priority of the interest in a given aircraft from being registered.
3. The Delegate of Canada further clarified that, while pre-delivery financing was the primary concern, there was no reason why the proposed treaty régime should not also apply in the case of used aircraft registered in one jurisdiction but intended to be registered in a Contracting State once closure had taken place as pre-delivery financing was used in such cases, although to a lesser extent than in cases involving new aircraft. To a point raised by the Delegate of Singapore, he cited, as an example, the issuance by Transport Canada of ferry permits for the importation into Canada of used aircraft registered in other jurisdictions which served as a form of provisional registration (although not registration for the purposes of the proposed treaty régime). Once the aircraft had been ferried into Canada and had completed inspection, actual registration took place. Some financing might be advanced prior to that registration.
4. The Delegate of Germany expressed concern that one of the criteria set forth in Article III, paragraph 2, of the draft Protocol – the intention to register – was subjective and that its meaning was unclear. That would render implementation of that provision very difficult.
5. The Delegate of Canada noted, in this regard, that the purchase agreement for an aircraft under construction called for registration and the painting of the registration marks of a particular jurisdiction. In most instances, the application for registration was submitted in advance of completion of construction and delivery of the aircraft, rendering it easy to establish the intention to register. The purchase agreement for a used aircraft would reflect the fact that a particular air carrier was acquiring the aircraft and would be registering it in that jurisdiction, thereby establishing the intention to register. In his view, it would be rather uncommon for an aircraft to be acquired without any arrangements having been made beforehand for its registration.

6. While supporting the application of the proposed treaty régime to aircraft prior to their registration in view of the comments made by the Delegates of Canada and the United States, the Observer from the Aviation Working Group (AWG) suggested that the proposed text of Article III, paragraph 2, of the Protocol be referred to a Drafting Committee to reformulate the concept of intentionality in a more objective manner so as to meet the concerns of the Delegate of Germany.

7. To a query by the Delegate of South Africa, the Delegate of Canada clarified that, regardless of whether the party which advanced pre-delivery financing was the ultimate lender or lessor or not, his registered interest in the aircraft or other object so financed would have priority over other such interests as he would have been the first to register the interest.

8. The Legal Committee decided to refer item 4 to the soon-to-be established Drafting Committee in accordance with the suggestion put forward by the Observer from AWG. It was recalled that those items identified in the said list of “Suggested Items for Consideration by the Legal Committee” as being pure drafting points (**items 2, 5, 6, 7, 8, 14, 22, 23, 27, 28, 30, 33 and 38**) had already been referred to that Committee (*cf.* LC 31/3, paragraph 14).

9. Referring to **item 7** (*Clarify that vesting may occur when the amount secured is higher than the value of the object*), paragraph 79 of the Report of the Rapporteur (LC/31-WP/3-4) relating thereto and the amendment to Article 8, paragraph 3, of the draft Convention proposed in LC/31-WP/3-13 presented by Sweden, the Observer from AWG stressed the need to consider paragraph 3 of Article 8 in conjunction with paragraph 2 of that same Article in order to fully understand the drafting history of that provision. He recalled that the underlying notion was that the court would have judicial discretion under the said paragraph 2. Paragraph 3 constituted a substantive limitation on that discretion which related to equivalence between the secured obligations to be satisfied by vesting. The Observer from AWG noted that in a financial arrangement in which there were different elements of collateral there might be less than full vesting. Thus while he agreed with the characterization of item 7 as a drafting issue, he considered that it was one which had to be considered in light of the judicial discretion provided for in Article 8, paragraph 2.

10. Observing the similarity between the proposals made by the Rapporteur in paragraph 79 of his Report and by Sweden in LC/31-WP/3-4, the Third Vice-Chairman indicated that they should be taken into account by the Drafting Committee in considering item 7, together with the above comment by the Observer from AWG.

11. Drawing attention to **item 9** (*Defer to the ICAO Council on the issue of the appropriate Supervisory Authority*), the Secretary recalled that the Council had, during the Fifth Meeting (Open) of its 159th Session on 1 March 2000, considered C-WP/11301 on the role which ICAO might play in the establishment, operation and supervision of the envisaged International Registry and would be returning to that issue during its 161st Session in November/December 2000 in connection with the Report of the Legal Committee. In view of the inter-relatedness of item 9 and items **10 to 21** regarding the International Registry and their integral link with the Report of the International Registry *Ad Hoc* Task Force (for Registration of Interests in Aircraft Objects) (LC/31-WP/3-5), it was decided to postpone discussion of those items pending consideration of that Report.

12. In offering clarifications with regard to **item 24** (*Consider the departure point for the deadline for procuring deregistration and export under Article XI, Alternative “A”*), the Observer from AWG noted that at issue in paragraph 8 of Article XI (*Remedies on insolvency*), Alternative “A”, of the draft Protocol was whether the remedies of deregistration and export should be subject to a uniform time standard or whether, consistent with the general philosophy embodied in Article IX (*Modification of default remedies provisions*), Contracting States should each be able to specify the period of time under Alternative “A” for the processing of the required formalities, such as five business days. While the latter option would provide Contracting States with increased flexibility, it would decrease the overall degree of uniformity. He noted that the issue was more technical than political in nature as

Contracting States would already have made the political decision regarding the duration of the waiting period referred to in paragraph 3 of Alternative “A”.

13. In observing that Transport Canada ordinarily completed the simple administrative steps required for deregistration and export in one or at most two business days, the Delegate of Canada indicated that five business days would be ample.

14. Noting that it had also been the experience of his Group that only a short period of time – one or two days – was required for the completion of the required procedures, the Observer from AWG clarified that he had suggested five business days as being an appropriate, conservative period of time which would achieve the objective of predictability.

15. While from the technical point of view the Delegate of France agreed with the Delegate of Canada that five business days would be quite sufficient, he suggested that that period of time be regarded as a minimum rather than a maximum in light of the anticipated participation in the international registry of not only developed States but also developing States and the associated problems which such a broad participation might give rise to as addressed by the International Registry *Ad Hoc* Task Force (for Registration of Interests in Aircraft Objects). The Delegate of France was of the view that the time period specified should be between five and ten business days.

16. The Delegate of the United States underscored the need to further examine this issue to determine the sufficiency of a five business day period for completion of deregistration and export formalities. He also emphasized that the drafting of paragraph 8 of Alternative “A” should be clarified to indicate that the time period specified therein related to the actions required to complete the deregistration procedure and that it did not necessarily preclude completion of the requisite safety and navigation functions of civil aviation authorities. The latter was intended to be covered in Article XIII (*Deregistration and export authorisation*). The Drafting Committee might nonetheless wish to consider whether those two provisions were properly correlated.

17. In agreeing that that issue should be addressed by the Drafting Committee, the Observer from AWG noted that the reference to aviation safety laws and regulations applied to export and not to deregistration. He suggested that that wording be incorporated into the text of Article XI, Alternative “A”, paragraph 8, and that both that provision and Article XIII condition the remedy under Article IX (*Modification of default remedies provisions*), paragraph 1 (b), of the draft Protocol and not under paragraph 1 (a) thereof as the references to aviation safety laws and regulations applied to export rather than to technical deregistration.

18. The Delegate of the United States indicated that the proposed amendment would resolve his concerns regarding the time period specified for the completion of deregistration and export formalities.

19. The Third Vice-Chairman then drew attention to paragraph 127 of the Report of the Rapporteur (LC/31-WP/3-4) relating to Article XI, Alternative “A”, paragraph 8, in which the Rapporteur indicated that “It would seem more logical if the initiating notice referred not to the creditor’s having been given possession but of its intention to deregister or to export and transfer out.” and suggested that it be referred to the Drafting Committee for consideration.

20. The Delegate of South Africa was of the opinion that the prerequisite to recourse to the remedies provided under Article IX, paragraph 1 (a) and (b), was the creditor’s having been given possession of an aircraft object and not the creditor’s intention to deregister or to export and transfer out an aircraft object.

21. The Delegate of South Africa suggested, in this regard, that the phrase “after having been given possession” be added at the end of the wording proposed by the Rapporteur in paragraph 127 of his Report and that the matter be referred to the Drafting Committee for consideration. It was so agreed.

22. An editorial amendment suggested by the Delegate of Canada regarding the paragraph numbering of the French text of Alternative “A” in Article XI of the draft Protocol was noted by the Secretariat for appropriate action.
23. In commenting on **item 25** (*Consider whether the Convention should provide that the assignor should have the power to dispose of the interest, as it provides that the debtor should have the power to dispose of the object*) and related paragraph 136 of the Report of the Rapporteur (LC/31-WP/3-4) proposing an amendment to Article 30 (*Formal requirements of assignment*), paragraph 2, of the draft Convention, the Delegate of Canada affirmed that there was no need to draw a parallel between the position of a holder of an international interest in an assignment of that interest and that of a debtor in a regular security agreement. Noting, from Article 30, paragraph 1, of the draft Convention, that “The holder of an international interest (“the assignor”) may make an assignment of it ...”, he indicated that, by definition, the assignor must be a holder of an international interest. That raised the question as to whether the reference to the “power to dispose” was a reference to some limitation on a holder in terms of being able to assign that interest – an issue which, in his view, the Legal Committee would not wish to raise in the draft Convention. The Delegate of Canada noted, in this regard, that the issue was addressed in the draft Protocol, where the consent of the other party to the international transaction was required.
24. The Delegate of the United States shared this view.
25. The Legal Committee accordingly decided not to modify Article 30 of the draft Convention as proposed by the Rapporteur in paragraph 136 of his Report.
26. With reference to **item 26** (*Consider whether assignments of an aircraft object should be required to contain an identification of the aircraft object similar to that required in respect of the constitution of an international interest and a sale*) and related paragraph 137 of the Report of the Rapporteur (LC/31-WP/3-4), the Delegate of Canada suggested that this drafting issue could be addressed by incorporating a reference to Article 30 of the draft Convention into Article VII (*Description of aircraft objects*) of the draft Protocol and by incorporating the identifying description of an aircraft object contained in the latter Article into the said Article 30 so that it also applied to assignments.
27. The Legal Committee decided to refer item 26 to the Drafting Committee together with the above proposal by the Delegate of Canada.
28. Turning to **item 29** (*Consider whether the Convention should provide that declarations related to registrable non-consensual interests should be modifiable at any time*) and related paragraph 144 of the Report of the Rapporteur (LC/31-WP/3-4), the Delegate of the United States indicated that the draft Convention should be amended so that declarations as to registrable non-consensual interests would also be modifiable at any time as suggested by the Rapporteur.
29. The Observer from AWG and the Delegate of the United Kingdom also supported the proposed amendment, which was then referred to the Drafting Committee for consideration.
30. With regard to **item 31** [*Re-examine the extent to which Article 19(1) on registrations and modifications of registrations should apply to sales*], the Observer from AWG voiced support for the analysis thereof presented by the Rapporteur in paragraph 148 of his Report (LC/31-WP/3-4). He noted in particular that the reference made in Article IV (*Application of Convention to sales*) of the draft Protocol to paragraph 1 of Article 19 (*Who may register*) of the draft Convention was inconsistent with paragraph 3 of Article V (*Formalities and effects of contract of sale*) of the draft Protocol and should be clarified. A substantive resolution of that matter should be along the lines of paragraph 3 of Article V.
31. In lending his support to the Rapporteur’s suggested clarification, the Delegate of Canada emphasized that it had be made clear with respect to the application of the draft Protocol to sales that the registration of a sale was not the same as the registration of a security interest or a lease to the

extent that there would be no possibility of the expiry of the registration of the sale or a period of time during which the sale registration was effective or a discharge of the registration of the sale except in the limited case suggested. He underscored that the registry of sales would constitute a record of transactions relating to a particular aircraft object and would thus serve as a record of chain of title.

32. The Delegate of Japan also endorsed the analysis of the Rapporteur regarding item 31.

33. The Legal Committee decided to refer the matter to the Drafting Committee for consideration. It likewise decided to refer to that Committee the proposal made by Japan in LC/31-WP/3-17 regarding the inclusion of an explicit statement in the draft Protocol that the buyer may register a sale with the consent in writing of the seller.

34. The meeting adjourned at 1630 hours.

LEGAL COMMITTEE – 31ST SESSION

SUMMARY MINUTES OF THE FIFTH MEETING

(CONFERENCE ROOM 1, WEDNESDAY, 30 AUGUST 2000, AT 0930 HOURS)

Third Vice-Chairman of the Legal Committee: Mr. G. Lauzon

Secretary: Dr. L.J. Weber, Director, Legal Bureau

Agenda Item 3: International Interests in Mobile Equipment (Aircraft Equipment)

1. The Third Vice-Chairman indicated that the Drafting Committee would be comprised of representatives from the following States: Brazil, Canada, China, Cuba, Egypt, France, Italy, Japan, the Russian Federation, the United Kingdom, the United Republic of Tanzania, the United States and Uruguay. States which were not represented on the Drafting Committee could attend its meetings as observers.

2. In enquiring as to the task of the Drafting Group, the Delegate of Germany recalled that the Governing Council of the International Institute for the Unification of Private Law (UNIDROIT) had, in its recently-adopted Resolution (*cf.* Appendix to LC/31-WP/3-14), called for the convening of a Diplomatic Conference as early as practicable in 2001 for the purpose of concluding a Convention and Protocol on the basis of the current draft texts. In light of that Resolution, he suggested that any drafting amendments or recommendations by the Legal Committee be reflected in its Report rather than be produced as new versions of the existing draft texts. The Delegates of Italy, Switzerland, Mexico and the United States supported this proposal.

3. The Delegate of India underscored that it was within the purview of the Legal Committee to finalize the draft texts and to present them to the Council in whatever form was deemed appropriate.

4. In drawing a distinction between the work of the Legal Committee and the work of the Drafting Committee, the Delegate of Pakistan noted that it was the task of the Drafting Committee to express the aims of the Legal Committee in more appropriate terms without introducing changes of substance into the texts of the draft instruments.

5. The Secretary drew attention to the fact that, according to the applicable procedures of the Legal Committee, it was not the mandate of the Drafting Committee to confine itself to general recommendations but to present the outcome of its deliberations in the form of a revised text.

6. The Delegate of Germany clarified that his proposal had not been intended to prevent the preparation of such a text by the Drafting Committee; rather, it had been intended to ensure that, as a matter of presentation, any drafting amendments or recommendations were reflected in the Report of the Legal Committee.

7. Commenting on points raised during the debate, the Third Vice-Chairman noted that there was no intention to limit the mandate of the Drafting Committee and observed that all Delegates were cognizant of existing ICAO procedures.
8. Averring that this was only a presentational matter, the Observer from the Aviation Working Group (AWG) recalled that the 30th Session of the Legal Committee had produced a revised draft text of the *Convention for the Unification of Certain Rules for International Carriage by Air* as an attachment to its Report (Doc 9693-LC/190).
9. Summarizing the discussion, the Third Vice-Chairman noted that there was no intention to curtail the prerogatives of either the Drafting Committee or the Legal Committee. He explained that the Report of the Legal Committee would contain the latter's proposed amendments in the form of a revised text which would show the changes introduced.
10. The Observer from UNIDROIT indicated that the proposal made by the Delegate of Germany would facilitate the common effort being made to convene a Diplomatic Conference as early as possible on the basis of a mature product. In agreeing that presentation was crucial to the matter at hand, he recalled that the Governing Council of UNIDROIT had, in the Resolution adopted in April 2000, authorized its Secretariat to make arrangements for the holding of a Diplomatic Conference as early as practicable in 2001 on the basis of the draft texts which had emanated from the Third Joint Session of the Sub-Committee of the ICAO Legal Committee and the UNIDROIT Committee of Governmental Experts (Rome, 20 to 31 March 2000). The Observer from UNIDROIT indicated that, in order to avoid having to wait for the next session of the Governing Council of UNIDROIT, slated for September 2001, before convening a Diplomatic Conference, UNIDROIT might circulate the revised texts of the draft instruments to the members of that body for approval.
11. The Legal Committee then resumed consideration of the list of "Suggested Items for Consideration by the Legal Committee" appended to the Report of the Rapporteur (LC/31-WP/3-4).
12. Referring to **item 32** [*Consider whether Article 24(1) on discharge of registration should not apply in respect of sales*], the Delegate of Canada maintained that the registration of an outright sale could not be discharged given its structure. In endorsing the comment made by the Rapporteur in paragraph 148 of his Report that Article 24 (*Discharge of registration*), paragraph 1, should not apply to sales, he reiterated the usefulness of a registry of sales as a record of chain of title for aircraft objects. The Delegate of Canada also supported the suggestion that the Drafting Committee consider the application of that provision to prospective sales. It was accordingly decided to refer both issues to the Drafting Committee.
13. The Legal Committee further decided to defer discussion of **item 34** (*Consider whether to provide that the courts of the seat of the Registry have exclusive jurisdiction to hear actions brought against the Registrar*) pending consideration of the Report of the International Registry *Ad Hoc* Task Force (for Registration of Interests in Aircraft Objects) (LC/31-WP/3-5) in light of the comments made by the Delegates of the United States and Greece.
14. Consideration of **item 35** (*Determine whether it is appropriate to grant residual jurisdiction to all Contracting State courts with jurisdiction under their national law*) was also postponed in view of ongoing informal consultations thereon, particularly with regard to Article 41(*Choice of forum*) , paragraph 1, of the draft Convention and its relation to Article 44 (*General jurisdiction*).
15. The Legal Committee then decided to defer consideration of **item 36** (*Review the provisions for entry into force of the Convention/Protocol to take into account the need for a viable registry as well as the need for early access to the other benefits*) pending discussion of other issues relating to the International Registry.
16. In commenting on **item 37** (*Note the desirability to review in due course the need for provisions on reservations*) and related paragraph 175 of the Report of the Rapporteur, the Observer from AWG drew attention to paragraph 4 of LC/31-WP/3-15 in which the AWG proposed grouping into a single

annex the five provisions of the draft Convention and draft Protocol deemed particularly important to realizing economic benefit, namely, those relating to the special insolvency rules; relief pending final determination; non-judicial remedies; deregistration and export authorisation; and choice of law on contractual matters. States would be permitted to “opt-in” to that annex either wholly or partially. In offering additional clarifications in response to a query by the Delegate of the United States, he emphasized that the proposal constituted a presentational and drafting change rather than a substantive one.

17. The Delegate of Italy expressed doubt that the said proposal would facilitate understanding of the provisions of the draft Convention and draft Protocol and creation of a consensus. In his view, the opt-in clauses should remain in their respective Articles for greater clarity. The Delegate of Italy noted, in this regard, that provisions contained in an annex could be perceived to have a different legal status than those contained in the body of an instrument.

18. At the suggestion of the Third Vice-Chairman, the Legal Committee decided to defer consideration of item 37 to the Diplomatic Conference.

19. With reference to **item 39** (*Agree an effectiveness period for reservations and for the withdrawal of reservations*), the Legal Committee agreed with the observation made by the Rapporteur in paragraph 176 of his Report that the antecedent for the pronoun “it” appearing in the first paragraph of Article XXIX of the Protocol should be clarified. In also agreeing with his comment regarding the sufficiency of an effectiveness period of six months for the noting by the international community of the contents of a declaration and the application of such a period for the withdrawal of a declaration, it decided to refer these issues to the Drafting Committee.

20. In drawing attention to **item 40** (*Consider whether the Depositary should communicate declarations to the Registrar so they can be made publicly available*), the Delegate of the Netherlands supported the suggestion made by the Rapporteur in paragraph 177 of his Report that the draft Protocol be amended to stipulate that the Depositary was to make available to the Registrar the contents of declarations. In noting the usefulness of such a provision, he emphasized that it would provide legal certainty. The Legal Committee accordingly decided to refer the matter to the Drafting Committee.

21. Commenting on **item 41** (*Review and refine the provisions on the Review Board and the Conference of States*) and related paragraph 178 of the Report of the Rapporteur, the Observer from AWG recalled the historical background of Article XXXII of the draft Protocol, highlighting the need for a mechanism for the updating of the treaty régime to bring it in line with emerging financing and leasing practices. In noting that it had always been the intention to develop a system which could respond promptly to the needs of the international aviation community, he stressed the importance of that system remaining flexible. The Observer from AWG also underscored the need for representatives of industry in be involved in that system to ensure that there was a proper balance of interests. He further emphasized the need for the system to be cost-effective and efficient.

22. In underscoring the need to carefully consider the issues raised by the Rapporteur, including the very important factors of cost and facilitation, the Delegate of the United States advocated deferring discussion to the Diplomatic Conference. He noted, in this regard, that the role to be played by ICAO in the treaty régime had not yet been determined, being scheduled for further consideration by the Council during its upcoming 161st Session. The Delegate of the United States indicated that it would also be necessary to consider the desirability of having all Contracting States and not only those represented on the ICAO Council participate in review conferences. He concurred with the Observer from AWG that the review process should be flexible and that all appropriate representatives of industry – manufacturers, financial parties, parties from the air navigation services sector and others – should be fully involved in all of its stages so as to ensure that the necessary review of the appropriateness of the treaty régime’s financial provisions would be undertaken. The Delegate of the United States noted that participation would have to be expanded when the issue of developing

provisions to cover military, customs and law enforcement aircraft was considered. While welcoming the Rapporteur's suggestion that, in the event of a decision by the ICAO Council to accept the functions of Supervisory Authority, the functions of the Review Board could be assigned to that body, he maintained that a decision regarding the assumption of such functions by the Organization should be taken at the Diplomatic Conference to ensure the full participation of all Contracting States.

23. In sharing this view, the Observer from UNIDROIT underscored that more time was required to consider such issues as cost. It would be necessary for the Review Board to be reasonably small in size, efficient and inexpensive to operate. Furthermore, its composition should be such as to ensure a proper balance between private parties and representatives of international organizations. In light of the structure of the treaty régime – a basic Convention with an equipment-specific Protocol – the Observer from UNIDROIT envisaged that the UNIDROIT Governing Council might wish to either cooperate with the other intergovernmental organizations in reviewing the viability of the instruments or to create a new minute organ which would be able to function as a Review Board. Additional time was required to evaluate all available options.

24. The Delegate of the United States clarified that he had no objection to the matter being discussed at the forthcoming Session of the ICAO Council. He had wished to underscore that it was one thing to have the Council discuss the appropriate mechanisms by which the establishment and functioning of the Review Board could be facilitated and another to anticipate that Representatives on the Council themselves would be called upon to act with regard to very specific and focussed matters relating to finance and commercial law, *inter alia*. The Delegate of the United States cautioned that the appropriate functions should be undertaken at a level where that type of detailed examination could be given. He recalled, in this regard, the creation within ICAO of technical bodies of experts to carry out the requisite detailed examinations and to formulate recommendations for further action. In view of the comments made by the Observer from UNIDROIT, the Delegate of the United States indicated that future discussions should address the possible establishment of a joint Review Board as a means of involving both ICAO and UNIDROIT and of accommodating the need to have the full participation of all Contracting States and not only of those represented on either the ICAO Council or the Governing Council of UNIDROIT. The use of technical bodies of experts might facilitate the work of such a joint Review Board.

25. The Third Vice-Chairman suggested, as a practical approach to initiating action prior to the Diplomatic Conference, that the Legal Committee recommend that the ICAO Council consider the possibility of appointing the members of the Review Board in consultation with UNIDROIT. He noted that technical bodies of experts had been appointed by the ICAO Council in the past to review certain matters, citing, in this context, the *Ad Hoc* Group of Specialists on the Detection of Explosives. Such technical bodies often carried out tasks associated with instruments, the parties to which were not necessarily ICAO Contracting States.

26. The Delegates of Italy, Pakistan and the Russian Federation and the Observer from AWG supported this proposed recommendation, with the Delegate of Pakistan and the Observer from AWG suggesting certain editorial amendments thereto.

27. The Delegate of the United States averred that the matter needed to be deferred to the Diplomatic Conference in order to ensure the greatest degree of harmony and collaboration and thus the success of that meeting. He cautioned that raising such issues as the appointment of members of the Review Board in a recommendation by the Legal Committee could generate controversy. The Delegate of the United States thus suggested that it recommend instead that the Council consider appropriate methods by which it could achieve joint action with UNIDROIT in order to arrive at an appropriate way to appoint members of the Review Board and to resolve issues associated with the functioning of such a Review Board, such as costs. He maintained that this was a more neutral approach which would avoid inter-organizational conflicts.

28. The Delegate of Spain endorsed this proposal.

29. The Legal Committee accordingly adopted the following recommendation:

Recommendation LC/31-1: It is recommended that the Council consider appropriate action in relation to the matters referred to in Article XXXII of the draft Protocol

30. The Secretary noted, in this context, that the ICAO Council would first need to consider whether or not it could accept a role in the establishment and functioning of the Review Board.

31. The meeting adjourned at 1230 hours.

LEGAL COMMITTEE – 31ST SESSION

SUMMARY MINUTES OF THE SIXTH MEETING (CONFERENCE ROOM 1, WEDNESDAY, 30 AUGUST 2000, AT 1430 HOURS)

Third Vice-Chairman of the Legal Committee: Mr. G. Lauzon

Secretary: Dr. L.J. Weber, Director, Legal Bureau

Agenda Item 3: International Interests in Mobile Equipment (Aircraft Equipment)

1. At the request of the Delegate of Germany, the Legal Committee agreed that a representative of his State be included in the Drafting Committee, the composition of which had been announced at the previous (LC 31/5) meeting.

2. In resuming its consideration of the list of “Suggested Items for Consideration by the Legal Committee” appended to the Report of the Rapporteur (LC/31-WP/3-4), the Legal Committee decided to defer discussion of **item 42** (*Review the alternative transitional provisions and determine whether interests created prior to the Convention’s entry into force should be registered following an appropriately long grace period and a low cost transitional filing fee*) in light of ongoing informal consultations thereon.

3. The Delegate of Pakistan then proposed that an arbitration clause be incorporated into the treaty régime so as to allow States to resolve, in an effective manner, difficulties which might arise between them as to its interpretation or application. The Delegates of Brazil, Namibia and Nigeria spoke in favour of such a clause.

4. While also welcoming the proposal, the Delegate of the United States indicated that it was a difficult subject to consider without much advance consultation and careful consideration as to its scope. He noted that, whereas the proposed clause would provide a mechanism for the resolution of disputes among States, the draft Convention would have its primary impact on private-sector parties. To the extent that States were, for example, owners of airline interests, they might be involved, not, however, as normally, in the context of a sovereign State function, but rather in the context of a commercial State function. With regard to the appropriateness of resolution by arbitration for private-sector parties or participating airlines, the Delegate of the United States noted that there were some aircraft transactions which provided, in detailed fashion, for arbitration mechanisms. Such mechanisms were normally enforced under existing international instruments and so did not need to be referred to in the draft Convention. With regard to other parties and interests, some of which were not represented at the present meeting, the Delegate of the United States emphasized that careful consideration would have to be given to the advisability of contemplating a system which would compel arbitration between non-consenting parties and interests. Thus the proposal might be of interest if spelled out in greater detail. While it was not one which could be readily accepted without being carefully examined beforehand, it could be considered at the Diplomatic Conference. The Delegate of the United Kingdom shared this view.

5. A suggestion by the Third Vice-Chairman that the Delegate of Pakistan present a paper setting forth a more detailed proposal was supported by the Delegate of India.

6. The Observer from the Aviation Working Group (AWG) underscored the need to clarify in the paper whether the proposal was limited to arbitration of disagreements between States or if it also related to litigation between private parties. He noted that, in the latter case, the arbitration mechanism would intersect with the Convention's basic jurisdictional provisions, which contemplated recourse to the courts, and would thus constitute a fundamental change to the basic architecture of the Convention.

7. The Delegate of Pakistan indicated that the arbitration clause was intended to facilitate the resolution of the numerous issues which might arise between States, as well as in the private agreements between the parties.

8. The Delegate of Canada observed that, whereas public international law instruments often contained clauses for settlement of disputes among States, private international law instruments did not. He noted that the draft Convention and draft Protocol were intended to apply to private parties and to States acting in commercial matters as private parties. In accordance with the terms of those instruments, disputes concerning the interpretation or application of their provisions were to be resolved before domestic courts. If, on the other hand, there were a breach by a State of its implementation of the instruments, it would be a matter of international public law, with possible recourse to the International Court of Justice.

9. In light of the discussion, the Delegate of Pakistan indicated that he would not pursue the issue of an arbitration clause further.

10. The Observer from the European Organisation for the Safety of Air Navigation (EUROCONTROL), noting that the current draft texts of the instruments referred to Contracting States as opposed to Contracting Parties, queried whether it would be possible for international organizations to accede to, or exercise certain functions under, those instruments. He underscored that, in the negative, it would create difficulties for EUROCONTROL as the Organization might not be able to protect its supra-national, non-consensual right to detain aircraft for the recovery of unpaid EUROCONTROL route charges under the EUROCONTROL *Multilateral Agreement relating to Route Charges*. In cited, as an illustration, Article 39 of that Multilateral Agreement, which presently allowed a State to declare generally or specifically those categories of non-consensual rights or interests which under that States' law would have priority over an interest in the object equivalent to an international interest. The question arose as to whether it would be possible for those States, parties to the EUROCONTROL *Multilateral Agreement relating to Route Charges*, whose national law provided for detention in respect of EUROCONTROL route charges, to make a declaration which would cover not only their own national charges but also those of EUROCONTROL. The said EUROCONTROL Multilateral Agreement for the collection of route charges created a single charge, payable to EUROCONTROL; however, the national laws of the member States provided for the mechanisms for the recovery of the said charges by EUROCONTROL. Some of EUROCONTROL's member States had adopted a dualist approach and others, a more monist approach, which affected the way the multilateral agreement was incorporated into national law of member States. Any inconsistent or unsatisfactory outcome for the implementation of the Multilateral Agreement could arise if EUROCONTROL had to rely solely on its member States making the necessary declaration if their respective national laws so permitted. The definition of a "non-consensual right or interest" as given in Article 1 (*Definitions*), paragraph (x), of the draft Convention was "a right or interest conferred by law to secure the performance of an obligation, including an obligation to a State or State entity". In the case of route charges in Europe, the obligation was to pay as owed to EUROCONTROL – not to the States. At issue was whether this definition was wide enough to encompass the obligation to pay to EUROCONTROL the route charges collected under the Multilateral Agreement. The Observer from EUROCONTROL therefore suggested that, either during the present meeting or during the Diplomatic Conference, consideration be given to including in the draft instruments a provision to the effect that certain international organizations, including EUROCONTROL, could accede to, or exercise certain functions under, the Convention and Protocol.

An alternative would be a provision dealing with the relationship between the EUROCONTROL *Multilateral Agreement relating to Route Charges* and the draft Convention now under consideration.

11. The Third Vice-Chairman noted that the Agency for Air Navigation Safety in Africa and Madagascar (ASECNA) and other such international organizations might be in the same position as EUROCONTROL.

12. Indicating that perhaps the right to accede to, or exercise certain functions under, the Convention and Protocol should be granted to international organizations, the Delegate of Greece suggested that the views expressed by the Observer from EUROCONTROL be retained for further study.

13. The Delegate of the United Kingdom expressed doubt that permitting international organizations to accede to the instruments would solve the perceived problem. He noted that in the United Kingdom the right to detain aircraft for non-payment of EUROCONTROL route charges and for non-payment of air navigation services fees owed to Canada, Denmark and Iceland was embodied in its national law. It would be necessary for the United Kingdom to make a declaration in order to preserve such non-consensual rights or interests. The Delegate of the United Kingdom was of the opinion that, as treaties were not self-executing under the legal system in place in his State, accession by an international organization such as EUROCONTROL to the Convention and/or Protocol would not directly accord it rights in British courts. Such rights had to be created by national law implementing the obligations arising from those instruments.

14. The Observer from AWG averred that, even if a broadening of the definition of a “non-consensual right or interest” to include an obligation owed to an international organization to which a State was a party fully addressed the problem raised – and the Observer from EUROCONTROL had suggested that it might not – and avoided a number of other issues, such as the one mentioned by the previous speaker, other significant issues would arise. Recalling earlier discussions concerning the possibility of the European Commission becoming a party to the instruments and the role which the Joint Aviation Authority might play thereunder, he emphasized the need to consider the purposes behind the accession of an international organization to the Convention and Protocol, as well as which declarations could be made by such an organization. Consideration would also have to be given to the issue of whether allowing accession by international organizations would have the effect of changing the current framework of rights from one based on national law to one based on international law.

15. Noting that the non-consensual lien remained a significant problem at some stages of financing and in the extension of financing to new markets, which had led to the rather restrictive approach taken in the Convention to such liens, the Delegate of the United States agreed on the need for further examination of this substantive issue.

16. The Delegate of Canada maintained that liens concerning fees for the use of airports or air navigation services were non-consensual rights which could be declared under the Convention. He averred that the issue raised concerning the supra-national or inter-governmental status of EUROCONTROL and the filing of declarations for regulations having direct effect in Europe would be best left to the European States to consider in the context of European law.

17. In expressing appreciation for the guidance provided by the Legal Committee, the Observer from EUROCONTROL indicated that, as suggested by the Delegate of the United States, his Organization could prepare a paper outlining its views on this issue and offering solutions, as well as identifying other similarly-situated international entities.

18. The Legal Committee agreed that this newly-raised important issue could be further examined on the basis of such additional information.

19. Consideration was then given to **square-bracketed provisions in the texts of the draft Convention and draft Protocol** which had not been included in the list of “Suggested Items for Consideration by the Legal Committee” appended to the Report of the Rapporteur (LC/31-WP/3-4).

20. In highlighting the substantive differences between the two alternatives presented under **Article 27** (*Liability and insurance*) of the draft Convention, the Secretary noted, *inter alia*, that, while Alternative “A”, paragraph 1, stipulated that the Registrar would be liable for a malfunction of the international registration system, including damage arising from a *force majeure*, Alternative “B”, paragraph 1, had a different standard for the liability of the Registrar, one which excluded damage from occurrences constituting a *force majeure*.

21. Observing that Article 27 was closely-linked to **item 20** of the said list, and recalling (LC 31/4) that discussion of that item had been deferred pending consideration of the Report of the International Registry *Ad Hoc* Task Force (for Registration of Interests in Aircraft Objects), the Third Vice-Chairman suggested, and it was agreed, that discussion of Article 27 would be likewise deferred.

22. In recalling the historical background of **Article Q** (*Criminal and tortious liability*) of the draft Convention, the Observer from the International Institute for the Unification of Private Law (UNIDROIT) noted that it had been considered useful by some to clearly indicate, for the purposes of, *inter alia*, Article 28 (*Priority of competing interests*), paragraph 3, that whoever exercised rights under the Convention would have to do so in compliance with tort law, criminal law and any other law applicable to his conduct. Others had been of the view that it was unnecessary to state the obvious in the Convention. The current square-bracketed text of Article Q represented a compromise solution.

23. The Delegate of South Korea spoke in favour of retaining Article Q as it clarified the issue of personal liability, which was distinct from the liability of an international organization.

24. The Observer from UNIDROIT, agreeing that Article Q did have an educational value even if some considered that provision to be superfluous, also supported its retention.

25. The Observer from AWG averred that retention of the Article in its present form but without the square brackets would be consistent with the guidance given by the Council to the Legal Committee (160/5) to take into account what had been achieved at the Third Joint Session of the Sub-Committee of the ICAO Legal Committee and the UNIDROIT Committee of Governmental Experts. The Delegate of Japan concurred.

26. Noting that the absence of Article Q would not preclude the filing of claims on the basis of criminal or tortious liability, the Delegate of Pakistan maintained that the Article was superfluous, serving only to deter violation of the Convention’s provisions. It could therefore be deleted. The Delegate of the United Kingdom shared this view.

27. While not having a particular position regarding the retention or deletion of Article Q, the Delegate of Canada indicated that it should be clarified and harmonized with other immunity-related provisions of the Convention and Protocol, as well as with the aforesaid Article 27.

28. The Delegate of Sweden recalled that Article Q had been developed to address a problem which arose in connection with Article 28, paragraph 3 (b), which provided, *inter alia*, that the buyer of an object acquired its interest in it free from an unregistered interest even if he had knowledge of that interest. He noted that, in a legal system such as Sweden’s where international treaties were transformed into national laws, the acquisition of an interest in an object with the fraudulent intent of extinguishing the interest of another person would not be regarded as tortious. The manner in which Article Q was currently drafted did not remedy this problem – a positively-framed article was required. While the Delegate of Sweden did not have a firm position regarding the retention or deletion of Article Q, he would accept its retention if the Article were of importance to other States. The Delegate of Norway shared this view.

29. The Delegate of the United States emphasized that Article 28, paragraph 3 (b), was essential to the financing of high-value mobile equipment and could not be left open to attack every time a debtor raised the question of a buyer’s prior knowledge of his unregistered interest in an object. While neither supporting nor opposing the retention of Article Q, an Article which he considered to be

superfluous but not harmful, the Delegate of the United States would object to reopening discussion of such a fundamental provision of the Convention which had been previously agreed upon.

30. At the suggestion of the Secretary, the Legal Committee agreed to defer consideration of **Article R** (*Entry into force*) to the Diplomatic Conference.

31. Concurring with the view expressed by the Delegate of the United Kingdom that **Article T** (*Protocols on Railway Rolling Stock and Space Property*) had little to do with civil aviation, the Legal Committee agreed to his suggestion that it be left in square brackets.

32. In commenting on **Article V** (*Determination of courts*), the Delegate of Canada recalled that at the Third Joint Session the view had been expressed that the situation of federal States with regard to the designation of the relevant court or courts should be addressed in a separate Federal State clause in the final provisions of the Convention and Protocol rather than in that Article.

33. Noting that his State would have difficulty in declaring, at the time of ratification, the relevant court or courts for the purposes of Article 1 (*Definitions*) and Chapter XII (*Jurisdiction*) of the Convention, given the very specific rules relating to jurisdiction in South Africa, and that the requirements of Article V might render it necessary for his State to establish a special court to deal with aviation matters, the Delegate of South Africa suggested that this issue be left for determination by the Diplomatic Conference.

34. The Delegate of the United Kingdom indicated that his State would also have difficulty in making a declaration under Article V. Observing that the existing wording of that provision suggested that it was obligatory to make such a declaration, he proposed replacing the word “shall” with the word “may” to add an element of choice.

35. The Delegate of Brazil shared these views.

36. Underscoring the significance of the issue, the Delegate of Canada maintained that consideration thereof should not be left to the Diplomatic Conference.

37. While sharing the concern expressed by the Delegate of South Africa, the Delegate of India noted that Article 41 (*Choice of forum*), paragraph 1, provided that “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.”. In his view, that provision would solve the perceived problem and would enable Article V to be deleted.

38. In clarifying his position, the Delegate of the United Kingdom indicated that it was expected that the question of which court had jurisdiction would be addressed under the national law of the United Kingdom relating to the division of jurisdiction between the different courts in its system. Clearly, claims would not be brought before a criminal court – they would be brought before a high court which had unlimited jurisdiction to hear disputes. The issue of whether the court having jurisdiction was one in England, Scotland, Wales or Northern Ireland would also be dealt with as a matter of national law. He indicated, by way of illustration, that in the case where remedies were being sought in respect of an aircraft located within a territory covered by the Scottish legal system, it would be a Scottish court which would have jurisdiction. For that reason, the Delegate of the United Kingdom considered that it should not be necessary to make a declaration. He noted, moreover, that there was always the danger that a State which had made an initial declaration would omit to make a further one when it subsequently introduced changes into its national legal system. In his view, it was entirely unnecessary to make a declaration when national laws enabled a litigant to easily determine which court would hear his claim.

39. The Delegate of Pakistan observed that Article 41 had been drafted based on the definition of the word “court” given in Article 1, paragraph (k): “... a court of law or an administrative or arbitral tribunal established by a Contracting State;”. The determination of the relevant court or courts under Article V thus had to be seen in the context of the law of the land, which would specify whether a high court, a sessions court, a senior civil court, an administrative tribunal or an arbitral tribunal was

seized with the power to hear the claim. In his view, Article 41 resolved any ambiguity which might surround the issue of declaring the relevant court or courts under Article V.

40. While agreeing that Article V was related to the above definition of the word “court”, and recognizing that it had been principally designed to enhance the predictability and efficiency of the relevant judicial procedures, the Observer from AWG averred, in light of the views expressed, that that Article might simply constitute an unnecessary obligation which would increase the complexity of the Convention without adding much value thereto. Despite the Group’s own keen interest in ensuring predictability, it considered that if the desire was to simplify the Convention to the maximum extent possible and to limit the number of unnecessary declarations, then Article V could easily be deleted without affecting either the intent or text of provisions which had been previously agreed upon.

41. The Observer from UNIDROIT shared this view, as well as the view expressed by the Delegate of the United Kingdom that the determination of the relevant court or courts was a matter of national law.

42. For his part, the Delegate of Canada favoured retaining Article V. While agreeing that Article 41 should clarify which court or courts was seized of the power to hear a claim, having the opportunity to access the declarations filed under Article V and appearing in the International Registry would facilitate the determination of the competent court or courts under Article 44 (*General jurisdiction*) and Article 42 [*Jurisdiction under Article 12(1)*] which related to speedy interim relief. He maintained that Article V would result in greater efficiency, clarity, predictability and transparency in the legal procedures. The Delegate of Canada noted, moreover, that it was the practice to have such an article on the designation of courts in private international law instruments.

43. Observing that his State would have the same difficulties as the United Kingdom in declaring the relevant court or courts under Article V, the Delegate of Germany indicated that he could accept the deletion of that provision. He could, however, also accept its retention, without the square brackets and amended in accordance with the suggestion put forward by the Delegate of the United Kingdom.

44. The Delegates of Switzerland and Sweden supported the retention of Article V, subject to the said proposed amendment. The Delegate of Sweden noted, however, that as the civil, criminal and administrative courts in his State were all equally competent to hear cases in their respective areas, it would be necessary to file with the envisaged declaration a list of all of the courts in Sweden, which would not facilitate matters for litigants.

45. The Delegate of Nigeria affirmed that the proposed replacement of the word “shall” with the word “may” in Article V would defeat the intended purpose of that provision, making the declaration of the relevant court or courts discretionary and thus creating uncertainty.

46. For his part, the Delegate of Namibia supported the suggested amendment, viewing it as a good compromise.

47. In light of the debate, the Legal Committee decided to retain Article V without the square brackets and subject to the amendment proposed by the Delegate of the United Kingdom, whereby the word “shall” would be replaced with the word “may” to indicate that it was not obligatory to make a declaration regarding the relevant court or courts.

48. The meeting adjourned at 1630 hours.

LEGAL COMMITTEE – 31ST SESSIONSUMMARY MINUTES OF THE SEVENTH MEETING
(CONFERENCE ROOM 1, THURSDAY, 31 AUGUST 2000, AT 0930 HOURS)

Third Vice-Chairman of the Legal Committee: Mr. G. Lauzon

Secretary: Dr. L.J. Weber, Director, Legal Bureau

Agenda Item 3: International Interests in Mobile Equipment (Aircraft Equipment)

1. The Legal Committee resumed (LC 31/6) and completed its consideration of **square-bracketed provisions in the texts of the draft Convention and draft Protocol** which had not been included in the list of “Suggested Items for Consideration by the Legal Committee” appended to the Report of the Rapporteur (LC/31-WP/3-4). Drawing attention to **Article 46** (*Relationship with the [draft] UNCITRAL Convention on Assignment [in Receivables Financing] [of Receivables in International Trade]*), the Secretary indicated that the text and title of the Convention referred to in that Article had not yet been finalized by the UN Commission on International Trade Law (UNCITRAL). As the implications of that Convention for the two draft instruments now being considered by the Legal Committee were thus unclear, he suggested that Article 46 be retained in square brackets pending the Diplomatic Conference, when a decision could be taken as to its retention on the basis of the additional information which would then be available concerning the UNCITRAL Convention.
2. In supporting this proposal, the Observer from the International Institute for the Unification of Private Law (UNIDROIT) noted that both UNCITRAL and UNIDROIT were still examining the relationship between the draft UNCITRAL Convention, the *[Preliminary] draft [UNIDROIT] Convention on International Interests in Mobile Equipment* and the *[Preliminary] draft Protocol to the [Preliminary] draft [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment*.
3. Observing that many of the States participating in the present Legal Committee were also actively involved in the negotiations surrounding the draft UNCITRAL Convention, the Delegate of the United States suggested that, prior to the meeting of the UNCITRAL Working Group on International Contract Practices in Vienna in December 2000, when a final draft of the said Convention was to be prepared, and the envisaged Diplomatic Conference, such States coordinate their positions in ICAO, UNIDROIT and UNCITRAL regarding those issues which were addressed in both that Convention and in the above-mentioned draft Convention and draft Protocol in order to achieve their goals more efficiently. He raised the possibility of an *ad hoc* group being formed to that end.
4. In accepting the proposal put forward by the Secretary, the Legal Committee encouraged consultations between States to ensure that this matter was handled smoothly in the various fora concerned.
5. In commenting on **Article XV** (*Modification of assignment provisions*) of the draft Protocol, the second and third paragraphs of which were in square brackets, the Observer from the Aviation Working Group (AWG) noted that the insertion of a new sub-paragraph (d) in Article 30 (*Formal requirements of assignment*), paragraph 2, of the Convention pursuant to Article XV, paragraph 1, would align the two instruments by necessitating, in each case, the debtor’s consent in order for an international interest to be valid. Observing that Article 32 (*Debtor’s duty to assignee*), paragraph 1, sub-paragraph (c), of the draft Convention contained two alternatives in square brackets, the first relating to the debtor’s consent in writing to the assignment and the second, to his not having been given prior notice in writing of an assignment in favour of another person, he indicated that if the first alternative were selected, then an amendment to Article XV, paragraph 1, would be unnecessary. If, on the other hand, the second alternative were chosen, then the insertion of a new sub-paragraph (d) in Article 30, paragraph 2, would render that alternative superfluous; hence square-bracketed

paragraph 2 of Article XV, which specified the omission of sub-paragraph (c) of Article 32, paragraph 1. Thus the deletion of the said square-bracketed paragraph 2 did not address the question of a debtor's consent.

6. In addition to offering this technical clarification regarding Article XV, paragraph 1, and square-bracketed paragraph 2, the Observer from AWG proposed that paragraph 3 of that Article remain in square brackets as it addressed one of the interrelated issues mentioned by the Delegate of the United States on which a position could not be taken pending the finalization of the UNCITRAL Convention.

7. Indicating that that issue was covered under item 28 (*Clarify that a debtor's consent is required for an assignment of associated rights*) of the list of "Suggested Items for Consideration by the Legal Committee" appended to the Report of the Rapporteur (LC/31-WP/3-4) which had been referred (LC 31/3) to the Drafting Committee, the Third Vice-Chairman suggested that the Legal Committee note these comments and refer them to the latter.

8. In agreeing with the Observer from AWG that no decision should be taken regarding square-bracketed paragraph 3 of Article XV of the draft Protocol pending finalization of the UNCITRAL Convention, the Delegate of the United States noted that if the Legal Committee so agreed, that would render it unnecessary to refer the matter to the Drafting Committee.

9. The Delegate of Canada was of the opinion that the issue of whether the consent of the debtor should be required under the draft Convention was a policy one and not a drafting one and should therefore be decided upon by the Diplomatic Conference.

10. In offering further clarification, the Observer from AWG noted that Article XV, paragraph 1, of the draft aircraft equipment-related Protocol clearly stipulated that the debtor's consent was required in order for an international interest to be valid; it was not an open issue. An amendment to the Convention to align the two instruments would, however, affect mobile equipment other than aircraft equipment, in particular, railway rolling stock and space property, and for that reason he did not consider it appropriate for the Legal Committee to introduce such a change.

11. The Delegate of South Africa observed that, although Article XV, square-bracketed paragraph 2, of the draft Protocol referred to the application of Article 32, paragraph 1, of the draft Convention with the omission of sub-paragraph (c), the latter related to Article 31 (*Effects of assignment*), paragraph 1, sub-paragraph (b), which, in turn, related to the assignment of all associated rights. It was thus his understanding that Article XV, paragraph 1, did indeed relate to Article 32 with an expressed qualification as pointed out by the Observer from AWG, *i.e.* the debtor's consent was an absolute requirement, a position which his Delegation supported. However, if sub-paragraph (c) of Article 32, paragraph 1, was to be omitted, then Article 31, paragraph 1, sub-paragraph (b), would be affected, with the position of the debtor being severely compromised.

12. The Observer from AWG, noted, in this regard, that Article 31, paragraph 1, of the draft Convention referred to "An assignment of an international interest in an object made in conformity with the preceding Article ...". The effect of that provision was that, if an assignment had not already been made, then it had to be made in conformity with Article 30 before there was even an assignment of associated rights. Thus associated rights could not be assigned unless there was an assignment of an international interest in accordance with Article 30. The effect of paragraph XV, paragraph 1, of the draft Protocol was the addition of a sub-paragraph (d) to Article 30, paragraph 2. That provision, as amended, required the debtor's consent for an assignment of an international interest to be valid. Article 31, paragraph 1, thus stipulated that only if there was a valid assignment of an international interest was there an assignment of associated rights. Accordingly, a debtor's consent was an absolute condition for the assignment of an international interest and therefore to an assignment of associated rights.

13. The Delegate of South Africa, in commenting on the relationship between Article 32, paragraph 1, of the draft Convention and Article 31, paragraph 1, sub-paragraph (b) thereof, noted that the former imposed a duty on the debtor to the assignee, specifying that “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: ... (c) the debtor [consents in writing to the assignment ...]”. There was thus a fundamental difference in approach between the two sections. His Delegation therefore considered that the debtor’s position would be severely compromised if paragraph 2 of Article XV of the draft Protocol were deleted.

14. In querying whether the draft Protocol was to be used to clarify the draft Convention or whether the draft Convention was to be used to clarify the draft Protocol, the Delegate of Nigeria raised the possibility of having a consolidated text of the two instruments to avoid further confusion.

15. In light of the divergent views expressed, the Third Vice-Chairman suggested, and it was agreed, that a small informal group of interested States would be established comprising representatives of Canada, France, South Africa and the United States, as well as the Observers from AWG and UNIDROIT, to come up with a solution to this problem.

16. A point then raised by the Delegate of France regarding the French text of Article V (*Formalities and effects of contract of sale*) of the draft Protocol was noted by the Legal Committee and referred to the Drafting Committee for appropriate action.

17. Drawing attention to **Article XXVI** (*Entry into force*) of the draft Protocol, the Secretary observed that the three-month period specified in paragraphs 1 and 2, respectively, for the entry into force of the Protocol itself and for the entry into force of the Protocol for each State subsequently depositing its instrument of ratification, acceptance, approval or accession was not unusual in international instruments. In the present context, where certain institutional arrangements such as the establishment of the International Registry were required, such a delay seemed reasonable. He thus suggested that the square brackets around the word “three” be deleted in both of the said paragraphs. The Secretary further noted that the number of instruments of ratification, acceptance, approval and accession required to bring the Protocol into force specified in paragraph 1, three or five, was the same as the number specified for the entry into force of the Convention in Article R (*Entry into force*), paragraph 1, of the latter and was usually left to the Diplomatic Conference to decide. He therefore recommended that the square brackets around the words “third/fifth” be retained for the time being.

18. The Observer from UNIDROIT supported these proposals.

19. At the suggestion of the Third Vice-Chairman, the Legal Committee agreed to delete the square brackets around the word “three” in paragraphs 1 and 2 of Article XXVI and to revert to the issue of the number of instruments of ratification, acceptance, approval and accession required for the entry into force of the Protocol following its consideration of the provisions relating to the International Registry in view of the possible implications which that would have for the International Registry and its viability.

20. Commenting on the **titles of the draft Convention and draft Protocol**, the Secretary suggested that the square-bracketed word “preliminary” be deleted from each title as the texts would no longer be preliminary in nature when the Legal Committee submitted them to the ICAO Council for consideration. In also suggesting that the square-bracketed word “UNIDROIT” be deleted from each title, he indicated that it would be inappropriate for the Legal Committee to ask the Council to approve texts which were identified as those of another international organization. Similarly, it would be inappropriate to send such texts to all ICAO Contracting States for comment following approval thereof by the Council. The Secretary noted, moreover, that it was not the practice of ICAO to identify the sponsoring organization in the title of a legal instrument. He emphasized that a decision to delete the word “UNIDROIT” from the titles of the draft Convention and draft Protocol would not be

binding on UNIDROIT, which would be free to retain the current titles if it so desired when using the texts of the two instruments for its own purposes.

21. The Delegates of India, China, Afghanistan, Jordan, Algeria, Cuba, Kenya, Panama, Nigeria, the United States, Madagascar, Singapore, Japan, Uruguay, and Germany, endorsed the proposals put forward by the Secretary.

22. In concurring with the suggested deletion of the word “preliminary”, the Observer from UNIDROIT noted that the texts of the two instruments had been approved by the UNIDROIT Governing Council and would therefore be referred to as draft texts pursuant to UNIDROIT practice. The fact that that word appeared in square-brackets in the current titles of the instruments was an indication that the texts had been printed prior to the Governing Council’s approval. With regard to the square brackets around the word “UNIDROIT”, he stressed the need to keep in mind the respective rules of procedure of UNIDROIT and ICAO, as well as the applicability of the Convention to other categories of mobile equipment. The Observer from UNIDROIT recalled that in 1988 the practice had developed within UNIDROIT to include its name in the title of instruments adopted under its auspices. Thus pending the Diplomatic Conference he envisaged proceeding along the lines indicated by the Secretary, with UNIDROIT continuing to use its name in the texts of the instruments which it transmitted to its Member States. It would ultimately be for the Diplomatic Conference to determine the titles of the two instruments.

23. In endorsing these comments, the Delegate of Mexico noted that it was the practice of UNIDROIT to pay homage to the host State of a diplomatic conference by including the name of the city in which the meeting had been convened in the short title of the adopted instrument. He cited, as a recent example, the 1995 *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*, referred to as the “Rome Convention”.

24. The Delegates of Jordan and Panama maintained that the Convention and Protocol should each have a single title to avoid confusion.

25. While also supporting the removal of the words “preliminary” and “UNIDROIT” from the titles of the two instruments as being consistent with ICAO practice and procedure, the Delegate of Pakistan averred that a decision to that effect should be taken by the Legal Committee and not deferred to the Diplomatic Conference.

26. The Delegate of the United States agreed with the approach outlined by the Secretary with regard to the submission of the draft instruments to the ICAO Council in accordance with the Organization’s established procedure. He also concurred with the Observer from UNIDROIT that a final decision regarding the titles of the Convention and Protocol should be left to the Diplomatic Conference convened for their adoption. The Delegates of Japan and Germany shared these views.

27. In also supporting the deferral of a final decision regarding the titles of the two instruments to the Diplomatic Conference, the Delegate of Uruguay observed that it was not possible to take such a decision at the present time as the host city had not yet been determined and thus could not be properly reflected in the short titles of the Convention and Protocol pursuant to the practice described by the Delegate of Mexico.

28. In light of the debate, it was decided to delete the words “preliminary” and “UNIDROIT” from the titles of the Convention and Protocol as proposed by the Secretary, on the understanding that a final decision regarding the titles would be taken by the Diplomatic Conference.

29. The Third Vice-Chairman expressed the hope that, in the interim, the Secretariats of ICAO and UNIDROIT would consult and coordinate with one another to ensure that the Diplomatic Conference would run smoothly.

30. The **Report of the International Registry Ad Hoc Task Force (for Registration of Interests in Aircraft Objects)** (LC/31-WP/3-5) was then introduced by the Delegates of France and the United States as Co-Chairmen of the Task Force. It was underscored that, while other substantive provisions

of the draft Convention and draft Protocol relating to, *inter alia*, the basis for registering international priorities, insolvency remedies and their enforcement, jurisdiction, liabilities and immunities would arguably become viable once those instruments entered into force, those relating to the establishment and operation of the International Registry, a functioning entity, would not without the requisite advance planning.

31. The three documents developed by the Task Force to facilitate the acquisition process necessary for the establishment and operation of the International Registry were then elaborated upon. The first document was the “Request for Proposals” (RFP), developed to respond to certain elements in the terms of reference of the Task Force. That document examined certain key concepts, milestone events and time lines, the matter of submissions, the contents of the technical proposals to be submitted by States, cost/price proposals and the principles of evaluation. Closely related to that document was the “Requirements Document” (RD), which was intended to describe certain technical parameters and performance specifications. The third document, the “Process for Soliciting and Evaluating Proposals” (Process), contemplated that an appropriate authority would solicit proposals in advance of the Diplomatic Conference, subsequently rating them on the basis of five significant factors and commencing negotiations with the State which offered the best overall value.

32. It was noted that the Task Force was submitting for the Legal Committee’s consideration, as part of its Report, three additional documents addressing the issues of electronic signature, confidentiality of information registered in the International Registry and liability of the Supervisory Authority and the Registrar.

33. The conclusions of the Task Force were then highlighted, with it being underscored that the Task Force recommended that a modern acquisition process to establish and operate an International Registry be commenced several months before any Diplomatic Conference. It was noted, in that regard, that the process might need to be conducted by a provisional authority.

34. The Third Vice-Chairman congratulated the Co-Chairmen on the Task Force’s thorough and thought-provoking Report, which would be discussed in detail by the Legal Committee during its next meeting.

35. The meeting adjourned at 1230 hours.

LEGAL COMMITTEE – 31ST SESSION

SUMMARY MINUTES OF THE EIGHTH MEETING

(CONFERENCE ROOM 1, THURSDAY, 31 AUGUST 2000, AT 1430 HOURS)

Third Vice-Chairman of the Legal Committee: Mr. G. Lauzon

Secretary: Dr. L.J. Weber, Director, Legal Bureau

Agenda Item 3: International Interests in Mobile Equipment (Aircraft Equipment)

1. The Legal Committee resumed (LC 31/7) and completed its review of the **Report of the International Registry *Ad Hoc* Task Force (for Registration of Interests in Aircraft Objects)** (LC/31-WP/3-5), presented by the Delegates of France and the United States as Co-Chairmen of the Task Force.

2. While understanding the need to advance work regarding the establishment of the International Registry, the Delegate of the United Kingdom voiced concern at the view expressed in paragraph 32 of the Report that it seemed “necessary to set up a provisional Authority as soon as possible and, in any case, before the end of the year 2000”. In emphasizing the need for caution, he requested further information regarding the envisaged provisional Authority.

3. The Co-Chairman from France indicated that it had been the Task Force’s understanding of the terms of reference which it had been given by the Third Joint Session of the Sub-Committee of the

ICAO Legal Committee and the Committee of Governmental Experts of the International Institute for the Unification of Private Law (UNIDROIT) (Rome, 20 to 31 March 2000) that the establishment of the International Registry was an urgent matter. That characterization had necessitated the development of interim provisions. He further noted that, as the members of the Task Force were not specialists in international public law, they had not been in a position to assess the feasibility of the proposed establishment of a provisional Authority.

4. To an additional point raised by the Delegate of the United Kingdom regarding precedents for the establishment of such an authority, the Delegate of Canada recalled that, prior to the entry into force of the 1982 *United Nations Convention on the Law of the Sea*, a Preparatory Commission for the International Sea-bed Authority and for the International Tribunal for the Law of the Sea had been formed to carry out the necessary advance work by virtue of Resolution I adopted by the Third Law of the Sea Conference in December 1982.

5. Drawing attention to paragraph 33 of the Task Force's Report, the Delegate of Canada observed that, while Article 25 (*Provisional application*) of the 1969 *Vienna Convention on the Law of Treaties* would enable the establishment of the proposed provisional Authority prior to the entry into force of the Convention and Protocol, it would do so only after the formal conclusion and adoption of those "treaties" by the Diplomatic Conference, *i.e.* when their texts had been finalized and were no longer subject to amendment.

6. In underscoring the operating assumption of the Task Force that the establishment of the provisional Authority was a time-sensitive endeavour, the Observer from the Aviation Working Group (AWG) recalled that the notion of bringing the instruments into force as promptly as practicable had always been a first principle. Thus the putting into place of provisional arrangements was essential, however difficult that undertaking might be. Everyone should continue in their efforts to advance work relating to the two instruments with deliberate speed. The Observer from AWG averred, however, that work relating to the advance establishment of the International Registry as outlined in the Report of the Task Force would fall outside the scope of Article 25 of the said Vienna Convention, which would only apply between the Diplomatic Conference at which the instruments were adopted and the entry into force of the latter. He considered that it would be appropriate for sponsoring organizations such as ICAO and UNIDROIT to arrange for the conduct of the preparatory work relating to, *inter alia*, the establishment of the International Registry. Sponsoring organizations had an essential role to play in such work which was a pre-condition to issues being addressed efficiently at the Diplomatic Conference.

7. The Delegate of the United States affirmed that the Task Force had advanced progress in many ways. Noting that it had had the advantage of involving a number of States which had participated in the Joint Sessions, as well as a substantial number of outside experts and the Secretariats of both ICAO and UNIDROIT, he indicated that, in its future work, it should continue to ensure the full participation of all interested States. The Delegate of the United States anticipated that such work might require the participation of additional outside experts. While agreeing with the comments made by the Observer from AWG regarding the desirability of the instruments entering into force as soon as practicable, he contended that the issues surrounding the possibility of a provisional Authority were not critical. It would, of course, be to everyone's benefit if it were possible to come to an agreement, through collaborative action of the ICAO Council and the UNIDROIT Governing Council, regarding the designation of some functional group to act in that capacity. It was his understanding, however, that that might take time as there might be certain institutional issues to be addressed beforehand. The Delegate of the United States did not consider that to be of critical importance, as it would still be possible for the Task Force to issue the Request for Proposals (RFP) referred to in its Report. The substantial amount of detailed information received in response thereto would form a sound basis on which to proceed at the Diplomatic Conference even if it were not possible to establish a provisional Authority prior to that time. The Delegate of the United States averred that such an Authority could be established at the Diplomatic Conference itself, if that were the will of the participants.

Furthermore, having already compiled the information received in response to the RFP, it would be possible to proceed with the remaining phases of the envisaged process in a more expeditious manner than originally anticipated. The Delegate of the United States wished to assure the Observer from AWG that he did not foresee any slow-down in that process and that he expected that it would be possible to meet the needs of industry and of the many user States and air carriers around the world.

8. The Delegate of France stated that, unless a legally sound and operational solution could be found which would enable work to be done in advance of the Diplomatic Conference as envisaged by the Task Force, he would favour the process outlined by the Delegate of the United States, which he considered to be reasonable.

9. The Delegate of Canada indicated that, aside from the comments made regarding the interpretation of Article 25 of the Vienna Convention, he was in total agreement that sound preparatory work had to be carried out between the Legal Committee and the Diplomatic Conference. Work should continue along the same track as it had been carried out along up to the present time.

10. Further to a query by the Third Vice-Chairman, the Co-Chairman from the United States noted that, in any procurement process, it was necessary that offerors submit proprietary information for consideration relating to, *inter alia*, pricing, salaries, their management plan and the assignment of staff to the project in question. Such information, in the view of the Task Force, should not become a matter of public record; rather, it should be treated confidentially. That was the principal concern of the Task Force.

11. The Co-Chairman from France observed that, in addition to issues of confidentiality which arose in connection with the RFP, there were also those which arose in connection with the operation of the International Registry, as elaborated upon during the presentation of the Task Force's Report. He then provided further clarification regarding confidentiality-related requirements for ensuring that the International Registry was safe and secure and operating on sound principles while still being accessible. The Co-Chairman observed that electronic signature was more a matter of security than confidentiality, although both were inter-related.

12. Commenting on a point raised earlier, the Co-Chairman from France indicated that Article 25 of the Vienna Convention could come into play once the Diplomatic Conference had taken place. He noted that a year could be saved in implementing the timetable given in the Task Force's Report if work continued to be done, without a provisional Authority, in the six to ninth months remaining prior to that meeting. The status of such work required clarification, however, pending the development of the legally sound and operational solution referred to by the Delegate of France. The establishment by the Diplomatic Conference of a provisional Authority would obviate the risk of any major timeshift in carrying out the work required.

13. The Delegate of India queried how continuity could be ensured in the work initially undertaken by the provisional Authority if, following the entry into force of the instruments, another entity were appointed as the Supervisory Authority. He also queried whether there would be a mechanism to ensure that the provisional Authority would become the Supervisory Authority.

14. The Co-Chairmen indicated that it was not possible to anticipate what action the Diplomatic Conference would take with regard to the appointment of a provisional or permanent Authority or to determine in advance the relationship between two such entities. The Co-Chairman from the United States concurred with the Delegate of the United States that the main concern was not so much that a legal entity in the form of a provisional Authority be established but that work would continue which would expedite the establishment of an operational International Registry.

15. In noting the common concern that there was very little basis, pending the Diplomatic Conference, for the establishment of a provisional Authority or for the conduct of work, especially as it related to third parties, the Third Vice-Chairman indicated that there was always the possibility that an existing body whose constitutional mandate was sufficiently broad to cover this subject could carry

out certain of the tasks. That would meet the concerns of those Delegates who sought a legal basis for further work, in particular, work involving third parties. While application of Article 25 of the Vienna Convention was another possible solution to be explored, it required the prior commitment to the texts of the instruments, in terms of signature by the parties – but not necessarily their ratification.

16. The Delegate of the Netherlands, noting that many States had stressed the necessity of continuing the work done thus far, suggested that they be requested to consider what action could be taken in the time preceding the convening of the Diplomatic Conference. One avenue which they might wish to explore would be precedents for the establishment of a provisional Authority, such as the provisional Authority set up to carry out work for the Organization for the Prohibition of Chemical Weapons. The ICAO and UNIDROIT Secretariats might also wish to verify if there were any precedents.

17. In affirming that the possibility of having an existing body perform certain of the tasks arising in connection with the two instruments merited further consideration, the Delegate of the United States indicated that any responses to the RFP received by the Task Force should be quickly transmitted to both the ICAO and UNIDROIT Secretariats to assist them in reaching a decision in that regard. Referring to the statement made by the Third Vice-Chairman, he indicated that it was his understanding, on the basis of the comments made by the two Co-Chairmen, that in soliciting information no direct contact would be made with third parties; rather, only States would be communicated with in order to keep that activity within the limits of the inter-governmental process. If States so wished, they could provide relevant information regarding third parties.

18. In sharing the view that the work done by the Task Force should be continued, the Delegate of Italy queried whether the Task Force would be disbanded now that it had completed its Report, rendering it necessary to recommend to the Council, through the Legal Committee, that it either establish another group to carry out future work or that it mandate the ICAO Secretariat to do so, together with the UNIDROIT Secretariat. Such a recommendation would ensure that the work was continued in an official manner.

19. The Secretary clarified that, as an *Ad Hoc* Task Force, it was a non-permanent group, sub-group to a Sub-Committee of the Legal Committee. Its terms of reference as set forth in LSC/ME/3-WP/30 were fairly broad, relating to, *inter alia*, the collection of information through the development and issuance of the RFP, an analysis of RFP responses and the production of a final report.

20. In sharing the concerns expressed by the Delegates of India and the United States, the Delegate of the Republic of Korea queried what the legal status would be of any provisional Authority and of any provisional arrangements which might be made prior to the Diplomatic Conference, averring that that issue was not well covered under Article 25 of the Vienna Convention. He suggested, as a possible solution to this problem, that the Diplomatic Conference could validate the preparatory work undertaken with regard to the establishment of an International Registry by means of a declaration, decision or resolution which would be incorporated into the Final Act of that meeting.

21. The Delegate of Sweden observed that if legal formalities prevented the establishment of a provisional Authority, then an informal approach could be adopted, with a State or group of States carrying out the work envisaged in the Report of the Task Force in a suitably open and transparent manner and presenting the outcome to the Diplomatic Conference in the form of a proposal.

22. The Delegate of India expressed concern regarding the legal status of the International Registry *Ad Hoc* Task Force and the role envisaged for it in the Report in the period leading up to the Diplomatic Conference. Underscoring the legal connotations of inviting and evaluating proposals pursuant to the RFP, he maintained that only a duly authorized body could carry out such tasks. While in favour of such work being carried out prior to the Diplomatic Conference, he considered that, if it were not possible to establish such a body, then the work should be deferred until that meeting. To ensure that the provisional Authority had the requisite legal framework, the Delegate of India suggested that provision be made in the Convention itself for its establishment.

23. In concurring with the comments made by the Secretary and the Delegate of Sweden, the Delegate of the United States accepted that the most which could be done prior to the Diplomatic Conference would be the completion of the information-gathering process and the transmittal of collected material by the ICAO and UNIDROIT Secretariats to States. States could take action thereon at the Diplomatic Conference. Such work would advance the deliberations of the Diplomatic Conference, although perhaps not to the same extent as work carried out by a provisional Authority. This was not to say that the Delegate of the United States would not welcome a more formal undertaking put in place by ICAO and UNIDROIT.

24. In requesting clarification regarding the information-gathering process referred to by the previous speaker, the Delegate of the United Kingdom averred that it would be wholly inappropriate if it encompassed the issuance of the RFP. In his opinion, that should be part of a formal bidding process which had a sound legal basis.

25. The Delegate of the United States agreed that the RFP could only be issued on the basis of some sanctioned authority from an appropriate organization. At the moment, it appeared that no entity would be so duly authorized pending the Diplomatic Conference. While that might entail some delay in completing the process, he considered that it might be the best that could be done under the circumstances.

26. The Observer from AWG affirmed the need for advance, formal preparatory work in light of Article XVI (*The Supervisory Authority and the Registrar*), square-bracketed paragraph 2, of the draft Protocol which envisaged, as one possibility, that the first Registrar would be appointed at the Diplomatic Conference. As a technical matter, there was an obligation for participants to consider mechanisms which would give effect to that provision. Referring to the comment made by the Delegate of the Republic of Korea, he averred that there was ample precedent for the Final Act of a Diplomatic Conference ratifying the necessary administrative work undertaken by the sponsoring organization(s) in advance of that meeting. The Observer from AWG thus considered that the matter should be addressed through cooperative work between ICAO and UNIDROIT in connection with their preparation for the envisaged jointly-sponsored Diplomatic Conference. Such work was contemplated by the instruments and was consistent with the expectations of those involved in the negotiating process.

27. Noting that paragraph (b) of Article 25 of the Vienna Convention provided that a treaty or a part of a treaty could be applied provisionally pending its entry into force if the negotiating States had so agreed in some manner other than in the treaty itself, the Delegate of Pakistan suggested that ICAO could, through a State letter, obtain the concurrence of States for the establishment of a provisional Authority.

28. While recognizing this as a constructive suggestion, the Delegate of Canada favoured the approach outlined by the Delegate of Italy in the event of the discontinuance of the Task Force.

29. To a query by the Delegate of the United States, the Third Vice-Chairman clarified that the motive behind that approach was to have the Council consider undertaking the preparatory work required for the establishment of the International Registry, which would include, but not be restricted to, those items currently within the mandate of the Task Force. The approach was designed to encourage the Council to assume a very active role in this important matter.

30. While welcoming an enhanced level of activity on the part of the Council, the Delegate of the United States queried whether that would involve disbanding the multinational effort which had already been well developed through the Task Force, an action which he could not support. He requested clarification in that regard. In emphasizing the need to take into account the budgetary implications of any such enhanced activity, the Delegate of the United States observed that costs arising in connection with the Task Force had been borne by the States participating therein, as well as by ICAO and UNIDROIT. Citing, in this regard, the meeting in Paris (21 to 23 June 2000), he noted that the associated costs borne by the two organizations had not been substantial. The Delegate of the

United States underscored that any future work undertaken should incorporate that already done by the Task Force. Provision should also be made to participation in that work by the Secretariats of both ICAO and UNIDROIT.

31. The Third Vice-Chairman indicated that these financial concerns would be taken into account by the Council.

32. While noting that his State had willingly borne some of the costs associated with the said meeting, the Co-Chairman from France underscored that it would not be in a position to financially support several such meetings over the course of the year under similar conditions. Thus the issue of funding would have to be addressed in carrying out preparatory work for the Diplomatic Conference. Human resources would likewise have to be so addressed. The Co-Chairman observed, however, that to the extent that the costs associated with the convening of future meetings would still to be shared equally among participants, the Task Force would be available to continue with its work. In commenting on its mandate, he noted that the Task Force had succeeded in addressing most of the issues on its list of points to be examined. However, the need to submit the Report to the ICAO and UNIDROIT Secretariats before the end of July 2000 had resulted in not all such issues being covered.

33. In light of the debate, the Legal Committee noted the Report of the International Registry *Ad Hoc* Task Force (for Registration of Interests in Aircraft Objects) and adopted the following Recommendation:

Recommendation LC/31-2: It is recommended that the Council, recognizing the work of the International Registry *Ad Hoc* Task Force, consider appropriate action to continue required preparatory work, with a view to rendering the Registry operational by the time the instrument comes into force, in cooperation with UNIDROIT and taking into account budgetary implications.

34. It was noted that a joint proposal developed by the AWG and several Delegates regarding the consent by both parties to the assignment of interests and associated rights would be submitted to the Drafting Committee for consideration.

35. The meeting adjourned at 1630 hours.

LEGAL COMMITTEE – 31ST SESSION

SUMMARY MINUTES OF THE NINTH MEETING (CONFERENCE ROOM 1, FRIDAY, 1 SEPTEMBER 2000, AT 0930 HOURS)

Third Vice-Chairman of the Legal Committee: Mr. G. Lauzon

Secretary: Dr. L.J. Weber, Director, Legal Bureau

Agenda Item 3: International Interests in Mobile Equipment (Aircraft Equipment)

1. The Legal Committee resumed (LC 31/6) consideration of the list of “Suggested Items for Consideration by the Legal Committee” appended to the Report of the Rapporteur (LC/31-WP/3-4), with the Third Vice-Chairman drawing attention to **item 9** (*Defer to the ICAO Council on the issue of the appropriate Supervisory Authority*). He noted that in paragraph 84 of his Report (LC/31-WP/3-4) the Rapporteur suggested that, as the draft Protocol did not identify the Supervisory Authority, the matter should be referred to the ICAO Council in view of its experience not only with the 1944 *Convention on International Civil Aviation* but also with the DEN/ICE Agreements [*Agreement on the Joint Financing of Certain Air Navigation Services in Greenland (1956) as amended by the Montreal Protocol of 1982* and the *Agreement on the Joint Financing of Certain Air Navigation Services in Iceland (1956) as amended by the Montreal Protocol of 1982*] and the 1991 *Convention on the Marking of Plastic Explosives for the Purpose of Detection*. The ICAO Council could decide on

an appropriate choice for Supervisory Authority, it being understood that that might turn out to be the Council itself.

2. Observing that there were only a few isolated precedents for the Council to serve as the Supervisory Authority, the Delegate of Uruguay averred that they should not automatically be followed; rather, the selection of a Supervisory Authority should be left to the Council, as suggested by the Rapporteur.

3. Contending that some Delegates considered that the Council would be the suitable body to serve as Supervisory Authority, the Delegate of Canada indicated that it would consequently be appropriate for the Legal Committee to formulate a corresponding recommendation or to at least comment on the issue.

4. In supporting the action proposed by the Rapporteur, the Delegate of the United States noted that a decision by the Council to serve as Supervisory Authority might be influenced by the outcome of the Legal Committee's discussion of the role of the Supervisory Authority. While the Legal Committee had been guided by helpful comments by the Secretary in envisaging what such a role would entail for the ICAO Council, and for the Organization as a whole, States would still need to consider a number of related issues, such as the budgetary implications of establishing such a Supervisory Authority and setting up the International Registry. The Delegate of the United States was thus of the opinion that it would be premature for the Legal Committee to formulate any recommendation. He underscored that it was not simply a matter of the ICAO Council reaching a decision regarding the choice of Supervisory Authority and that the matter had to also be considered by the other organization with which ICAO had been working closely, the International Institute for the Unification of Private Law (UNIDROIT), which had, in fact, initiated this negotiating process for a new instrument(s). Furthermore, his State, as well as other States, would wish to consult on these matters with both the ICAO Council and key Member States of UNIDROIT – a very important part of the process, in his view. While the Delegate of the United States would personally support a decision to allow the ICAO Council to be considered as an appropriate choice for Supervisory Authority, his Delegation had not yet formally taken a position on that issue. Such a position might become clear when the matter was discussed by the ICAO Council.

5. In light of the debate, the Legal Committee decided to recommend to the ICAO Council that it give careful consideration to accepting the role of the Supervisory Authority, taking into account the experience gained regarding the aforesaid DEN/ICE Agreements and the *Convention on the Marking of Plastic Explosives for the Purpose of Detection*, as well as other relevant practical considerations.

6. A suggestion by the Delegate of the United States that the Secretariat provide the ICAO Council with information relating to the functions which ICAO had successfully filled with regard to the above-mentioned instruments was duly noted.

7. In commenting on **item 10** (*Recommend who should appoint the Registrar*) and related paragraph 85 of the Report of the Rapporteur, the Delegate of the United States contended that the basic assumption was that the Supervisory Authority would determine the method of appointing the Registrar and that that process would take place from time to time. Previous discussions had been predicated on the assumption that the first appointment might be that of an interim Registrar in order to develop the International Registry and the registration process. The Supervisory Authority would retain that mechanism as an ongoing part of its work, which would be reviewed from time to time to determine whether adjustments were needed.

8. Supporting the view that the Supervisory Authority should appoint the Registrar, the Delegate of India underscored that that would facilitate a legally admissible change of Registrar if the latter were not discharging its functions satisfactorily. He noted that, if the first square-bracketed option of paragraph 2 of Article XVI (*The Supervisory Authority and the Registrar*) of the Protocol designating the Registrar were adopted, it be necessary to amend the Protocol in the event that a replacement of the Registrar so identified became desirable.

9. The Delegate of Uruguay suggested that that first option be deleted to accommodate the notion of a potential change of Registrar. Only the second option (“The Supervisory Authority shall appoint the Registrar”) should be retained, in square brackets, if deemed necessary. The Delegate of the United States supported this proposal.

10. In light of the debate, the Legal Committee decided to retain the said second option, on the understanding that the Diplomatic Conference would be free to consider action regarding an interim Registrar, if considered necessary.

11. Referring to **item 11** (*Determine the Registry’s proprietary rights*), the Delegate of the United States indicated that he shared the view expressed by the Rapporteur in paragraph 86 of his Report that a provision should be inserted in the Protocol to ensure that the proprietary rights in the hardware and software developed for the International Registry and the information recorded in the latter rested with the Registry. It would be cause for concern if, at the end of a Registrar’s five-year term, such information could be transferred to that Registrar and sold to the highest bidder. While it was understood that the Registrar or the developer of such hardware and software would consider that it had some proprietary rights which were subject to negotiation, the International Registry also had proprietary rights since it used the hardware and the software. The International Registry should have some assurances that, after the expiration of the Registrar’s five-year term, it would be able to continue using that hardware and software. Thus the Delegate of the United States considered that traditionally the proprietary rights in hardware and software were part of the negotiation process which occurred before an award was made and would be referred to in the contractual documentation at the time of the award. In light of the difficulty of drafting a provision on this issue for inclusion in the draft Protocol without prior knowledge of the licensing rights of particular International Registry operators, he suggested that this issue be considered not by the Drafting Committee but by the International Registry *Ad Hoc* Task Force (for Registration of Interests in Aircraft Objects). The Delegate of France supported this proposal.

12. In also sharing the Rapporteur’s views, the Delegate of Mexico stressed the need to ensure continuity in the said proprietary rights of the International Registry.

13. While he endorsed the comments made by the previous speakers, the Delegate of India indicated that the Task Force should bear in mind that its aim in considering this issue was to develop a suitable draft provision for the Protocol which would be submitted to the Diplomatic Conference for consideration.

14. Recalling the Legal Committee’s decision that details concerning the operation of the International Registry should not appear in either the Protocol or the Convention and that the Supervisory Authority would instead issue regulations for its operation, the Delegate of the United Kingdom questioned the appropriateness of including such a provision in the Protocol. He suggested, as an alternative, that it be brought within the ambit of the Supervisory Authority’s work.

15. In indicating that he did not have any strong views regarding the referral to the said Task Force of the issue of proprietary rights in hardware and software, the Delegate of Canada averred that it would be sufficient if the International Registry were not treated as a legal person. The legal persons involved in the matter were the Supervisory Authority and the Registrar. In light of the fact that the Registrar might change from time to time, it was important to ensure in the draft Convention that all of the essential features of the International Registry was the property of a body which had a continuing existence and which was immune from civil process. That led the Delegate of Canada to believe that such features should be the property of, and protected through, the Supervisory Authority. He noted, however, that in non-legal terms, they were the property of Contracting States held in trust by the Supervisory Authority.

16. The Delegate of the United States asserted that, if there were ultimately a reason to include any provision on this issue in the draft Convention, the most it should stipulate was that appropriate rights and guarantees had to be obtained to ensure permanent and effective operation of the International

Registry system. To go any further, for example, to suggest that that system retain all proprietary rights, could be a significant impediment in negotiations. The Delegate of the United States noted, by way of illustration, that it was quite common for software developers to grant a royalty-free and permanent license to the original organization which required the software to continue to use and to upgrade that software. At the same time, however, the software developers often retained the right to employ the software for other purposes, which substantially reduced the cost of obtaining the original software for the first user. There was no way of knowing, at this stage, whether or not that was the appropriate way for the Legal Committee to proceed. It was a matter of cost, as well as of what types of software it might be desirable to employ for the purpose of the International Registry. The Delegate of the United States cautioned against going so far as to imply that all proprietary rights and, for example, the software (as opposed to the data), must in some way be obtained on behalf of, and retained by, the International Registry. The Legal Committee might wish to think in terms of a clause requiring the retention of those rights and guarantees necessary to ensure the permanent and effective operation of the International Registry. It should not, however, go beyond that in a way which could bind effective negotiations to ensure as limited a cost implication as could be achieved for the future International Registry.

17. The Delegate of Canada clarified that he had not meant to imply that all proprietary rights associated with the International Registry should be vested in the Supervisory Authority; rather, all the proprietary rights which were required for the International Registry and which were owned by the International Registry system should be vested in the Supervisory Authority. There was no suggestion that the Supervisory Authority must own every aspect of the software. The license itself was the property to which he was referring. The issue was not one of insisting that all of the software, the data in particular, be owned by the Supervisory Authority. The point was that the property which was necessary for running the International Registry must be protected from civil process. His suggestion was that the appropriate way to ensure that was to have that property, whatever it was, however it was limited by prior ownership, vested in the Supervisory Authority.

18. The Delegate of India agreed that rights should be vested in the Supervisory Authority. He likewise saw a very good reason not to insist on full proprietary rights as that would certainly cause some problems for the appointment of the Registrar. Thus a provision which protected the continuity and use of the International Registry database and use of the software without having proprietary rights would suffice. The Task Force should be requested to draft such a provision.

19. In summarizing the discussion, the Third Vice-Chairman indicated that there was general agreement that all proprietary rights in information recorded in the International Registry must be vested in the Supervisory Authority and not in the International Registry itself. It was the Supervisory Authority which was the legal body in this matter. There was also consensus that some work needed to be done to ensure that the proper functioning of the International Registry was not hampered. That was a signal to those who had been negotiating contracts on behalf of the International Registry to address that issue. The Third Vice-Chairman thus suggested that the Drafting Committee develop a short clause for inclusion in the draft Convention regarding the vestiture of the said proprietary rights in the Supervisory Authority and request the Task Force to develop, prior to the envisaged Diplomatic Conference, an appropriate paper which would cover the other, more complex aspects which the Legal Committee had not yet agreed upon.

20. The Delegates of the United States, Ireland and Uruguay endorsed this approach, with the latter raising the possibility of the Task Force also considering the question of the form of ownership of the software used by the International Registry.

21. In speaking in favour of the proposed referral of this issue to the Task Force for in-depth study, the Delegate of France suggested that the scope of its study be extended to include all aspects of the relationship between the Supervisory Authority and the Registrar under civil and common law.

22. The Delegates of Italy and India supported this suggestion. Underscoring that disputes could arise between the Supervisory Authority and the Registrar, the Delegate of India advocated having the rights and obligations of the Supervisory Authority clearly specified in the draft Convention.
23. The Observer from the Aviation Working Group (AWG) fully endorsed the Task Force continuing to examine these important practical questions. In highlighting a few interrelations, he noted that the current documents produced by the Task Force which had been noted by his Group contemplated that the bidding States would have the ability to make bids in connection with entities which would be providing the software used by the International Registry. Recalling the comment made by the Delegate of the United States, he indicated that it would be necessary to first examine such proposals before being able to address the issue raised by the Delegate of Uruguay. The Observer from AWG accordingly considered that the Third Vice-Chairman's summary offered the right balance. Referring to the comment made by the Representative of India, he observed that Article 16 of the draft Convention went a long way towards outlining the specific obligations of the Supervisory Authority. The Observer from AWG also indicated that consideration by the Task Force of the private law relationships between the Supervisory Authority and the Registrar, as well as of ownership and operational issues – all interrelated – would constitute a continuation of the analysis which it had already undertaken and which had resulted in the present draft Convention and draft Protocol and would greatly assist the Diplomatic Conference in its deliberations.
24. The Legal Committee thus agreed to the approach suggested by the Third Vice-Chairman, as well as to the proposal put forward by the Delegate of France that the Task Force also consider the private law relationship between the Supervisory Authority and the Registrar, it being understood that the Task Force would take into account the comments made during the discussion.
25. In drawing attention to **item 12** (*Determine whether the Registry will be cost-recovery based or non-profit making*) and related paragraph 95 of the Report of the Rapporteur, the Third Vice-Chairman indicated that the draft Protocol was unsettled as to how to circumscribe the non-profit-making status of the International Registry. Alternative “B” to Article XIX thereof proposed that the Registrar, in the performance of its functions as operator of the International Registry, be a non-profit-making organization. Alternative “A” focussed on the criterion for determining fees which were to be the reasonable costs of operating the International Registry and setting up the registration system. He noted that the Rapporteur suggested that Alternative “B” might be misguided as it could well preclude the use of a private company to operate the International Registry, which could turn out to be an efficient and acceptable approach. All that was necessary, in the Rapporteur's view, was to provide for cost recovery as proposed in Alternative “A”. He was also of the view that consideration should be given to covering the costs of the Supervisory Authority in the fee structure.
26. Speaking in favour of Alternative “A”, the Delegate of Australia suggested, further to the recommendation of the Rapporteur, that it be amended to indicate that the costs of the Supervisory Authority associated with the performance of its functions, the exercise of its powers and the discharge of its duties as contemplated in Article 16(2) of the draft Convention would also be included.
27. In also supporting Alternative “A”, the Delegate of the United States emphasized the importance of including as much expertise in the process as possible. He maintained that it would be a mistake to require that the operator of the International Registry be a non-profit organization.
28. The Delegate of Canada endorsed the concept of the International Registry being run on a cost-recovery or even a self-funded basis as it would be necessary to build up a reserve for its operation.
29. Recalling his earlier introduction of the Report of the International Registry *Ad Hoc* Task Force (for Registration of Interests in Aircraft Objects) (LC/31-WP/3-5) of which he was a Co-Chairman, the Delegate of France noted that, while the Members of the Task Force had not had the opportunity to conduct a budgetary analysis of the operation of the International Registry, they had all subscribed

to the principle that it should be self-funded, with some additional measures being taken during the transitional period, a principle which appeared to have the support of the Legal Committee. Observing that regulations governing the operation of non-profit organizations varied from State to State, he indicated that Alternative “A” might constitute a more straightforward basis if it were amended as proposed by the Delegate of Australia and suggested that it be referred to the Drafting Committee.

30. Averring that Alternative “B” was overly restrictive, the Delegate of the United Kingdom indicated that he favoured Alternative “A” subject to its being amended as suggested to include the costs of the Supervisory Authority and to clarification being provided regarding reference made to initial fees for the recovery of designing and implementing the international registration system. He averred that it would be unfair if the costs of establishing the International Registry were only incorporated into the fees charged to those who were the first to register their international interests.

31. In sharing the views expressed by the Delegates of Australia and the United Kingdom, the Delegate of India suggested that the Drafting Committee be requested to clarify the distinction to be made between initial and final fees and possibly to redraft Alternative “A”.

32. The Delegate of Pakistan, contending that it was inappropriate to determine the fees at this stage, favoured leaving the matter open-ended and indicating that the fees to be determined by the Registrar were to be notified from time to time to all interested parties for implementation.

33. Without seeking now to determine how the fees were to be handled, the Delegate of the United States joined with those speakers who had spoken in favour of Alternative “A”. He stressed, however, that Alternative “A” should not be so worded as to preclude consideration of the possibility that a host State might itself seek to absorb a certain level of infrastructure or development cost as part of the overall business package. While unaware if there were presently a State which wished to do that, the Delegate of the United States did not want that possibility to be excluded. He also joined those speakers who favoured including the envisaged costs of the Supervisory Authority in the cost recovery approach. Recalling from previous discussions on similar functions performed by, *inter alia*, ICAO, the Delegate of the United States did not anticipate that such costs would be high. Nevertheless, they should be recovered through some reimbursement mechanism of the International Registry system.

34. The Observer from AWG suggested that the Drafting Committee consider the deletion of the last phrase of Alternative “A” referring to initial fees for the reason mentioned by the Delegate of the United Kingdom. While considering that such an amended Alternative “A” was preferable to Alternative “B”, he indicated that the Diplomatic Conference could decide to simply rely on Article 16(2)(g) of the draft Convention as per the comment made by the Delegate of Pakistan. The Observer from AWG emphasized that it was important to retain Alternative “A” on cost recovery at this point when proposals were going to be made to operate the International Registry. He agreed with previous speakers that it was appropriate for the costs of the Supervisory Authority to be included in the fee structure on the understanding that the costs of such a high technology electronic registry would be reasonable. Noting that a self-funded International Registry was, by implication, one which would be financed by industry, namely, by the various groups represented on AWG, the Observer from AWG suggested that the Council be requested to consider not only its role as Supervisory Authority but also the envisaged costs which would be incurred and budgeted as they would need to be part of the system which would be paid for. Recalling that the Task Force had commenced consideration of the amortization of costs, a very important issue for the reasons cited by the Delegate of the United Kingdom, he stressed that States ratifying the Protocol at an early date should not be penalized by front-end loading such costs. The latter would be a disincentive. The Observer from AWG also indicated that, in the event that a decision were taken to permit transitional filings, then such filings should be encouraged by charging lower fees. He underscored that States’ proposals solicited in accordance with the process developed by the Task Force would include proposals for funding and thus an indication of the willingness of potential host States to absorb the costs of operating the

International Registry over a reasonable period of time so that the first States to file their international interests would not have to bear all such costs.

35. In advocating Alternative “A”, the Delegate of Italy stressed that fees should be established at such a level as to ensure the recovery of reasonable operating costs. He suggested, however, that the last phrase of Alternative “A” referring to initial fees be placed in square brackets for the time being and considered later in light of further developments and of ICAO’s experience in administering the DEN/ICE Agreements and the *Convention on the Marking of Plastic Explosives for the Purpose of Detection*.

36. In supporting this proposal, the Delegate of Canada indicated that it would be for the Supervisory Authority to decide how best to amortize the costs of operating the International Registry in consultation with those concerned.

37. The Secretary clarified that, whereas separate budgets had been established for the DEN/ICE Agreements to which States participating in the Agreements contributed, no such separate budget had been put in place for the *Convention on the Marking of Plastic Explosives for the Purpose of Detection*. Instead, the administrative costs of the International Explosives Technical Commission (IETC) were at least partially absorbed by the Organization’s Programme Budget. To refer to both precedents might thus send a mixed signal to the Diplomatic Conference.

38. In summarizing the discussion, the Third Vice-Chairman noted that there was clearly a consensus in favour of Alternative “A” to Article XIX of the draft Protocol. In light of the concern expressed regarding initial fees, he suggested that the last phrase of Alternative “A” be deleted and that the amortization of costs be left to the Supervisory Authority, as suggested by the Delegate of the United States. That would allow for the possible absorption by the host State of some of the initial costs involved. The Third Vice-Chairman observed that there was also a consensus that the costs of the Supervisory Authority, which might turn out to be the ICAO Council, if it so agreed, should be included in the costs to be recovered and that Alternative “A” be amended in accordance with the suggestion put forward by the Delegate of Australia by adding, after the word “and”, the phrase “and the costs of the Supervisory Authority associated with the performance of the functions, the exercise of the powers and the discharge of the duties contemplated by Article 16(2) of the Convention”. Alternative “A” in its amended form was then referred to the Drafting Committee.

39. Recalling his earlier comments (*c.f.* paragraph 34), the Observer from AWG indicated that his agreement to the above action was predicated upon an analysis by the Council of the costs of establishing and operating the International Registry.

40. In commenting on **item 15** (*Determine whether States may impose additional conditions to registration at entry points*) and paragraph 97 of the Report of the Rapporteur, the Delegate of the United States recalled that the assumption since the onset of the negotiation of the draft instruments was that some States would wish to designate local entry points for the registration of international interests while others would not. The intention was to allow those States not wishing to designate such points to permit direct filing of international interests in the International Registry. He observed, in this regard, that such direct filing would be necessary in some cases for aircraft engines which were treated in quite a different manner from air frames. The Delegate of the United States further recalled that the understanding on which negotiations had proceeded in the past had been that it should not be for the draft Convention to determine whether States wished to both designate a local entry point and to impose additional conditions on filing an international interest through that point; rather, the approach had been to leave that issue for decision by each participating State. States would, however, wish to bear in mind that if such additional conditions were substantial in nature and resulted in a delay in the filing of an international interest, then they would have the effect of placing a financial risk on the registering party for the duration of the delay. The Delegate of the United States endorsed the philosophy that the designation of local entry points and the imposition of additional conditions should be left as an option for each participating State to consider.

41. The Delegates of Colombia and India shared this view, as did the Observer from AWG. Observing that the second sentence of paragraph 4 of Article XIX of the draft Protocol made reference to the “various registration facilities”, the Delegate of India suggested that it be revised to refer to entry points. The Third Vice-Chairman indicated that the matter would be brought to the attention of the Drafting Committee with a request that the term “entry points” be used throughout the draft Protocol so as to ensure consistency. To a further point raised by the Observer from AWG, the Third Vice-Chairman noted that the nature of the additional conditions remained to be clarified, in particular, whether such conditions precluded the levying of fees by local registering authorities.

42. Basing his comments on the assumption that that which was not prohibited was permitted, the Delegate of the United Kingdom, noting that there was no provision in the draft Protocol which prevented a national registry authority from being permitted to charge fees to persons using that registry as an entry point into the system, averred that it would therefore be a matter for the law of a State to grant authority to the Registrar to charge fees, or not, as the case might be. That was not a matter which could be, or needed to be, dealt with by the draft Protocol. On the basis that the draft Protocol was silent on that matter, it was left to the discretionary powers of each State to decide whether or not to charge such fees. It was therefore unnecessary to amend Article XVIII, paragraph 1, of the draft Protocol or any other provision thereof.

43. The Delegate of the United States concurred with this analysis. He suggested, as a general guideline for the Legal Committee, the proposition that costs associated with, or charges by, or in any way related to, the operation of entry points were separate and distinct from costs associated with, and therefore charges by, the International Registry. They were two separate functional mechanisms which separately resolved their own fee and charge and funding bases.

44. The Third Vice-Chairman indicated that this point should be recorded as it would assist in interpreting the draft Protocol. In summarizing the discussion, he indicated that States could impose additional conditions, which could include fees, on the understanding that such fees were not part of the fee structure to be established by the Supervisory Authority. It was unnecessary to formulate a new provision to that effect.

45. The meeting adjourned at 1230 hours.

LEGAL COMMITTEE – 31ST SESSION

SUMMARY MINUTES OF THE TENTH MEETING (CONFERENCE ROOM 1, TUESDAY, 5 SEPTEMBER 2000, AT 0930 HOURS)

Third Vice-Chairman of the Legal Committee: Mr. G. Lauzon

Secretary: Dr. L.J. Weber, Director, Legal Bureau

Agenda Item 3: International Interests in Mobile Equipment (Aircraft Equipment)

1. The Legal Committee resumed (LC 31/9) consideration of the list of “Suggested Items for Consideration by the Legal Committee” appended to the Report of the Rapporteur (LC/31-WP/3-4), with attention being given to **item 16** (*Consider whether the immunity of the Supervisory Authority should extend to administrative processes and whether it should be restricted to the so-called functional immunity*) relating to Article 26, paragraph 2, of the draft Convention, and paragraph 107 of the Report of the Rapporteur (LC/31-WP/3-4).

2. The Delegate of Uruguay favoured the Supervisory Authority being accorded functional immunity as that was more restrictive than the immunity granted under international law to State representatives such as ambassadors. He noted that, whereas under the 1961 *Vienna Convention on Diplomatic Relations*, diplomats were granted immunity by virtue of both their representation and their functions, under the 1975 *Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character*, international organizations were granted

only functional immunity. While aware that the high-ranking officials of international organizations enjoyed a range of immunities, the Delegate of Uruguay considered that the Supervisory Authority and the officials serving that body should only be granted functional immunity.

3. The Delegate of the United States observed that there were other precedents such as the 1946 *Convention on the Privileges and Immunities of the United Nations* and the 1947 *Convention on the Privileges and Immunities of the Specialized Agencies* which should be taken into account. The Legal Committee might, however, wish to be guided by a somewhat more practical approach and avoid sending in advance a restricted signal which might inhibit some international bodies from considering the assumption of the role of Supervisory Authority. He expressed concern that the signal might be given to the ICAO Council that, if it were willing to undertake that responsibility and to have representatives of various States serve on the Supervisory Authority, whether they were Council Members or not, that in the exercise of those functions, the immunity of State representatives would be reduced to functional immunity. The same would be true for other international organizations. The Delegate of the United States affirmed that there should be no limitation as to the appropriate level of immunity for the Supervisory Authority and that it should be left to the Diplomatic Conference to decide thereon, taking into account which international organization might appropriately serve in that capacity and what its requirements were. Alternatively, reference made in Article 26, paragraph 2, of the draft Convention to the type of immunity should be left in square-brackets.

4. For the reasons cited by the previous speaker, the Delegate of France was of the view that the issue should be referred to the Diplomatic Conference.

5. While voicing preference for functional immunity, considering that such immunity would provide the Supervisory Authority with the degree of independence which it needed to carry out its work, the Delegate of Germany indicated that he could nonetheless agree to the suggested referral of the issue to the Diplomatic Conference.

6. In supporting the position of the Delegate of the United States, the Delegate of the United Kingdom stressed the need for caution and a pragmatic approach. He therefore endorsed referring the issue to the Diplomatic Conference.

7. With regard to the issue of whether the immunity of the Supervisory Authority should encompass administrative as well as legal processes, the Delegate of the United States indicated that both processes should be covered so as to avoid placing limitations on that immunity. He reiterated that such limitations would render it difficult to obtain the cooperation of those international organizations which might wish to serve as Supervisory Authority.

8. The Delegate of Uruguay concurred that the immunity should encompass both legal and administrative processes.

9. The Delegate of Greece averred that it would be necessary to have a better understanding of the status and functions of the Supervisory Authority before a decision could be taken regarding the type of immunity to be accorded to the latter.

10. The Delegate of Canada, recalling the Legal Committee's earlier decision (LC31/9) to recommend to the Council that it give careful consideration to accepting the role of the Supervisory Authority, suggested that further discussion regarding the Supervisory Authority's immunity could take place at that time. One approach that could be taken would be to accord the Supervisory Authority full immunity for only certain of its functions.

11. Contending, on the basis of the comments made, that it was not possible for the Legal Committee to take a decision regarding the Supervisory Authority's immunity, the Delegate of Colombia indicated that it was for the ICAO Council to consider the issue and to decide whether it should be referred to the Diplomatic Conference.

12. The Delegate of Greece noted that when a UN organization was charged with supplementary administrative activities it continued to have full and complete immunity.

13. While supporting, in principle, functional immunity, the Delegate of Sweden was of the view that if the international body which was appointed Supervisory Authority had enjoyed up to that time a higher level of immunity then it should retain that level of immunity. In suggesting that Article 26, paragraph 2, be revised to reflect that, he noted that it would ensure that if the ICAO Council were to assume the role of Supervisory Authority then it would continue to enjoy the same level of immunity as it currently did under its existing agreements. The Delegate of the United States supported this very practical proposal.

14. The Delegate of Pakistan averred that the general immunity which an international organization enjoyed under international law would be sufficient and that it would be unnecessary to extend that immunity to cover administrative processes and to restrict it to functional immunity.

15. Referring to the comment made by the Delegate of Greece, the Delegate of France contended that it might be contrary to international practice to limit the immunity of the ICAO Council in the event that it was appointed Supervisory Authority. In light of the fact that no decision had yet been taken by the ICAO Council in that regard, that it remained to be clarified whether such an appointment would be only for the transitional period or for a longer term and that the structure of the Supervisory Authority had yet to be defined, as well as in light of comments made, he agreed with the suggestion put forward by the Delegate of the United States that the issue be referred to the Diplomatic Conference. The Delegate of France raised the possibility of conveying an informal signal to the ICAO Council through the report of the Legal Committee that its immunity would not be limited if it were to serve as Supervisory Authority. He spoke in favour of retaining the existing text of Article 26, paragraph 2, with its square brackets.

16. In summarizing the discussion, the Third Vice-Chairman noted that there was general agreement that if the ICAO Council were to assume the role of Supervisory Authority then the broad immunity which it currently enjoyed would remain unchanged. If, however, another international organization which did not enjoy such a broad immunity were to assume that role then it would be accorded functional immunity, a term which would be more clearly defined in due course. There was also general agreement that Article 26, paragraph 2, should be retained in its present form, with it being recorded in the Report of the Legal Committee that if the ICAO Council were to be appointed Supervisory Authority by the Diplomatic Conference then the word “functional” would be deleted therefrom. With regard to the reference made in the said paragraph 2 to administrative process, the Third Vice-Chairman indicated that the intention was that there should be immunity, whether functional or otherwise, from all of the national jurisdictions which could come into play and influence the workings of international organizations. He noted, in this regard, that in some States there were administrative processes which were distinct from legal processes, while in other States, there were not. The Third Vice-Chairman therefore suggested, and the Legal Committee agreed, that the square brackets around the word “administrative” be deleted for greater clarity.

17. In commenting on **item 17** (*Determine whether the Convention need deal with the privileges of the Supervisory Authority*) relating to Article 26, square-bracketed paragraph 3, of the draft Convention, and paragraph 108 of the Report of the Rapporteur, the Delegate of the United States underscored its practical importance which arose from the manner in which it covered the functional activities of the Registrar. In his view, the draft Convention should be structured so that the privileges obtained on behalf of the Supervisory Authority also applied to the activities of the Registrar. If that were not currently the case, then the Drafting Committee should be requested to revise the text accordingly. The Delegate of the United States emphasized that it should not be left to the Supervisory Authority and the host State of the Registry to decide which privileges should be incorporated into their agreement in view of the considerable cost implications. He noted, in this regard, the general agreement of the Legal Committee during discussions of the functions of the International Registry of the critical importance of limiting the cost of the latter and of facilitating a timely performance of its important commercial function. In order to accomplish those goals, certain issues had to be resolved through appropriate drafting of the Convention. The Delegate of the United

States was less concerned with the method of redrafting Article 26, paragraph 3, to apply to the International Registry as opposed to the Supervisory Authority. What was very important was that: it be clear from the draft Convention that the privilege of exemption from taxation was applicable across the board, regardless of which State served as host, either of the Supervisory Authority or the International Registry; that there be the normal diplomatic capacity to bring experts in for technical functions without any restrictions; that the importation of necessary computer technology not be impeded by the imposition of substantial costs or taxes; and that its outgoing communications function not be so burdened. He recalled, in this regard, that discussions were underway concerning the placement of substantial tax burdens on computer-based communications systems as they crossed borders in their activities. Stressing that everyone had an important function to serve in keeping the costs of the International Registry to a minimum, the Delegate of the United States averred that any host government should be willing to undertake that, as with many other activities of international organizations, there be no limitation on the bringing in experts and the importation of the requisite technologies, no costs or taxes burdening the function of the International Registry of that sort, and no taxation on its activities generally. In his view, this was a matter which should not be left to some future negotiation by a Supervisory Authority and a host State, the outcome of which could not be determined in advance, given its potential cost implications for the International Registry. The Delegate of the United States suggested that the Legal Committee take a position regarding such privileges and make a recommendation thereon to the ICAO Council, for ultimate decision by the Diplomatic Conference.

18. The Delegate of Namibia shared this view.

19. Further to a point raised by the Delegate of India, the Third Vice-Chairman clarified that square-bracketed paragraph 3 as drafted, dealing with the privileges of the Supervisory Authority, might not be of such importance. What would be important would be to have a provision dealing with the privileges of the Registrar given their major cost implications for the operation of the International Registry. The Legal Committee therefore had before it the possibility of either deleting, or retaining in its weakly-worded present form, square-bracketed paragraph 3 and including a new paragraph in Article 26 comparable to paragraph 3 but much more strongly worded, possibly a new paragraph 5, dealing with the privileges of the Registrar.

20. The Delegate of France considered that the conditions for the establishment of the International Registry should be determined during the negotiations with the host State. In observing that the problem of costs was a well-recognized one, having been raised in the discussions of the International Registry *Ad Hoc* Task Force and in other fora, he indicated that it could be addressed in the tenders submitted by potential Supervisory Authorities. The Delegate of France suggested, in this regard, that the envisaged Requests for Proposals could stipulate that it was mandatory to address the issue of costs in submitting tenders. He observed that it was within the sovereign rights of States to establish a régime whereby the International Registry would enjoy tax exemptions and other privileges. The Delegate of France further noted that the Legal Committee might have to return to this complex issue in considering the remaining items on the list of “Suggested Items for Consideration by the Legal Committee” as there was no provision in the draft Convention regarding the location of the Registrar and the International Registry. It was thus possible that the International Registry might be established where the Supervisory Authority was headquartered, something which might render it difficult for the Legal Committee to reach a decision during its present meeting on a way to allow for the enjoyment of privileges. Recalling that that point had been made in the Task Force’s Report, the Delegate of France suggested that the Legal Committee might wish to indicate in its Report that the costs of the International Registry should not be overburdened by an adverse taxation system so as to increase awareness of the problem. It would be necessary to examine this cost aspect from the point of view of civil law, as well as of the highly complex relationship between the Supervisory Authority and the Registrar. Proprietary rights also had to be considered in that context. The Delegate of France reiterated that the final definition of the privileges to be enjoyed, especially those relating to taxation,

should be made during the negotiation of the agreement between the Supervisory Authority and the host State.

21. Observing that the role of the Supervisory Authority was supervisory in nature and that consequently the latter would not be involved to any great extent in financial transactions, would not have much income and therefore would not be as affected as it otherwise might be by the taxation régime established by the host State, the Delegate of India concurred with the Rapporteur (*c.f.* paragraph 108 of LC/31-WP/3-4) that square-bracketed paragraph 3 of Article 26 was unnecessary and suggested its deletion.

22. The Observer from AWG endorsed this proposed deletion for the reasons stated. In voicing general agreement with the essence of the rationale behind the suggestion by the Delegate of the United States that taxation be principally addressed, he recalled the decision that the International Registry was to be operated on a cost-recovery basis. It was a matter of principle that efforts be made to reduce those costs through a clear statement regarding taxation. While not wishing to minimize the other points made by the Delegate, the Observer from AWG indicated that from his Group's perspective taxation was the principal issue. That being the case, it was necessary to address the basic issue of whether or not the competitive nature of the bidding process was sufficient to ensure lack of taxation. In his view, the point made by the Delegate of France in arguing for leaving it to the bidding process was fundamental and at least in his Group's view might argue the other way, namely that was that there was no necessary connection between the physical location and place of incorporation of the Registrar on one hand and the host State. Thus the point made by the Delegate of the United States regarding cross-border taxation issues was highly relevant if one was dealing with cross-border payments in a situation in which there was no clear international law. In other words, the principal issue was avoidance of taxation. That should be the end result. The present discussion could perhaps be advanced by making the comments of the Delegate of France more concrete and noting that this was a fundamental matter of principle that either should be addressed through any bids made to host the International Registry, including any States in which the Registrar was located, or by indicating in the draft Convention that, as a matter of principle, there would be taxation privileges. It would seem that, one way or the other, it was necessary to have a clear idea for all to go by.

23. The Delegate of the United States indicated that he would now support retention of square-bracketed paragraph 3 subject to the removal of the square-brackets surrounding the words "exemption from taxes and". He averred that, in the last analysis, it was too important an item to be left only to the bidding process as that process, which he otherwise considered could be a successful method for analyzing different types of cost mechanisms, could not rest with certainty on the tax treatment of a given day or a given year for there to be assurance that the cost structure of the International Registry would work. Taxes changed, as all were aware. Moreover, it was not simply a question of income taxes – many States had a variety of turn-over type taxes which could well impose a substantial burden on the International Registry when levied on, for example, imported technologies. The Delegate of the United States therefore favoured retaining square-bracketed paragraph 3. Its connection with the International Registry could be discussed later on, as previously indicated by the Delegate of France. He considered that other related issues should be addressed by the International Registry *Ad Hoc* Task Force on the understanding that it would pursue those issues with any State wishing to offer further information as to how registries might be operated within its territory. This would ensure that there would be sufficient detail for a careful examination of those issues by the Diplomatic Conference. A decision could be made at that meeting which all could be comfortable with, based on its long-term implications for the cost of operating the International Registry. The Delegate of the United States underscored that the fundamental problem with leaving such matters of importance to a future agreement, such as a host State agreement, was that the cost implications would not be known until a time beyond which they could effectively be dealt with. He averred that most present, as well as the aviation industry, would wish to have a greater level of assurance by the time work was concluded at the Diplomatic Conference.

24. In light of the discussion, the Third Vice-Chairman suggested that, although square-bracketed paragraph 3 was a weak clause, one that the Rapporteur considered to be unnecessary, it should be retained without its square brackets as a general signal that there should be a provision in the agreement between the Supervisory Authority and the host State on taxes. He further suggested that the square brackets surrounding the words “exemption from taxes and” be removed so as to clarify that the eventual privileges accorded to the Supervisory Authority would include tax exemption. The square-brackets surrounding the word “other” should likewise be removed, as a matter of logic. No new paragraph dealing with the privileges of the Registrar and mirroring paragraph 3 would be created. The minutes of the present meeting should reflect the view of the Legal Committee that the question of privileges, especially the fiscal privileges of the Registrar, was an important matter which should be the subject of careful negotiation between the appropriate authorities. The Third Vice-Chairman noted that the International Registry *Ad Hoc* Task Force would consider this issue in examining the bidding process.

25. The Legal Committee agreed to the above action.

26. In drawing attention to **item 18** (*Determine whether the immunity of the Registrar should extend to administrative processes and whether it should be restricted to the so-called functional immunity*) relating to Article 26, square-bracketed paragraph 4 (a), of the draft Convention, and paragraph 109 of the Rapporteur’s Report, the Third Vice-Chairman, referring to the Legal Committee’s earlier decision regarding the immunity of the Supervisory Authority (*c.f.* paragraph 16 above), indicated that the same reasoning would lead the Committee to include administrative processes in the types of processes from which the Registrar would have immunity. It was so agreed.

27. Recalling the comments made previously by the Delegate of Uruguay on the Supervisory Authority’s immunity (*c.f.* paragraph 2 above), the Delegate of Italy spoke in favour of according functional immunity to the Registrar, as did the Delegates of Germany and Jordan.

28. The Delegate of Canada suggested that the Drafting Committee review the provision to ensure that there was no conflict between the immunity accorded to the Supervisory Authority and that accorded to the Registrar.

29. In supporting that proposal, the Third Vice-Chairman indicated that it was necessary to ensure that the Registrar would not be immune from judicial or even administrative intervention requested by the Supervisory Authority in view of the Registrar’s perceived non-observance of the relevant rules. He underscored that the possibility of such a situation was very real, especially in the case where a private company were acting as Registrar.

30. In also endorsing the referral of square-bracketed paragraph 4(a) to the Drafting Committee, the Delegate of the United States suggested that the Legal Committee recommend to that body that the Supervisory Authority be empowered to waive the immunity of the Registrar. It was so agreed.

31. Referring to **item 19** (*Determine whether the Registry’s inviolability and the Registrar’s immunity from seizure should apply in respect of administrative processes*) relating to Article 26, square-bracketed paragraph 4 (b), of the draft Convention, and paragraph 109 of the Rapporteur’s Report, the Third Vice-Chairman suggested, and it was agreed, that in light of the Legal Committee’s two earlier decisions, the Registrar’s immunity from seizure would be extended to administrative processes. The provision was accordingly referred to the Drafting Committee.

32. Drawing attention to **item 20** (*Determine the cause that is to generate the losses that the Registrar must*), the Third Vice-Chairman noted that under Alternative “A”, paragraph 1, of Article 27 of the draft Convention, the Registrar would be liable for compensatory damages directly resulting from an error or omission of the Registrar or from a malfunction of the international registration system, whereas under Alternative “B”, paragraph 1, thereof the Registrar would be liable for such damages directly resulting from the failure of the Registrar to exercise reasonable care and skill in the performance of its duties. In paragraph 111 of his Report, the Rapporteur had indicated that either

formulation could be acceptable provided that losses resulting from failure to operate the International Registry as a result of factors beyond the control of the Registrar were not subject to compensation by the Registrar as per the new provisions for Article XVI of the draft Protocol proposed in paragraph 102 of the said Report.

33. The Delegate of the United States indicated that, subject to further information being provided on this issue by the Co-Chairmen of the International Registry *Ad Hoc* Task Force regarding the levels of cost and insurability achievable, he was of the view that Alternative “A” was the only secure path on which a workable system of costs could be premised, especially the very critical factor of the cost of insurability, whether by traditional insurance or by standby letters of credit or bank guarantees or any other kind of appropriate financial undertaking. He averred that opening up this process to litigation on the grounds of negligence would substantially increase – and not lower – the cost of insurability. The Delegate of the United States underscored that, in some other areas of international commercial practice, there had been a marked reduction in insurance costs when a strict liability standard had been employed as that standard had the very great advantage of not giving lawyers a field day to litigate and of instead making it simply an insurability issue. Alternative “A” thus remained his preferred position. The Delegate of the United States noted, in this regard, that in the absence of knowledge that Alternative “B” was an effective cost insurable choice, it would be difficult for him and possibly for other Delegates to take the path of litigation with its associated uncertainties, especially with regard to liability, and its potential impact on insurability.

34. While supporting Alternative “A”, the Delegate of Canada stressed the need for clarification regarding insurability and its related cost. Voicing concern over the use in paragraph 1 thereof of the expressions “omission of the Registrar” and “malfunction of the international registration system”, he stressed the need to specify that the International Registry did not carry liability for situations in which it could not function due to some external factor such as a power failure or a strike by employees. It must be made clear that the International Registry was not a total guarantor and that strict liability did have its limits. The Delegate of Canada observed that his State had much experience with public registries of this kind and that every Canadian statute providing for a registry made it clear that the Registrar had the power, without liability, to suspend Registry functions when it was in fact inappropriate or difficult if not impossible to make those functions available. Thus with that caveat, the Delegate of Canada would support the so-called “strict liability” approach over the so-called “negligence” approach.

35. On behalf of his Delegation, and not in his capacity as Co-Chairman of the International Registry *Ad Hoc* Task Force, the Delegate of France indicated that he favoured Alternative “A” as it was based on strict liability rather than on fault. He suggested, however, that it be retained in square-brackets pending consideration by the Diplomatic Conference.

36. In endorsing the comments made in favour of Alternative “A”, the Observer from AWG recalled that that alternative had received the support of a strong majority at the Third Joint Session. He underscored that the essence of Alternative “A” was that it was designed for a high technology electronic International Registry and that Alternative “B” would be unacceptable in that context. With reference to the comment made by the Rapporteur in paragraph 111 of his Report and supported by the Delegate of Canada, he emphasized that, at this stage, the question of *force majeure* was a critical one. The Observer from AWG agreed with the important point made by the Rapporteur that a *force majeure* would not include losses attributable to the faulty design, including the poor security, of the system. The question of what was outside the control of the Registrar depended upon several factors, including the quality of the design and the security and back-up systems. Thus while he was not concerned about having a very narrow *force majeure* clause relating to true acts of God, he was concerned about having a general reference to *force majeure* bearing in mind that the International Registry would be an electronic system and that such a system could be designed with varying levels of security and back-up. It was thus necessary to give this issue careful consideration. The Observer from AWG nonetheless considered that, in principle, Alternative “A” was the correct approach.

37. The Third Vice-Chairman, observing that the previous comment had been premised on the existence of a high technology electronic International Registry and underscoring that, at the present time, there was no clear obligation in the draft Convention to have a high technology system, suggested that the square brackets surrounding Alternative “A” be retained.

38. The Delegate of Finland voiced support for Alternative “A” in light of the comment made by the Rapporteur in his Report and the comments made by the Delegate of Canada and the Observer from AWG concerning an exemption from liability in the case of *force majeure*. In emphasizing that the question of *force majeure* was a difficult one in view of the multiplicity of interpretations of that term, such as whether or not it encompassed the notion of foreseeability, he indicated that consideration would have to be given to the criteria to be placed on *force majeure* as a limiting factor of strict liability. In questioning whether such things as power failures should actually limit or exclude the Registrar’s liability, the Delegate of Finland indicated that common sense would dictate that back-up systems would be in place and that power failures or other similar incidents would not bring down the entire International Registry system. He underscored that it was an essential feature of the draft Convention and draft Protocol that the International Registry function properly around the clock, seven days a week, year round.

39. The Delegate of Finland concurred with the Delegate of the United States that the issue of the insurability of the Registrar’s liability and its financial implications should be considered further by the International Registry *Ad Hoc* Task Force. He stressed that the Registrar’s liability should not extend to the potential liability of service providers, operators and others who might have contractual arrangements with the Registrar but who were working independently of the latter in carrying out their functions. Observing, in this regard, that if the registration system was to be established in the Internet environment, then there would be numerous instances of operators experiencing malfunctions or other problems with their systems resulting in loss of use of the International Registry system, the Delegate of Finland averred that the liability of such operators should be borne by the operators themselves and not channelled to the Registrar. He considered that the International Registry system should not be understood as comprising all of the elements of a full-blown Internet environment.

40. The Delegate of the United States noted that the practice in some new developments in international electronic transfer systems had gone in the opposite direction due to the different interpretations in different States regarding what constituted *force majeure*, as well as to the large web of uncertainty, and increased costs, resulting from the involvement of multiple parties and the possible errors or failures at different points in the computer communications systems. In citing, as an example, a system in the United States comprising the international transfer, on a daily basis, of messages involving very large sums of money, he observed that it was the strict liability approach which had prompted the designers of the system to go to such great lengths in protecting the system. That approach had also kept the operating costs very low.

41. Referring to comments made regarding the nature of the International Registry system, the Delegate of the United States averred that the discussions of the possible approaches to that system had always been premised on the need to have a high technology solution. Each time a different possibility had been raised, it had become immediately apparent that it would result in very high costs due to the very high exposure to liability. He favoured the Legal Committee focussing on the only solution which could keep costs manageable, namely, a high technology solution. Expressing concern that that point might not have been already resolved by the Legal Committee or by the Joint Sessions, the Delegate of the United States averred that it should be closed at some time during the meeting of the Legal Committee given the significant financial implications. He indicated that he had not found a single commentator knowledgeable about modern registry systems who could support a non-high technology solution *i.e.* a computer-based solution and at the same time keep the costs even remotely manageable for very high-value mobile equipment.

42. In line with the view expressed by the vast majority of Delegates attending the Third Joint Session, the Delegate of Germany supported Alternative “A”. However, in light of the comment made by the Delegate of Canada and in view of the exemption from strict liability granted under German law in the case of *force majeure*, he considered that it might be necessary to amend Alternative “A” to also include such an exemption.

43. Indicating that it had been largely assumed from the beginning of negotiations, particularly by the International Registry *Ad Hoc* Task Force in carrying out its work, that the International Registry system would be a high technology one, but recognizing that it was not clearly stated in the draft Convention, the Observer from AWG suggested that Article 16, paragraph 2(h), thereof be amended to refer to a high technology electronic registration system. He further proposed that, with that change, Alternative “B” be deleted in light of the clear support evinced for Alternative “A” during the Third Joint Session and the present meeting. The Legal Committee could then focus on ensuring a appropriate dividing line between the issues which might properly come under a strict liability exemption on the one hand and basic design and security protections on the other.

44. In summarizing the discussion, the Third Vice-Chairman indicated that there was general agreement that the International Registry should be a high technology system. As neither the draft Convention nor the draft Protocol contained a clear statement to that effect, he suggested that the amendment to Article 16, paragraph 2(h), proposed by the Observer from AWG be referred to the Drafting Committee.

45. The Third Vice-Chairman further noted that, with the exception of concerns expressed by the Delegates of Canada and Germany on the need for exemptions from strict liability in the case of *force majeure*, there was general agreement that Alternative “A” to Article 27 should be retained. Observing that there was a distinction to be made between those incidents which could be expected, such as a power failure which lasted only a few hours or a couple of days, and those incidents which were beyond expectation, such as a power failure of extraordinary magnitude which lasted a week or more, he underscored that in such situations the common law in many States provided that losses would fall wherever they fell. In the case under consideration, the Registrar would absorb his losses in an extraordinary circumstance and the other parties would absorb their own losses; the Registrar would not become the insurer of all of the transactions which might be flying over the wires throughout the world at that particular moment in time. There was thus general support for Alternative “A”, subject to that point being explored further, either by the Drafting Committee or by a special group which the Legal Committee could establish, or to leaving Alternative “A” in square brackets.

46. The Delegate of Canada suggested that another term be used in place of “high technology” as what was “high technology” today could be obsolete in five years’ time. Utilization of the term “high technology” would oblige the Supervisory Authority to update the International Registry every three or four years to ensure that only cutting edge technology was in use.

47. Drawing attention to the definition of the word “Registrar” given in Article 1 (jj) of the draft Convention, the Delegate of Pakistan suggested that either it be aligned with Article 26, square-bracketed 4(a), to refer to the Registrar’s officers and employees, or simply to employees as including officers, or that Alternative “A” to Article 27 be so aligned.

48. The Delegate of the United States noted that he would have no difficulty accommodating the point which the Delegate of Canada had raised as long as it was clear that the International Registry system which was being described was well beyond the paper-based world and its associated insurability concerns. Referring to the above proposal by the Delegate of Pakistan, he stressed the need for the Drafting Committee to include reference in the relevant provisions to agents or other persons acting on behalf of the Registrar. With regard to comments made on the need for exemptions to strict liability in the case of *force majeure*, the Delegate of the United States suggested that the issue be referred to the International Registry *Ad Hoc* Task Force so that action would be taken in full

knowledge of the cost implications of such exemptions rather than on the basis of a generalized legal approach.

49. In light of the above, the Third Vice-Chairman indicated that the question of including reference to the Registrar's officers and employees, as well as to the Registrar's agents or other persons acting on its behalf would be referred to the Drafting Committee. The Drafting Committee would also be requested to find a substitute for the term "high technology".

50. Noting, from the discussion, that there was some discomfort regarding exemptions from strict liability in the case of *force majeure* due to the lack of knowledge concerning the actual costs involved, with some prepared to assume that the cost of insuring for all aspects of what was in some States called *force majeure* would be enormous based on their experience with national registries and with others not being so confident that that would be the case, the Third Vice-Chairman suggested that the current wording of Alternative "A" to Article 27 be retained in square brackets to indicate that there were some aspects which remained to be explored. Further study of the issue of cutting down, as necessary, on the absolute liability of the Registrar to meet cost considerations would be invited so that a decision thereon could be taken by the Diplomatic Conference.

51. A suggestion then put forward by the Delegate of the United States that the square brackets surrounding Alternative "A" be deleted and that the square-bracketed phrase "except ..." be added at the end of paragraph 1 to indicate that exceptions remained to be worked out was then agreed to by the Legal Committee. It was understood that Alternative "B" would be deleted.

52. The meeting adjourned at 1230 hours.

LEGAL COMMITTEE – 31ST SESSION

SUMMARY MINUTES OF THE ELEVENTH MEETING (CONFERENCE ROOM 1, TUESDAY, 5 SEPTEMBER 2000, AT 1400 HOURS)

Third Vice-Chairman of the Legal Committee: Mr. G. Lauzon

Secretary: Dr. L.J. Weber, Director, Legal Bureau

Agenda Item 3: International Interests in Mobile Equipment (Aircraft Equipment)

1. In resuming (LC 31/10) consideration of the list of "Suggested Items for Consideration by the Legal Committee" appended to the Report of the Rapporteur (LC/31-WP/3-4), the Legal Committee turned its attention to **item 34** (*Consider whether to provide that the courts of the seat of the Registry have exclusive jurisdiction to hear actions brought against the Registrar*) relating to Article 43 of the draft Convention. The Third Vice-Chairman noted that the Rapporteur had suggested in paragraph 157 of his Report (LC/31-WP/3-4) that the apparent intention of the framers of the provision would be better assured by conferring exclusive jurisdiction on the courts of the place where the International Registry was located and not where the Registrar was located.

2. In averring that the use of the International Registry's location as a connecting factor would give rise to further problems in the absence of a definition of the term "location", the Delegate of Finland proposed that the Drafting Committee be invited to consider the possibility of using the place of business or principal place of business of the International Registry as the connecting factor. Such usage would have the effect of aligning Article 43 with Article 4. Observing that problems could arise if, in the State where the registration activities were being carried out, there were insufficient assets with which to enforce a judgement rendered against the Registrar, he emphasized the need to consider whether such a judgement was enforceable elsewhere.

3. The Delegate of Uruguay, noting that Article 43 was highly innovative in nature, stressed the need for prudence as that provision could entail major changes to domestic law.

4. Observing that the use of the place of business or principal place of business as the connecting factor was a variation of what was contained in paragraph 1 of Article 43, where reference was made to the Registrar's centre of administration, the Delegate of the United States averred that the suggested approach was workable. He noted that it was, moreover, consistent with the approach taken by the United Nations Commission on International Trade Law (UNCITRAL) in its widely-applied Model Law on Electronic Commerce. The Delegate of the United States further indicated that it would be feasible to specify in the arrangements made by the Supervisory Authority that the location of the registration system be such as to not place jurisdiction in question. He nonetheless considered that Article 43 would be effective in terms of enabling parties to the Convention to determine the jurisdiction of the courts.

5. In referring to the comment made by the Delegate of Finland, the Delegate of the United Kingdom underscored that, pursuant to both Alternatives "A" and "B" of Article 27, the Registrar and not the International Registry was liable for compensatory damages. The latter did not appear to have any legal personality under the draft Convention and the draft Protocol; it was thus not to be expected that actions would be brought against the International Registry. He therefore questioned whether the Legal Committee should be pursuing the point made in the Rapporteur's Report as the place where actions should be brought for damages should be the location of the Registrar. In his view, Article 43, paragraph 1, in its present form was entirely consistent with Article 27.

6. The Delegate of Canada shared this view. There were two aspects to Article 43 to be considered, one relating to liability and the other to an order requiring the Registrar to change the registration database. With respect to the second aspect, he averred that such orders were against the Registrar. While the International Registry might have a physical location, it was conceivable that the registration database could be replicated in several places throughout the world. It would therefore be problematic to indicate that there was an International Registry which had a single location for the purpose of jurisdiction. In the view of the Delegate of Canada, the main point with regard to Article 43, paragraph 2, was that the court which would be empowered to enforce an order to change the registration database would be the court referred to in paragraph 1 of that same Article, namely, the court of the place in which the Registrar had its centre of administration.

7. In noting that he could accept the existing text of Article 43 or that text as amended to include a further precision of the term "centre of administration", the Delegate of Sweden suggested that in the Requests for Proposals (RFPs) applicant States indicate the location of their respective centres of administration so as to clarify that the latter would in fact be in the applicant State and not in some remote part of the world chosen for the purpose of avoiding liability.

8. In light of the divergent views expressed, the Third Vice-Chairman suggested, and the Legal Committee agreed, that Article 43 be retained in the form presented. In so doing, the Legal Committee considered it appropriate that any applicant State for the position of Registrar should specify the location of its centre of administration. Such information, which was useful and easy to obtain, would thus become a factor in the appointment of the Registrar.

9. In drawing attention to **item 35** (*Determine whether it is appropriate to grant residual jurisdiction to all Contracting State courts with jurisdiction under their national law*), the Third Vice-Chairman noted that the Rapporteur, in paragraph 158 of his Report, indicated that footnote 12 relating to Article 44 of the draft Convention cautioned that the general residual jurisdiction granted to courts of Contracting States having jurisdiction under their national law might be considered over-broad and that it was therefore a matter worthy of further consideration.

10. In order to address some of the concerns expressed previously, the Delegate of the United States reiterated the suggestions made at the Third Joint Session that Article 41, paragraph 1, be amended by adding the word "exclusive", so that the provision would read "... may exercise exclusive jurisdiction ..." and that the language used in Articles 42 and 43 be tightened up so as to ensure that the exercise of jurisdiction under Article 41, paragraph 1, did not interfere with the jurisdiction

exercised pursuant to Articles 42 and 43. He maintained that such drafting changes would help clarify the functions of those Articles and consequently reduce the area of concern under Article 44. Consideration could then be given to the need to retain the remaining text of Article 44.

11. The Delegate of France spoke in favour of referring Articles 41 and 44 of the draft Convention, as well as Article XX of the draft Protocol, to the Drafting Committee so as to address the points raised during the Third Joint Session at the level of both the Plenary and the Drafting Group and to remove any remaining ambiguities. In agreeing that one solution might be to amend Article 41 so as to grant exclusive jurisdiction to the court or courts of the Contracting States chosen by the parties, he indicated that the consequences thereof would have to be reflected in Article 44. While the Delegate of France had no difficulty with Articles 42 and 43, he considered that they could be clarified. He also was of the view that Article XX of the draft Protocol should be amended to indicate that the jurisdiction of the Contracting State was that of the State of Registry, subject to Article 41 of the draft Convention.

12. The Delegate of Colombia concurred with previous speakers, including the Delegate of the United States, that the text of Article 41, paragraph 1, should be revised for greater clarity.

13. In favouring the inclusion of reference to exclusive jurisdiction in Article 41, paragraph 1, so as to be in line with other international instruments in this field, the Delegate of Canada noted that Article 4 of The Draft Hague Convention offered the possibility of exclusive jurisdiction while also enabling the parties thereto to decide otherwise. It was for the Legal Committee to determine whether or not it wished to reproduce that provision in the draft Convention. The Delegate of Canada agreed on the need to tighten up the language used in Articles 42 and 43, as well as in Article 44. Observing that under Article 12, paragraph 4, of the draft Convention, forms of interim relief other than those referred to in paragraph 1 of that Article were left to the general jurisdiction under Article 44, and recalling that pursuant to the decisions taken during the Third Joint Session concerning Article 12, paragraph 4, and the allocation of jurisdiction for interim relief on the basis of the distinction between *in rem* and *in personam*, he suggested that that distinction be reflected in Article 42. That would satisfy his previously-expressed concerns regarding Article 44.

14. The Delegate of Finland endorsed the proposed review of Articles 41 to 44, in particular, the amendment of Article 41, paragraph 1, to refer to exclusive jurisdiction. In also favouring a review of Article XX of the draft Protocol, he questioned the appropriateness of the State of Registry having general jurisdiction thereunder for the purposes of Articles 42 and 44 of the draft Convention, observing that that provision went beyond what was provided for in Articles 41 to 44.

15. The Observer from AWG supported the general thrust of the discussion, viewing the comments made as being entirely consistent with the decisions taken at the Third Joint Session and the issues which had been left to the Legal Committee for further development. He favoured tightening up the drafting of Articles 41 to 44 along the lines suggested, averring that that would assist the Diplomatic Conference in its deliberations. In endorsing the general concept of exclusivity to the extent agreed, the Observer from AWG underscored his agreement with the comment made by the Delegate of Canada regarding mirroring the concept of exclusivity as set forth in The Draft Hague Convention to the extent so agreed. He considered that Article 44 could ultimately be deleted.

16. In light of the debate, the Third Vice-Chairman indicated that Articles 41 to 44 of the draft Convention and Article XX of the draft Protocol would be referred to the Drafting Committee with a view to tightening up their wording along the lines suggested.

17. He then drew attention to **item 36** (*Review the provisions for entry into force of the Convention/Protocol to take into account the need for a viable registry as well as the need for early access to the other benefits*) and paragraph 174 of the Report of the Rapporteur, in which it was indicated, *inter alia*, that the number of ratifications proposed in Article R of the draft Convention (three or five) might be too small to ensure that the International Registry would be able to operate efficiently and that the registration fees would not be excessively high. He noted, in this regard, that if

the draft Convention were to enter into force upon ratification by only three States, and those States were extremely minor ones in terms of the volume of international financing transactions, producing a total of a dozen transactions annually or even fewer, then the per transaction and registration fees could be very high. The Third Vice-Chairman recalled that one solution which had been advanced was that money be found to operate the International Registry temporarily on the basis of monies other than the monies available from the registration fees. While it was ultimately for the Diplomatic Conference to decide on the number of ratifications required for the entry into force of the draft Convention, the Legal Committee might wish to give that meeting some words of caution in this respect.

18. The Observer from AWG agreed that the matter should be decided by the Diplomatic Conference. While acknowledging the point made by the Rapporteur in his Report, he emphasized that the conditions for the entry into force of the draft Convention would directly effect when the aviation industry, governments and other concerned parties would be able to enjoy its anticipated benefits. In his view, it had been agreed, in principle, from the onset of negotiations, that only a small number of ratifications would be required to bring the draft Convention into force. The Observer from AWG recalled that: the 1948 Geneva Convention, the international air law instrument which was most closely analogous to the draft Convention, had required only two ratifications to enter into force; the 1933 Rome Convention had required five ratifications for its coming into force; and the 1988 *UNIDROIT Convention on International Financial Leasing* required three such ratifications. In underscoring that there was no necessary relationship between the number of ratifications required for entry into force and the ultimate number of ratifications achieved, he noted that the said Geneva Convention had been ratified by more than eighty States and that the 1958 *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* which had required only three ratifications for its entry into force had been ratified by more than one hundred States. Thus while the Legal Committee should be sensitive to the point raised by the Rapporteur, that point should be viewed in the context of the over-arching objective of bringing the private international law instrument into force promptly, with a small number of ratifications, in line with international treaty practice in this area. That being said, there were a number of ways of addressing the Rapporteur's concerns. One was for the host State to agree to finance the International Registry, as previously suggested. The Observer from AWG noted, in this regard, that the International Registry *Ad Hoc* Task Force had built into the bidding proposal the concept that States would be invited to agree to a financing procedure as part of their competitive bid. Other ways to achieve the said objective included bringing certain provisions of the draft Convention, such as those relating to default remedies, into force upon ratification by a small number of States and in advance of the other provisions, to which different conditions for entry into force would apply. As this was a fairly complicated issue, with many elements remaining to be developed, some of which would depend upon the bids to host the International Registry, the Observer from AWG favoured deferring the issue to the Diplomatic Conference. Retaining the number of ratifications given in the current text in square brackets, "[third/fifth]", would signal the clear, continuing intent for a small number of ratifications to bring the draft Convention into force. The concerns raised by the Rapporteur in his Report should be noted in the Legal Committee's Report which would be considered by the Diplomatic Conference in light of the further work of the International Registry *Ad Hoc* Task Force on the practicalities associated with the financing arrangements required in the bidding process.

19. The Delegate of India endorsed the views expressed in the Rapporteur's Report on this issue. Although he noted with great interest the various precedents cited by the previous speaker, he was in favour of a higher number of ratifications, three or five ratifications being in his opinion too low. Recalling that the 1999 Montreal Convention on the unification of certain rules for international carriage by air, viewed as a very pressing requirement by the international aviation community, would come into force only upon ratification by thirty States, he indicated that he would find a similar number of ratifications for the entry into force of the draft Convention more acceptable.

20. In also sharing the concerns expressed by the Rapporteur, the Delegate of Colombia considered that there were several mechanisms available which would ensure that, on the one hand, the number of ratifications required for the entry into force of the draft Convention would not be so high as to be unattainable and on the other hand, that those States whose ratification brought the draft Convention into force conducted a sufficient number of transactions so as to guarantee the economic viability of the International Registry. He recalled, in this regard, the conditions set for the entry into force of the 1971 Guatemala City Protocol.

21. The Delegate of the United States indicated that he was fully in accord with the analysis and the proposals made by the Observer from AWG. He did not view this as a formalistic discussion. The purposes of the draft Convention bore a relationship to the work done on other conventions where there had been a need to have a larger number of ratifications for their entry into force. The Delegate of the United States considered that it was fundamental to note the absence from the present meeting of the Observer from the International Air Transport Association (IATA). He recalled the strong, detailed statements which the latter had made at the Joint Sessions in which it had been emphasized that every single month of delay in the entry into force of the draft Convention would cost major markets around the globe a substantial sum of money, primarily those in the developing world. In the view of the Delegate of the United States, the Legal Committee owed it to the development of international air transport, as well as to the development of other areas of infrastructure in many States, in all economic regions, to not conclude its work in any way which would result in a delay beyond that which was absolutely essential. It was for that reason that the target of a very low number of ratifications for the entry into force of the draft Convention had been seen as absolutely critical. The Delegate of the United States averred that the fact that some States might be slower than others at arriving at a position which would enable their ratification of the draft Convention was no reason to deprive such other States of the important economic benefits to be derived therefrom. In his opinion, a low number of ratifications would not pose a problem for the viability of the International Registry, especially in light of the proposed funding by the host State of the International Registry in its initial stages. However, mindful of the possibility that it could become a problem, the Delegate of the United States indicated that the proposal made by the Observer from AWG for a two-stage entry into force of the draft Convention whereby International Registry-related provisions would come into force separately from the other provisions should be the subject of further consideration. It was his understanding of the capital markets that this would have immediate tangible benefits, although not as many as if the registration system were in place and actually operational. In his view, the Legal Committee owed it to all States to make the opportunities offered by the draft Convention available as quickly as possible. How to expedite the process would become clearer once bids from potential host States had been received. In noting that the same problem had arisen during the establishment of other registries in various States, he underscored that it had not generally been the practice to defer the point of effectiveness until a specified level of transactions had been assured. In summary, the Delegate of the United States did not consider that working this issue out as a practical matter would ultimately be an obstacle. In his view, it was critical for the whole purpose of the negotiations which had taken place over the last two or three years to assure that the Convention would enter into force as quickly as possible, in either one or two stages, with the smallest possible of number ratifications necessary to make that happen.

22. The Delegate of Cuba concurred with the view expressed by the Rapporteur on this issue, as well as with the comments and analysis made by the Delegate of India, particularly with regard to the entry into force of the 1999 Montreal Convention, an instrument which was highly important both to ICAO and to the world of aviation, including airlines.

23. Referring to the comments made by the last three speakers, the Delegate of Sweden observed that, in general, new instruments relating to new areas of law required a low number of ratifications for their entry into force while new instruments which superseded existing instruments required a higher number of ratifications in order to ensure stability during the transitional phase. He cited, in

this context, the 1999 Montreal Convention, which would, upon ratification by thirty States, supersede the 1929 Warsaw Convention, which had come into force upon ratification by five States. The Delegate of Sweden noted that the draft Convention had two main categories of provisions: those related to default remedies, which would bring the most benefits to the aviation industry and to developing States, and those related to the International Registry. The latter provisions would supersede those of the 1948 Geneva Convention under which registry systems had been established in Sweden. Noting that, while Sweden would be able to preserve the possibility of internal transactions under Article S of the draft Convention, it would need to set up a new system for international transactions, he spoke in favour of a high number of ratifications for the entry into force of the new Convention so as to ensure that Sweden would not have to abandon its Geneva Convention-based registry systems before there was strong, stable support for the system established under the new Convention.

24. The Delegate of Canada averred that it was an error to link the start-up of the International Registry with the number of ratifications required for the entry into force of the draft Convention. He emphasized, in this regard, that in order for there to be a reliable, functioning International Registry the necessary infrastructure had to be in place. It was not solely a question of having on hand the requisite financial resources. The Delegate of Canada queried what would happen if, three months following the adoption of the draft Convention by the Diplomatic Conference, thirty States had deposited instruments of ratification and the International Registry was not yet operational. He indicated that consideration should therefore be given to phased implementation whereby the International Registry and its associated priority rules would become effective on a set date, one perhaps set by the Supervisory Authority when the system had been put in place and tested, with satisfactory results. This would not preclude the possibility of other provisions of the draft Convention coming into force on the basis of the number of ratifications received.

25. Recalling the comments made by the Delegate of Sweden, the Observer from UNIDROIT indicated that it was crucial to make the distinction between an international instrument which dealt with a new subject and one which was aimed at promoting the passage from an old régime to a new, successor régime. In comparing the case of the 1929 Warsaw Convention and the 1999 Montreal Convention to the case of the draft Convention now under consideration, he underscored that the latter comprised provisions which would be completely new to the vast majority of participating States. As it was not a successor situation, the Legal Committee should not follow the example of the Warsaw Convention/Montreal Convention; rather, it should be aware of the novelty and of the innovative potential of the new Convention. In observing that there was a second distinction to be made, the Observer from UNIDROIT noted that while ICAO had, over the years, been primarily involved in the creation of international air law instruments, the draft Convention being considered was related to the private international law of banking, which implied a different rationale. As the Observer from AWG had pointed out, the modern tendency in private commercial law was for a relatively low number of ratifications to be specified for the entry into force of a new instrument. This would seem to indicate that entry into force of the draft Convention upon ratification by three States – a major manufacturer State, a major financier State and a major user State – should not be barred. The Observer from UNIDROIT emphasized, in this context, that the crucial point of having a low number of ratifications for the entry into force of the draft Convention had been agreed upon during the Joint Sessions.

26. Referring to the phased implementation suggested by the Delegate of the United States, the Delegate of the United Kingdom noted, on the basis of his own experience with legislation in the United Kingdom, that staggered implementation was as difficult as dealing with transitional provisions. Given the amount of work which had been done to develop provisions relating to transitional arrangements, he would not favour, at this stage, trying to determine which parts of the draft Convention might be brought into force at an earlier date than the rest, which other parts might need to be brought into force for that purpose, and what kind of additional provisions might be

required in order to make such entry into force possible. In indicating that he would prefer a small number of ratifications to bring the draft Convention and draft Protocol into force, as per their current provisions, the Delegate of the United Kingdom noted that there had been no lack of enthusiasm on the part of host States which might operate the International Registry. He further noted that there had been discussion on whether potential host States might finance the International Registry in the initial stages of its establishment, with the set-up costs to be subsequently recovered from the income resulting from registration fees. The Delegate of the United Kingdom averred that the Legal Committee should not seek to have a staggered implementation of the draft Convention and the draft Protocol.

27. The Delegate of Uruguay concurred with the views expressed by the Rapporteur in his Report, as well as with those expressed by the Delegate of India and others who had advocated more than three or five ratifications for the entry into force of the draft Convention. In recalling the reference made to the number of ratifications which had been required for the entry into force of the 1933 Rome Convention and the 1948 Geneva Convention, he underscored that at the time of the conclusion of those instruments there had been only a small number of independent States in existence. The intervening years had seen a tremendous increase in their number. Observing that there were now 186 States Members of ICAO, the Delegate of Uruguay indicated that there was sufficient justification for requiring, for example, thirty-five ratifications for the entry into force of the draft Convention. An innovative instrument necessitated a prudent approach. Referring to the suggestion made that the host State provide the financing for the initial stages of the International Registry, he stressed that not all potential host States could provide such financing and that it would in some cases constitute a heavy financial burden. The Delegate of Uruguay agreed with the Delegate of the United Kingdom that having certain provisions of the draft Convention enter into force before other provisions would prove very difficult. In view of all of these drawbacks, he favoured having the draft Convention come into force only upon ratification by thirty-five States.

28. In also endorsing the comments made by the Delegate of India, the Delegate of South Africa averred that three or five ratifications was too low a threshold. Such a threshold was contradictory to the aim of the draft Convention of bringing certainty to the capital markets and would seriously compromise the development of a coherent international jurisprudence on the issue of aviation financing.

29. Maintaining that it was inappropriate to have a phased implementation of the draft Convention in light of the many problems associated therewith, the Delegate of Switzerland indicated that he would consequently agree to a rapid entry into force of the Convention upon ratification by a small number of States, three or five, with one caveat: that, in view of the possibility that the International Registry would not be operational at the time of entry into force of the Convention, there be a provision enabling the choice of the Registrar to be delayed, with a committee being established to oversee the establishment of the International Registry.

30. Endorsing the comments made by the Delegates of Sweden, India and South Africa, the Delegate of the Netherlands voiced support for a higher number of ratifications than those proposed, particularly in view of the fact that the new Convention would supersede the 1948 Geneva Convention.

31. The Delegate of the United States recalled that, while the Third Joint Session had not agreed on a specific number of ratifications required for the entry into force of the draft Convention, it had intentionally indicated three or five ratifications in Article R to reflect its overall policy of assuring that private sector capital funding could come to primarily developing State markets where such financing was needed for air transportation and other equipment purchasing in as short a time frame as possible. In underscoring that the comments made by certain Delegates in favour of a higher number of ratifications marked a major departure from the text emanating from that Third Joint Session, he averred that a requirement of thirty or thirty-five ratifications would effectively bring the

process to a halt, eliminating the Convention's potential benefits for many States. The Convention would no longer be considered seriously and capital markets would invest elsewhere. The Delegate of the United States emphasized that the purpose of such a financing convention was not the development of coherent international jurisprudence on the issue of aviation financing, however laudable that might be, if achieved; rather, its purpose was economic in nature: it was to bring private sector market resources to the assistance of States which currently either did not have access to those resources or could only have access at high and disadvantageous interest rates. What certain Delegates were now proposing would seriously dislodge the efforts which had been made over the last several years to make those resources available. Those Delegates should consider what economic benefits their own States and other States would derive from the draft Convention. In observing that this issue would have to be resolved at the Diplomatic Conference, the Delegate of the United States expressed the hope that in the intervening time all States would give serious consideration to the economic benefits which the draft Convention offered and to what policy or economic reasons, if any, they might have to delay its entry into force.

32. The Observer from AWG concurred that a requirement for a high number of ratifications would seriously call into question the negotiating process from this point forward. Reiterating that a low number of ratifications was a fundamentally-agreed concept, he noted that one of the reasons why the aviation sector had worked with UNIDROIT was because it concerned a private international law treaty for which precedent was very clear that a small number of ratifications for its entry into force was appropriate. Observing that ICAO was, with the draft Convention, venturing into the areas of commercial finance and aircraft finance, he stressed that analogies to the 1929 Warsaw Convention and the 1999 Montreal Convention were not applicable. Contending that changing the said fundamentally-agreed concept would lead to serious problems, including those of a procedural nature, the Observer from AWG suggested that the text of Article R of the draft Convention be retained in its present form and be referred to the Diplomatic Conference for consideration.

33. In summarizing the discussion, the Third Vice-Chairman indicated that, while a good number of Delegates considered that it was important to have a small number of ratifications required for the entry into force of the draft Convention, a good number of Delegates considered that, under the circumstances, a larger number of ratifications was desirable. It was not his impression that the Legal Committee had been particularly impressed by the solutions which had been advanced for resolving the perceived problems to which a small number of ratifications would give way. He remained convinced that it was possible to think in terms of providing for different break points for different provisions in some way which was easy to understand.

34. Referring to consultations which he had held with potential host States, the Third Vice-Chairman noted that they considered that it would be unrealistic to expect the host State to defray the costs associated with the initial stages of the International Registry. In observing that further consideration of this issue was required, he indicated that the proposed phased implementation of the International Registry merited some support. Careful note should be taken of the point made by the Delegate of Sweden that more than eighty States had already established régimes under the 1948 Geneva Convention. While such régimes were not as broad in scope as the one under consideration, provision had to be made for the transfer from one régime to the other.

35. In light of the debate, the Third Vice-Chairman noted that the Report of the Legal Committee should indicate that the proposed three or five ratifications required for the entry into force of the draft Convention was too low and that it had created a severe sense of discomfort among Members. It should also indicate that the Legal Committee recommended that the Diplomatic Conference, whose task it was to examine the issue, take a very serious look at appropriate transitional provisions which would allow, on the one hand, a sufficiently broad level of acceptance of the new régime by those States parties to the 1948 Geneva Convention and, on the other hand, a régime which would provide for the phasing-in of the International Registry, perhaps using some administrative devices as had been suggested by certain Delegates so that the International Registry could enter into force when it

became viable. That was not to say that preparations could not be made for such a day; rather, the International Registry should not enter into force before it had become viable.

36. Asserting that the above summary reflected the position of only one group of Delegates, the Delegate of the United States averred that it was inappropriate to state in the Legal Committee's Report that the two points cited by the Third Vice-Chairman should be the points of reference for further work. There was no consensus on this very serious issue. Maintaining that if it were resolved in the wrong way, the potential benefits of the draft Convention would effectively be eliminated for many States for a very long period of time, he suggested that, in view of the magnitude of that seriously negative effect on the economic value of the entire Convention, and in the absence of a clear consensus on the issue, the language of the said summary be changed. While the Diplomatic Conference should be apprised of the problem regarding the number of ratifications required for the entry into force of the draft Convention, it should not be stated as the position of the Legal Committee that a higher number of ratifications than the numbers proposed was necessary.

37. The Third Vice-Chairman indicated that the Legal Committee's Report would clearly reflect that there were two points of view on this issue.

38. The Delegate of the United States underscored that it was not simply a case of reflecting that there were two points of view: the conclusion should not be on behalf of one of the two sides. This comment was duly noted.

39. The meeting adjourned at 1630 hours.

LEGAL COMMITTEE – 31ST SESSION

SUMMARY MINUTES OF THE TWELFTH MEETING (CONFERENCE ROOM 1, WEDNESDAY, 6 SEPTEMBER 2000, AT 0930 HOURS)

Third Vice-Chairman of the Legal Committee: Mr. G. Lauzon

Secretary: Dr. L.J. Weber, Director, Legal Bureau

Agenda Item 3: International Interests in Mobile Equipment (Aircraft Equipment)

1. The Third Vice-Chairman indicated that in its consideration of the list of "Suggested Items for Consideration by the Legal Committee" appended to the Report of the Rapporteur (LC/31-WP/3-4), the Legal Committee had now reached **item 42** (*Review the alternative transitional provisions and determine whether interests created prior to the Convention's entry into force should be registered following an appropriately long grace period and a low cost transitional filing fee*). He recalled that this matter had generated considerable debate in the third Joint Session of the Sub-Committee with the UNIDROIT group, and had been left unresolved pending consultations between the different interests involved. The Third Vice-Chairman wished to know whether those consultations had produced any proposals that might be acceptable, making it possible to remove the square brackets, or whether they were still continuing.

2. The Delegate of Canada felt that the Convention required transitional provisions in order to be a complete instrument, since he was not aware of any mortgage registers that had ever been enacted without such provisions. The Canadian Delegation therefore favoured Alternative B, and supported the Aviation Working Group's proposal in LC/31-WP/3-15. Canada recognized the reasons which would support a long transitional period, for example 10 years, and accepted the desirability of nominal transition fees—perhaps even more nominal than the initial registration fees for new transactions. A large number of airliners in Canada had recently been registered as a result of re-financing of Canadian Airlines in Quebec, and these transactions were registered at a cost of Canadian \$34 per aircraft, equivalent to approximately U.S.\$25 per aircraft. The Canadian Delegation

believed that without transitional provisions, there would never be complete certainty with many types of transactions or with many aircraft.

3. The Canadian Delegation had also reviewed the working paper presented by Japan in LC/31-WP/3-17, which summarized the concerns about transitional provisions. These concerns were related primarily to the costs of registering and the complexity of many of the existing transactions. Canada accepted the fact that many air finance transactions were complex, but wished to emphasize that the complexity of registrations in a paper-based registry was very difficult. In a notice-based registry, however, a single, one-page on-line filing could give notice of the interests of all parties to an aircraft, and the interests of most of the parties in these transactions was held in trust in any event. Thus, even in the most complex transactions, notice of only two or three interested parties in a particular aircraft was provided.

4. The major difficulty which the Canadian Delegation saw from a practical point of view in not enacting transitional provisions was that most aircraft were re-financed over the course of their term. The absence of transitional provisions could give rise to a situation for many aircraft in respect of which interests had been created prior to the Convention's entry into force, whereby re-financing or amendments taking place after the entry into force of the Convention would cause significant difficulties. Canada believed that the apparent savings realized by not enacting transitional provisions would be artificial. Over the long term, it would be considerably less costly for airlines to have transitional provisions because transactions that were concluded under the Convention would be significantly less expensive than transactions that were concluded outside of it.

5. Finally, the Delegate of Canada believed that transitional registrations would only result in material costs to airlines if, firstly, assuming that a long transition period of 10 years were used, the underlying transactions continued for a period exceeding 10 years. Most air-financed transactions did not continue for that length of time, and therefore most transactions would be excluded from the requirement to make a transitional registration. Secondly, of those transactions that did exceed a duration of 10 years—and those primarily were only tax-based transactions which formed a portion of the financing of some fleets—there would only be a saving if they did not require any re-financing in any respect after the 10-year transition period. That would be, in Canada's view, a very rare set of circumstances. It was fair to say that the significant majority of transactions that had a term in excess of 10 years would require some form of re-financing over the course of their term, whether it be by assignment, extensions, restructuring, or, more recently, by securitization or sub-leasing, which were becoming very common with these structures. The Delegate of Canada suggested that it was a very rare financing indeed that had a term in excess of 10 years with no requirement for re-financing. All of those transactions would thus be caught by the Convention, in any event. If there was a transaction that did not go for more than 10 years and did not require any element of re-financing, there would only be a saving if the lenders in that transaction did not insist upon a cautionary filing in the new transaction in any event, and on the basis of his own experience the Delegate of Canada believed that a high percentage of lenders would require cautionary filings in the new system as soon as it was up and running. In any event, it was the Canadian Delegation's view that the costs of the transition filings would be nominal. If the costs were not nominal, there would be other problems with the registration system. Nevertheless, because there would be a cost, and because that cost was some time from being determined, the Canadian Delegation felt that the benefits of transition were so obvious it would be premature to support Alternative A at this stage and not leave Alternative B available for consideration of Diplomatic Conference.

6. The Observer from the Aviation Working Group indicated that the AWG had historically supported Alternative A, as had most other Delegates at the Third Joint Session on the basis of such factors as simplicity and cost sensitivity. That said, the AWG believed that the Canadian Delegation had made a compelling case for further consideration of this matter at the Diplomatic Conference for the reasons stated, and found itself in agreement with the general theme of Canada's comments to the effect that a complete system would be available only by virtue of Alternative B, to which there were

certain benefits. At the simplest level, the case had been made for that option. However, two assumptions made by the Canadian Delegation were, in the AWG's view, absolutely essential to its support for leaving the issue open. The first assumption was to insert 10 years as the transitional period. If the transitional period was shorter than that, many things that had been stated would simply not be true because a relatively larger percentage of transactions would have to be re-filed, costs would be higher, risks of unfairness would result, and the likely objections from the industry would be much greater. The AWG would thus suggest inserting "10 years" and including a very clear statement that the costs of the transitional system were either waived or truly nominal. The situation would involve parties—airlines and financiers—who had already completed existing transactions and who would ask why they should now look backwards and be required to take steps. The Canadian Delegation had offered good reasons why one should, but at a very simple level. To ensure maximum support for the new Convention, the issue had to be addressed, and the AWG suggested that there be a very clear statement, not only in the report but probably also in a footnote attached to Alternative B in place of the current footnote, indicating that the intention of this option would be that the transitional fee would be waived or would be truly nominal. On the basis of those two assumptions, the AWG would support the Canadian proposal to leave the two options in the text. The AWG would be prepared to rediscuss this issue with the industry who would ultimately be paying this fee, with a view towards having a position at the Diplomatic Conference.

7. The Delegate of France recalled that at the meeting of the Legal Sub-Committee (Rome, 20-31 March 2000), his Delegation had supported Alternative B; France was still in favour of that alternative. In the context of this meeting's discussion, France would still support the retention of the current Alternatives A and B so that the Diplomatic Conference could have a choice if it was not possible to resolve the matter at this time. Without wishing to speak at length about the advantages of Alternative B, the Delegate of France pointed out that it would allow for the establishment of a complete international registry system, with registration not just of conventional consensual international interests, but also of other pre-existing agreements which were still in force, making it possible for the managers of the register to verify at any time the status of mortgages or interests related to a given object. There would thus be a technical guarantee serving as a very useful tool for dealing with any polemics or differences. The Delegate of France also recalled that in Rome, his Delegation had spoken in favour of a lengthy transitional period, notwithstanding the fact that a long amortization term and very slow phase-in of the registry could be costly. France could, however, accept a transitional period of five to 10 years.

8. The Delegate of the United Kingdom indicated that his State's consultations with industry were not yet complete, and would therefore prefer it if both Alternatives A and B were retained in the text until the time of the Diplomatic Conference. Recalling that his Delegation's position at the Third Joint Session had been in support of Alternative A, the Delegate of the United Kingdom confirmed that this position remained, unless industry presented strong arguments in support of Alternative B. The Delegate of Germany indicated that his State also preferred Alternative A, as pointed out at the Third Joint Session, since this alternative was easier to use in practice and protected the pre-registered creditor, who would not have to pay again for a second registration in the new international registrar. Germany could, however, live with the proposal to refer this decision to the Diplomatic Conference. The Delegates of the Netherlands and Japan also supported Alternative A but agreed that both alternatives could be presented to the Diplomatic Conference.

9. The Observer from the Aviation Working Group suggested that those who favoured Alternative B consider his suggestion to insert "10 years" in square brackets so that it would be subject to reconsideration at the Diplomatic Conference. The AWG's considered opinion on the subject continued to be that it would be extraordinarily difficult for industry to support Alternative B, unless it was very clear that there would be a long transitional period. The Delegate of Canada supported the comments of the AWG with respect to the inclusion of "10 years" in square brackets, and also wished to support the AWG's suggestion that footnote 16 be modified to indicate that Alternative B would

require that the fees be nominal or in fact waived. The Delegate of France could follow the position expressed by the previous speaker with regard to the duration, especially if footnote 16 were amended. France would not oppose a consensus around a 10-year period if there was that consensus among those who supported Alternative B.

10. The Third Vice-Chairman observed that there seemed to be a consensus among those who had intervened in favour of maintaining the two alternatives until the time of the Diplomatic Conference. All of the interveners, perhaps save one, had indicated a willingness in that direction. Both alternatives could thus be maintained in the text with the understanding that this matter would be decided at the Diplomatic Conference, and the hope that in the interim, the necessary consultations would be finalized so that a quick decision could be reached at the Diplomatic Conference on this issue. As far as the wording of Alternative B was concerned, the Third Vice-Chairman had noted a general feeling among the proponents of that Alternative to accommodate the view that a period of 10 years be contemplated; the text would be inserted between square brackets to suggest to the Diplomatic Conference what could be appropriate. In addition to the language which would appear in the report to reflect the debates, a footnote to Alternative B would underline the fact that the fees charged in respect of these older transactions should be nominal.

11. The Third Vice-Chairman observed that the Legal Committee's discussion of item 42 was concluded, and indicated that the Secretariat had informed him that there was an item relating to the Geneva Convention of 1948 which did not appear on the list of suggested items which the Rapporteur had presented for the Committee's consideration, but which the Secretariat wished to submit to the Legal Committee for its determination as to whether or not the Committee wanted to get involved with it.

12. The Secretary indicated that the point which the Secretariat wished to draw to the Committee's attention concerned **Article XXII of the Protocol**, (*Relationship with 1948 Convention on the International Recognition of Rights in Aircraft*), which regulated the relationship between the new instrument or instruments on the one hand, and the Geneva Convention of 1948 on the other. Article XXII of the Protocol provided that the Convention would, for a Contracting State that was party to the Geneva Convention of 1948, supersede that Convention as it related to aircraft and aircraft objects. It was felt that this rule superseding the Geneva Convention of 1948, once a State had become party to the new instrument, might be a somewhat "broad brush".

13. The Geneva Convention of 1948, which presently had 85 parties, was based on different principles than the new instrument now being discussed. It was based on the mutual recognition of nationally registered security rights, whereas the new instrument would be based on an internationally registered interest. The two regimes and the two instruments would therefore appear to be not, *per se*, inconsistent with each other, although there may be inconsistencies in the actual implementation of the two instruments. For those States which had ratified the Geneva Convention of 1948, there might be a desire in a number of instances to continue to make use of the facilities under the Geneva Convention of 1948, even after the new Convention was in force. If that was the case, the rule in Article XXII might have the effect of preventing some States from acceding to the new instrument because if they did so, Article XXII would prevent them from using the facilities under the Geneva Convention of 1948 from that point onwards.

14. Therefore, it should be considered by the Committee whether it might not be preferable, instead of broadly superseding the 1948 Convention, to solve this potential conflict between the two in relation to conflicts arising in the actual implementation or application of the two instruments. In this regard, the Secretary referred the Committee to the wording of the provision which had been put forward by the Second Joint Session (Montreal, 24 August-3 September 1999). The Second Joint Session's report set forth a rule which would precisely do what the Secretary had just described, namely resolve the conflict in favour of the new instrument only in those cases where a conflict arose in the actual implementation and application of the two instruments. In this regard, the Secretary

referred the Committee to LC/31-WP/3-2 which set forth the report of the Second Joint Session. This rule was found in Attachment F to the report, at page F-43. The Secretary suggested that it should be considered whether a wording along those lines could be taken into account.

15. The Third Vice-Chairman asked whether there were any Member States who shared the Secretariat's concern regarding this matter, which had not been previously on the Committee's agenda but which the Secretariat wished to bring to the Committee's attention. The Delegate of Sweden indicated that his State shared the concerns of the Secretariat. The Delegate of Greece observed that the proposal made by the Secretariat was a logical one, since the Geneva Convention of 1948 dealt with subjects that were very close to those addressed in the text now under consideration. After the Convention's entry into force, its provisions might be in conflict with the Geneva Convention of 1948, which had a different approach to the subject.

16. The Delegate of the United States wished to remind the meeting that this issue had been discussed in great detail during the Third Joint Session. At the Second Joint Session, some language had been proposed but it had been understood that it needed to be thoroughly reviewed. The Public International Law Working Group, which had been established during the Second Joint Session, had had a meeting before, and again during, the Third Joint Session to review the scope of the relationship between this Convention and the Geneva Convention of 1948. That review had established that the language that had been proposed during the Second Joint Session had a number of problems; it was convoluted and could come to misunderstand the relationship between the two Conventions and which one would take precedence. The Public International Law Working Group had considered all of the clauses within the Geneva Convention of 1948 in depth, and had concluded that as between the financing transactions covered by this Convention, there were no elements within the Geneva Convention of 1948 worth preserving. There had been consideration of whether certain elements should be taken out of the Geneva Convention of 1948 and placed in the new Convention with regard to the financing transactions as they related to aircraft and aircraft objects as defined in the new Convention. After extensive discussion, the Working Group had determined that there were no elements of the Geneva Convention of 1948 worth preserving in the new Convention and aircraft protocol. The Working Group had therefore accordingly recommended that Article XXII of the draft aircraft protocol be amended along the lines of what was now before the Committee, as approved by the Third Joint Session.

17. The Delegate of the United States reminded the meeting that Article XXII as proposed by the Public International Law Working Group had been approved and referred to the Drafting Committee for final drafting. The Drafting Committee—comprised of both UNIDROIT and ICAO—had pointed out that Article XXII, which stipulated “as it relates to aircraft”, made it clear that it was talking about the definition of aircraft in the new Convention. The new Convention would supersede the Geneva Convention of 1948 with respect to the financing transactions of aircraft and aircraft objects, as defined in the new Convention. There was to be no mistake about that, and the language was clear as it was now written, that the new Convention would prevail. That was not to say, however, that the Geneva Convention of 1948 would no longer exist. The Geneva Convention, for those States that were party to it, would continue to be in force with respect to all other transactions that were not covered by the new Convention. Before it decided to revisit the language in Article XXII, the Delegate of the United States wished to remind the Committee that this was beyond the mandate given to it by the ICAO Council. That mandate had been limited to reflect upon the items in the Rapporteur's report, and the Rapporteur rose the issue in LC/31-WP/3-4, in paragraph 162 which noted that this decision had been taken. If the Secretariat wished to raise some concerns at this late hour, the absence of a working paper would make it difficult for Delegates who were new to this process to have a proper understanding of the issues. For the Committee to go back to language that had been thoroughly considered by both the Public International Law Working Group and the Third Joint Session would be embarking upon more work which it did not have time to address in great detail.

18. The Delegate of India believed that the point which had been raised by the Secretary of the Committee had sufficient merit to deserve a discussion because the wording of Article XXII of the aircraft protocol simply said that the new Convention shall supersede the Geneva Convention of 1948, whereas the intervention made by the United States intended that in some respects the Geneva Convention would still remain in effect; that intention was not coming out clearly in the provision as drafted. Notwithstanding the procedural point raised by the Delegate of the United States regarding the Legal Committee's mandate to address the matter, the Delegate of India was of the opinion that the Committee should have the mandate to have some discussion of the item.

19. The Delegate of Cuba, whose State was a party to the Geneva Convention of 1948, shared the concerns of other States that saw a need to look carefully into the wording of Article XXII, especially in view of what had just been stated by the Delegate of India. Reference to the 1948 Geneva Convention was made in the Protocol, thereby limiting the scope of the Geneva Convention of 1948. The Delegate of the Netherlands also agreed with the Indian Delegation on this issue. For the Delegation of the Netherlands, it was unclear from the United States' intervention that if the Convention was to retain certain aspects these should be clarified in the wording of the text, since his Delegation's reading of the provision would give it to understand that the entire Geneva Convention of 1948 would be superseded. The Delegate of the Netherlands sought clarification from the United States on this point.

20. Responding to the request put forward by the Delegate of the Netherlands, the Delegate of the United States indicated that the new Convention did not supersede the Geneva Convention of 1948 *in toto*, but only with respect to the financial transactions covered within the new Convention. The issue of whether or not that was clear in Article XXII could perhaps be reviewed by the Drafting Committee. The feeling of the Drafting Committee of the Third Joint Session had been that because it was clear in Article XXII that only certain aircraft terms were defined in the new Convention, the Geneva Convention of 1948 would continue to be effective for elements not addressed in the new Convention.

21. The Third Vice-Chairman observed that the question at hand simply concerned whether or not the Legal Committee would address the point raised by the Secretariat, and that some States would like to see this examined. The question that came to mind was whether the Legal Committee should address the subject at this time or force the examination to go to the Diplomatic Conference. In this respect, his policy on such matters was to try to resolve as many items as possible before going on to the Diplomatic Conference. He was therefore in favour of allowing a quick discussion of this item. States had already indicated where they saw problems, which could be referred either to the Drafting Committee or to a select group of countries comprised of those who had intervened on this issue, asking them to come up with an appropriate solution almost immediately. The Third Vice-Chairman asked if anyone would have difficulty with this approach.

22. The Delegate of Italy indicated that he would have no difficulty with the suggestion put forward by the Third Vice-Chairman, but that he did have a proposal that could be looked after by the Drafting Committee eventually. In order to cover the points raised by the different Delegates, he wished to know if it would be possible to complete the present text by adding, after the word "objects", a clarification along the lines of "to the extent of inconsistency between the two Conventions" in order to cover the concern of some Delegations that after taking into account the inconsistency, there were some aspects of the Geneva Convention of 1948 that still remained applicable. The Third Vice-Chairman said that he had an indication from the Secretariat that they believed this was a useful approach which would cover their concerns. The suggestion put forward by the Delegation of Italy was thus referred to the Drafting Committee, together with the comments which had been made during the discussion on the subject.

23. The Observer from the Aviation Working Group was concerned with the nature of the discussion which had taken place, particularly with the proposal that had just been made by the Italian

Delegation, and felt obliged to provide some historical background on this point. The Observer from the AWG would not address the procedural issues that the United States had raised, and with which his Delegation was in agreement.

24. The Observer from the AWG observed that the draft Convention was about ensuring commercial predictability and involved some complicated questions. The Geneva Convention of 1948 was a recognition convention, whereas the new Convention would be a substantive convention. The Geneva Convention of 1948 covered aircraft; this new Convention covered airframes, aircraft engines and helicopters. The Geneva Convention of 1948 had provisions dealing with spare parts that might or might not match the definitions in the new Convention, and addressed a public registry system in a manner which might or might not be consistent with the treaty now being developed. To leave this matter to the terms suggested by Italy would be, in the AWG's view, unsatisfactory because it would simply be left to a court to determine what was consistent and what was inconsistent. That was precisely what Delegations at this meeting were trying to avoid by being clear on the relationship between the two documents.

25. That said, the wording referred to by the Secretariat in the Second Joint Session had been a good-faith attempt by those involved in the process to avoid the problems which the Observer from the AWG had mentioned; i.e., to identify the one aspect of the Geneva Convention which most people agreed with, the basic recognition point, but to do so in a very precise, carefully drafted way that would ensure commercial predictability. That was what had been produced by the study group of UNIDROIT, the Steering and Revisions Committee, the First Joint Session and the Second Joint Session. Now, as the United States had just pointed out, the Public International Law Working Group had felt that there were nonetheless some technical issues and complications that justified a more clear superseding of the instrument.

26. It seemed that there were two choices. The first choice was to have interested parties look at whether or not the wording in the Second Joint Session—the more precise way of addressing this, as the Secretary had suggested—could be reconsidered with a view towards addressing the concerns of the Secretariat in a precise way, as opposed to a general way whose lack of clarity would certainly not be acceptable to industry and, he suspected, to many States. Civil aviation authorities around the world would regret in the end any sort of uncertainty on this point. One option would therefore be to go back to the Second Joint Session and see whether or not the points identified by the Public International Law Working Group could be accommodated. A second alternative, and one that the AWG would support, would be for the interested parties to work on it in advance of the Diplomatic Conference and see whether or not it would be appropriate to agree on that or another set of wording.

27. The Delegate of Canada supported the position of the AWG and the United States. While Canada was not a party to the Geneva Convention of 1948, it was familiar with the terms and generally regarded the two Conventions on all material points as mutually exclusive. If the new Convention applied, the Geneva Convention of 1948 could not apply; if the new Convention did not apply, there was nothing to prevent the Geneva Convention of 1948 from applying. The Delegate of Canada was not sure that this was as clear as it should be in Article XXII, and believed it was a proper matter for referral to the Drafting Group.

28. The Third Vice-Chairman observed that the proposal of the Delegate of Italy had not met with unanimous support, and was perhaps too “broad brush” and did not provide the certainty that people would like to see. Nevertheless, he would like as many matters as possible to be resolved before the Diplomatic Conference, and suggested, after having just consulted the Secretariat, that a small group convene to look at this issue and provide the Committee with a possible wording by the following day. The group would be composed of Sweden, the United States, India, the AWG, Italy and, for its commercial experience, Canada.

29. The Delegate of Colombia suggested that if the Cuban Delegation was interested in participating in the group, it would be highly advisable since Colombia would be interested in

receiving Cuba's contribution. The Delegate of Cuba thanked the Delegation of Colombia for the proposal, but did not believe it was necessary for the Cuban Delegation to participate in that group. Cuba was working actively in the Drafting Group and agreed with the views expressed by the Delegate of Italy as well as with those offered by the Third Vice-Chairman with regard to the composition of the special group. The Delegate of the Netherlands indicated that his Delegation had an interest in this issue and wished to be part of the group if possible.

30. The Third Vice-Chairman directed the meeting's attention to the only remaining item on the suggested items proposed by the Rapporteur for consideration by the Legal Committee, that being **item 1** (*Consider the structure of the instrument*). He recalled that the Committee had postponed discussion on this item to allow for informal consultations to take place, to see if some consensus could be arrived at. The Committee had now reached the point where it had to deal with the item, and the Third Vice-Chairman expressed the hope that there were some common views that would emerge. The Third Vice-Chairman pointed out that the Rapporteur had not taken a position on the form of the instruments, but had thought that the more discreet approach should be to simply allow the Legal Committee to consider this matter and to arrive at conclusions without the Rapporteur's input as to what those conclusions ought to be.

31. The Observer from the International Institute for the Unification of Private Law (UNIDROIT) indicated that the two-tiered structure of the instrument's architecture, a convention setting out basic principles on the one hand, and equipment-specific protocols making those basic principles operational on the other, had been looked at with some scepticism at the beginning of the First Joint Session. By the end of the Third Joint Session, however, that structure had met with almost unanimous support. The report noted that only one Delegation had expressed a different precedent.

32. The first argument in favour of a two-tiered structure concerned the economics behind the project's history. Originally, member States had wanted this to become the basis of comprehensive worldwide modernization of the law of secured transactions for the purposes of asset-based financing. Only a few countries had such a law. In other countries, in particular in developing economies, debtors urgently needed it in order to get access to credit at lower cost. It had taken the fathers of the project some time to realize that they needed to considerably narrow the scope, at least for the time being, if they wanted to succeed. They had chosen high-value mobile equipment. Forces were to be concentrated there because the legal quality of security interests taken in this area was particularly insufficient. One should not forget, however, that varying from country to country, major economic benefits were to be reaped in areas other than aviation finance.

33. The second argument in favour of a two-tiered structure concerned the rationality, or the efficiency argument. Prudent use of resources made it advisable to have a two-tiered approach, involving the base Convention with general principles and de-linked as much as possible, one equipment-specific protocol such as the aircraft protocol for every category of equipment. Why reinvent the wheel for meteorological or telecommunication satellites or railway wagons, if mature devices in the aircraft area had been developed and were considered to be useful for other industries? Governments and parliaments had no time to waste. Therefore, it was wise to shepherd the base Convention and aircraft protocol through the parliamentary deliberation processes so as to have the structure ready and to add later with ease, whatever amendment in form of a protocol a country may deem useful.

34. The third argument—very importantly—concerned fairness and solidarity. The countries where aviation interests were particularly articulate should mobilize their forces and lend a helping hand to those who were more in need of mobile equipment other than aircraft. As a matter of fact, the association of the world's airlines, *i.e.* IATA, and the Aviation Working Group were prepared to share their advanced and valuable experience with those other, slower sectors.

35. The fourth argument concerned strategy. The aviation industry and its financiers would need allies if this project was to be a worldwide success. For example, the banks in one important country

had indicated that they would not be heard if they talked to politicians on behalf of aviation. Why? Because the national carrier was financially very strong and didn't need it, so it was said. Also, the long-time and also the current parliamentary majority was in love with, if not to say married to, the railway sector. Even questions of constitutionality had been raised in some countries. Guarantees of equal treatment under the law required that industries in similar conditions, *i.e.* highly mobile equipment, be treated equally. An aircraft-only convention therefore would either never pass parliament, or be challenged in the courts afterwards.

36. The last argument concerned the legislative elegance, or the cross-applicability of ideas in the process of elaborating tools of interpretation—for example, case law—after entry into force. Also, the review process would be streamlined and more focussed with the more articulate basic principles and specific protocol structure.

37. The Observer from UNIDROIT pointed out that there was precedence for the two-tiered structure. As the public international law advisor had told the Joint Sessions, there was an increasing number of precedents, especially in the area of environmental law. Examples included the MARPOL, a maritime pollution treaty system with substance-specific protocols, currently in its final stage of negotiation, and the United Nations Convention against Transnational Organized Crime, a base convention with three area-specific protocols dealing with illicit trafficking in arms, illicit trafficking in migrants, and illicit trafficking in women and minors.

38. The two-tiered structure was, for UNIDROIT member States in all five corners of the world, not a matter of technique or arrangement of provisions, but was one of the essentials of the project, as for the reasons set out. UNIDROIT did, however, understand concerns regarding the readability, and a practical proposal had therefore been developed. As a matter of fact, it had been developed in close cooperation with UNIDROIT's African member States. It consisted of two steps. As a first step, a working tool would be submitted to the Diplomatic Conference in the form of an integrated version like the one attached to the Rapporteur's report, with a view to facilitating the handling, the management, and the understanding of people interested only in the aviation sector. The second step of the approach would be a commitment by the two sponsoring organizations to have an authentic, integrated reading version in place as soon as possible after the Diplomatic Conference.

39. The Delegate of the Republic of Korea supported the convention and its protocol system, rather than a single convention, in order to make it remain open-ended in terms of a specific protocol.

40. The Delegate of India observed that the subject at hand was a difficult one on the conceptual plane and also in terms of practicalities. On the conceptual plane, the Delegate of India was uncomfortable with the two-tier architecture because it had made an otherwise clear-cut idea quite complicated as far as its practical use was concerned. The term used by the Rapporteur in paragraph 36 of his report (LC/31-WP/3-4), to the effect that the dual structure was not particularly "user-friendly", described it well. Not only was it not user-friendly, it was likely to give rise to some legal complications because of excessive cross-referencing and the variations reached through the Protocol in the main provisions of the Convention. It was perhaps legally possible to have such a mechanism, but it certainly made the whole project a bit complex. Only time would tell how the courts and lawyers would handle it, and handle it with clarity, he hoped.

41. The Delegate of India therefore had no hesitation in saying that India wished to see a single convention presented to the Diplomatic Conference for adoption, although he did wish to offer some comments on the practicalities. The position was that a document in a two-tiered form had been discussed and developed by the two Joint Sessions; the Sub-Committee of ICAO's Legal Committee had participated in the deliberations of those Joint Sessions; and the matter was now before the Legal Committee in that form. If this meeting took a decision that a single convention had to be presented to the Diplomatic Conference, how would that be achieved? And if the single document, as many people had promised, was developed, it would be developed only for the sake of reference and convenience. But supposing for a moment it was considered as a document to be presented to the Diplomatic

Conference for adoption, would it be possible to present it to the Diplomatic Conference without having gone through the channel of the Legal Committee? That was also an important question, because the Legal Committee would like to see the draft, article by article, before it was presented to the Diplomatic Conference. The Delegate of India would therefore leave it to the Secretariat of ICAO to guide the Committee on that issue and if the practicalities permitted, to change over to a single text for the use by the aviation community. If the practicalities barred the meeting from embarking upon that course, the Indian Delegation would be prepared to go along with the dual architecture presented.

42. The Delegate of Indonesia preferred a single text for very simple and non-political reasons. Although Indonesia found the provisions contained in the Protocol and Convention to be quite mature at this time and ready to be presented to the Diplomatic Conference, and was confident that these provisions, once in force, would enhance and facilitate international aviation, it strongly felt that the dual structure was far too complex for the reasons already indicated by the Rapporteur in his report and also for the reasons why the meeting was taking place at this Organization. A single text containing the same creation of security interest provisions, the same priority rule provisions, the same registry provisions and the same enforcement provisions would, from Indonesia's point of view, be just as effective and perhaps more desirable. Indonesia therefore shared the views and concerns of the Indian Delegation.

43. The Delegate of the United States thanked the Observer from UNIDROIT for a thoughtful and helpful explanation of why the present path had been chosen, and why it was beneficial to many States. It was very beneficial to many States represented at this meeting; their development potential would be significantly enhanced by access to modern capital market assistance in infrastructure development, which would immediately be affected by a wide range of equipment that would become available through this two-tiered system. In this regard, the United States would associate itself with the comments and reasoning offered by the Delegate of the Republic of Korea. As to practicality, that was indeed a most serious concern. The Delegate of the United States knew through consultations during this meeting that a number of States shared the views his Delegation was presenting. If the Legal Committee were, at this stage, to in some way seek to undo the progress of the last three years and the two-tier structure which had been carefully developed in cooperation with other sectors, there would be a significant conflict which would necessarily be transferred to the Council of ICAO and the Council of UNIDROIT. The other options were undesirable in all respects. There were countries, such as the United States, which were not prepared to proceed on the basis of a single convention which would in effect collapse and tear down the work of three years. To select that path would seriously jeopardize the further involvement of ICAO and the development which many participants at this meeting would like to see, because it would now become a controversial and troubled part of the picture within the ICAO system, to no-one's benefit.

44. The comments which had been offered about the complexity of a two-tiered structure were somewhat perplexing to the Delegate of the United States. Lawyers in almost all branches of their work were accustomed to working with several instruments that affected the same legal topic or the same legal issue. Their everyday work addressed a whole variety of treaty matters that involved protocols, supplementary protocols, and so on. The Delegate of the United States therefore found that the concerns which had been expressed were perhaps sometimes overly optimistic about the benefits that could be achieved without the two-tier structure. The United States was also very comforted by the assurances that had been received from other States and from the Secretariats which, it believed, would be cooperative on this, in an effort to produce a very workable, composite single text for assistance. The United States believed that this would happen, and that it would happen expeditiously. There would nevertheless have to be extreme caution about trying to undo the working methods that had been followed carefully for three years, and the carefully developed two-tiered system. The Delegation of the United States would strongly suggest that if the meeting stayed the course it was on, by this time next year a final, completed project that all could be proud of would be achieved; a

product that would quickly facilitate the path forward not only for aircraft but for other major areas of infrastructure equipment of vital need to many countries in all regions of the world.

45. The Delegate of Japan indicated that his comments would be brief since his delegation's views were very similar to those of the United States. Japan understood that the text now under consideration was much more understandable and believed that the two-tiered text was easier to understand. Japan did not want to complicate the process and therefore hoped that the Committee would be very careful in trying to find an approach that would be easiest for everyone to accept, along the lines proposed by UNIDROIT.

46. The Delegate of the United Kingdom indicated that his State's position on structure was informed by the fact that the United Kingdom was a Member of the ICAO Council and a Member of the Governing Council of UNIDROIT. From its perspective, the United Kingdom saw a need to bear in mind the needs of the aviation sector specifically, but also the wider context of the UNIDROIT project as a whole, which covered other types of high-value mobile equipment. The United Kingdom did not believe these interests were incompatible, and considered it vitally important to continue to negotiate on the basis of the dual texts of the base Convention and Protocol to facilitate the development of protocols for other equipment. At the same time, the United Kingdom recognized the complications of this approach and its lack of "user-friendliness", as had already been mentioned by other speakers. Whereas there would be considerable value in a consolidation of the two texts, as mentioned by the UNIDROIT Secretariat, it was important to be very clear about its status. In the United Kingdom's view, only the dual Convention and protocol would be legally binding at the international level. It was, however, very important that there be a single agreed consolidated text to avoid a situation where different versions were in circulation. The United Kingdom was grateful to the Rapporteur for the work he had already done on a consolidated text, and would hope that more work could be done before the Diplomatic Conference, possibly led by the two Secretariats, and a single authentic version available after the Diplomatic Conference, as suggested by the UNIDROIT Secretariat.

47. The Delegate of Nigeria indicated that although the Committee had been frequently told that the Convention would bring benefits to developing countries, after careful review his Delegation could not say that it had really seen these benefits. But be that as it may, Nigeria was strongly in favour of merging the Convention and the Protocol into one easily readable document.

48. Having listened very carefully to the previous interventions, the Observer from the International Air Transport Association felt to some extent a burden of responsibility with respect to this subject, because IATA was actively involved in suggesting the two-tier umbrella Convention-plus-protocol approach as a means of expediting consideration of this issue. Speaking on behalf of the organization of the world's airlines, he would normally imagine that IATA would be in support of a single instrument dealing solely with aircraft and engines. In these days of globalization and converging and harmonized interests, however, one really had to take a broad view. The Chairman of the Railway Rolling Stock Working Group, who had attended all three of the intergovernmental sessions in Rome and Montreal, had recently made a presentation to the senior management of IATA in Geneva on the railway industry's interest in the project and on the question of inter-modality, a subject area of growing common interest. One could indeed foresee the day when the financing of aircraft and railway rolling stock would be looked at as part of the package to facilitate transport, ultimately of great benefit to the consumer and the shipper. The long road ahead was marked with a series of milestones which could not be ignored, in a situation which would see change in the way high-value mobile assets would be financed and have acquisition to capital markets in the future. Since neither the air transport industry nor other modes of transport lived in isolation, it was necessary to look at the "big picture".

49. Given all the work that had gone into the exercise and the point reached today, the Observer from IATA suggested that it was certainly not opportune at this moment to change the structure. The issue would continue to be discussed inevitably between now and next year's Diplomatic Conference.

Those discussions would reach some sort of fruition and hopefully a consensus, but clearly, it was not the task of this meeting to change direction or to change track at this point in time. Indeed, if one looked at the guidelines for this meeting set out by the ICAO Council and took fully into account the decision of the Governing Council of UNIDROIT, one would have to say that the issue of structure was probably beyond the mandate of this group. That did not, however, impede an honest debate and consideration.

50. It was IATA's belief that such discussion should continue to take place in the time which remained before the Diplomatic Conference, and hopefully a general consensus would be arrived at. The results of this meeting should not in any way be put in jeopardy by trying to change a fundamental aspect of the documents that had been put before the Committee for consideration. A lot of progress had been made; the three intergovernmental meetings had been very successful indeed. The Legal Committee of ICAO had brought a lot of expertise and experience to bear and the results of this meeting would clearly be improved texts which should go forward to the Diplomatic Conference after the procedural aspects had been worked out between the two eminent international organizations concerned.

51. The Delegate of France indicated that his State, like the United Kingdom, was a Member of ICAO and UNIDROIT and their governing councils, and therefore felt accountable for the procedure as seen from both points of view. The Delegate of France recalled that at the end of the Third Joint Session of the Legal Sub-Committee of ICAO and the UNIDROIT experts, there had almost been a consensus regarding the structure just established. Another, even more objective fact was the mandate entrusted by the Council of ICAO to the Legal Committee, which had consisted in recommending an in-depth study of such items that had been held in abeyance and if possible, not to undo consensus. If one looked at the consensus on the present structure, one could consider that the Committee was either entrusted or not to make new proposals on structural matters. The Delegate of France was for his part in favour of debate, including challenging some situations that had already been achieved. In any case, the Committee should develop this question as a function of the mandate entrusted to it by the ICAO Council.

52. From the point of view of the French Delegation, there was no doubt that it would not be timely to challenge the present structure of a basic Convention and protocols, and the aviation protocol in this instance. The Delegate of France recalled that his country had not had such strong views during the Third Joint Session in Rome; however, the efforts made during this meeting had been successful in clarifying and setting up limits for the possible scope of application of the base Convention which would be limited to three important sectors, i.e. aviation, space and railway stock. It would be counterproductive to say that the problems of the space and railway sectors were of no interest to aviation.

53. Referring to the readability of the instrument, the Delegate of France believed that in a drafting group there was always the possibility of aligning small inconsistencies between the texts of the Convention and protocol. The French Delegation was in favour of the development of a text which would make it possible to gather all of the provisions of the Convention and protocols without creating new inconsistencies or making substantive changes, and believed that this could be made available during the Diplomatic Conference as a working instrument made available to delegations.

54. The Delegate of Italy saw the merit of having a two-tiered structure that would provide international financial benefits to different sectors. He noted the concern, reflected in the report of the Rapporteur, that the complexity of the instruments might have a negative impact on domestic support for ratification, and pointed out in this respect that the presence of ministries of foreign affairs at the Diplomatic Conference would ensure a global view and evaluation of the instruments. For working and reading purposes a consolidation would be needed, and the Delegate of Italy was confident that the Secretariat would find an appropriate mechanism to have such a consolidated text ready in time for the Diplomatic Conference.

55. The Delegate of Germany thanked the Secretariat of UNIDROIT, the Observer from IATA and the Delegate of the United States for the comments and clarifications provided, and entirely shared the views which had been offered by the United States. The current structure comprising a base Convention and separate protocols for each category of equipment had been generally accepted in the three Joint Sessions, and there was no reason to diverge from this general acceptance at this time. The German Government was interested in extending the provisions in the draft Convention to other categories of equipment, and for this purpose, believed that it would be beneficial to retain the current structure, which would apply the same general rules to the different categories and avoid “reinventing the wheel”. The convening of a Diplomatic Conference in the near future would moreover only be possible if the current structure was retained. The Delegate of Germany therefore asked that the Committee exercise caution when considering any change in the structure which might risk destroying the project. Germany believed that an integrated text would at least make it much easier to understand the new regime and its use and practice, and therefore supported the drafting of an informal, integrated version of the text to facilitate its use and practice.

56. Further consideration of the subject was deferred to the next meeting, and the meeting adjourned at 1230 hours.

LEGAL COMMITTEE – 31ST SESSION

SUMMARY MINUTES OF THE THIRTEENTH MEETING (CONFERENCE ROOM 1, THURSDAY, 7 SEPTEMBER 2000, AT 0930 HOURS)

Third Vice-Chairman of the Legal Committee: Mr. G. Lauzon

Secretary: Dr. L.J. Weber, Director, Legal Bureau

Agenda Item 3: International Interests in Mobile Equipment (Aircraft Equipment)

1. The Third Vice-Chairman recalled that the previous meeting had adjourned to allow the Drafting Committee more time to complete its work. In this respect, he was pleased to inform the meeting that the Drafting Committee had completed its work, and that its report was presented in LC/31-WP/3-20, which would be considered in due course.
2. The Committee returned to its consideration of **item 1** (*Consider the structure of the instruments*) on the list of “Suggested Items for Consideration by the Legal Committee” appended to the Report of the Rapporteur (LC/31-WP/3-4), in respect of which a number of comments had been offered at the previous meeting.
3. The Delegate of Finland observed that this topic had been discussed at length over the past year and a half, and that the arguments on both sides had remained more or less the same. There was therefore no need to reconsider the positions taken earlier, as far as Finland was concerned. The only development that had taken place since the initial discussions in Rome concerned the considerable developments on equipment-specific protocols, other than the aircraft protocol. It seemed to Finland at this point in time that it was beyond doubt other protocols would eventually also come to fruition and be adopted in due course, and would thereby complement the Convention’s general regime. Finland supported the two-tiered structure, provided that there was a comprehensive, carefully drafted consolidated version of the entire instrument made available after the Diplomatic Conference.
4. The Delegate of Colombia wished to emphasize the complexity of the present format, and supported the approach which had been suggested by some speakers, whereby the matter would be referred to the Diplomatic Conference for a decision, with the understanding that a reference document clearly unifying the relevant articles of the Convention and protocol would be prepared to assist the Conference in reviewing the subject.
5. The Delegate of Switzerland believed that it was important to retain the present approach with two instruments, these being the Convention and a protocol for each type of interest. The many

excellent reasons for this choice had already been highlighted at the previous meeting. Switzerland wished to support the proposal made at that time by the Observer from UNIDROIT, whereby a working instrument with an authentic, consolidated document would be prepared. Such a balanced approach would respond to the concerns that had been expressed at the previous meeting while maintaining the results of the efforts made thus far.

6. The Delegate of Pakistan observed from the arguments that had been advanced on the subject that no-one had disagreed on having a single Convention, except for the reason that a lot of work had been done on the protocol as well as on the Convention; this was the only argument which had been advanced in favour of a two-tier system. The Delegate of Pakistan did not think that this argument was sufficient for retaining a two-tier system, and believed that it should be possible to devote a little more time and effort in favour of a single, comprehensive document in the form of a Convention on aircraft.

7. The Delegate of China wished to support the suggestion for consolidating the Convention and protocol, for the reasons already expressed by a number of other speakers.

8. The Delegate of Australia supported the retention of the two-tier system for the reasons that had already been expressed. In doing so, Australia would join with the Delegate of Finland's suggestion that a consolidation be prepared to go along with this. The Delegate of Australia also took note of the remarks of the Delegate of Colombia, who had drawn an important distinction between complexity and convenience. He was not entirely convinced that a single document would be any less complex than using two, although it might be more convenient. The Committee should support all appropriate efforts to ensure that between the conclusion of this Committee meeting and the Diplomatic Conference, all States participating in the Conference have as complete, accurate and comprehensive an understanding of the implications of the Convention and its operation, as possible.

9. The Delegate of Uruguay supported the proposal that the Committee leave it to the Diplomatic Conference to resolve the issue of the structure of the instrument, with the understanding that in the interim, a consolidated text would be prepared to facilitate study and understanding of the provisions of these instruments.

10. The Delegate of India recalled that at the previous meeting his Delegation had clearly indicated its preference for a single Convention, in keeping with the past practice of the Organization. At the same time, however, India had indicated that there were some practical difficulties and that much work had already gone into the development of the base Convention and the aircraft-specific protocol. The Sub-Committee of the Legal Committee had been working on this project, and the Indian Delegation had therefore expressed the opinion that it could live with the dual structure, provided that a consolidated text for reference was developed at the same time. The Delegate of India was pleased to see that many Delegations had, at this meeting, expressed their opinion in favour of developing a consolidated, authentic integrated text. He believed that the Committee should go along with that course of action, and suggested that the work on developing such a consolidated text could be taken up in right earnest, possibly as a joint effort by the Secretariats of ICAO and UNIDROIT. He suggested that the text be circulated officially by ICAO to its Contracting States before the convening of the Diplomatic Conference.

11. The Delegate of the United Kingdom wished to restate his Delegation's position, in strong support of the two-tier structure. The United Kingdom believed that the two texts should form the basis of negotiations at the Diplomatic Conference, and that it would be useful to have a consolidated text for informal purposes.

12. The Delegate of South Africa wished to lend his strong support to the Delegations who had expressed the view that the Committee should proceed on the basis of a two-tier system. While this was a meeting of the Legal Committee of ICAO, and whilst as lawyers performing a legal task Delegates at this meeting had not often made the connections, South Africa believed that these discussions had been taking place in a much broader social and political context which affected the

continent of Africa in particular. It was a context of poverty on the one hand, and globalization and development on the other. The issues of poverty had been addressed in a number of international fora, including a recent summit hosted by the Japanese Government at which the most developed and most powerful nations had in fact put the question of poverty and development, and in particular the development of Third World countries, firmly on the map. It was no accident that the vast majority of the poor, illiterate, homeless and disease-ridden people lived in the Third World. It was in that context of assisting Third World countries to develop that South Africa, since its historic elections of 1994, had participated in the meetings of ICAO and UNIDROIT.

13. The South African Delegation had examined the two texts very carefully and critically, and believed that it had a duty to the people of its newly liberated nation and to the continent of Africa as a whole to do so. In studying these documents, the South African Delegation acknowledged that there were considerable advantages for the capital markets and the industry as a whole, but also believed that considerable benefits may flow from a ready and easy accession and ratification of the Convention and Protocol. South Africa believed that the benefits which the capital market would enjoy by the accession of this Convention and the Protocol must have a good *pro quo*, and that good *pro quo* must be reduced financing costs to the developing world. The accession of these documents would in fact provide the developed world with an opportunity to demonstrate its good faith, to facilitate development in the Third World and developing countries, and to help eliminate poverty and disease.

14. Insofar as it was possible to do so, the Delegation of South Africa supported fully the views articulated by the Observer from UNIDROIT on this matter. Whilst South Africa was not the country which had raised the constitutional issues, the South African Delegation had paid particular attention to these issues at this and prior meetings, and had tried to balance the interests of the capital market with the needs of developing countries, emphasizing the need for there to be protection for debtors. These constitutional issues were important. After studying the documents, South Africa believed that the Convention and the Protocol provided a balance which was easily acceptable and which should be acceptable to all, particularly to countries in Africa. South Africa was keen to ensure that the Convention and Protocol were adopted as quickly as possible, and as easily as possible by the largest possible number of States. The international community had embarked on a long journey, which had lasted in excess of twelve years. South Africa had only participated in that work for approximately four years, but did not believe that there would be any benefit to the developing world if the process of ratifying the Convention and Protocol was delayed, because it would mean that developing countries would continue to pay higher financing charges.

15. The South African Delegation believed that the only proper route, the easiest route, and in fact the safest route at the moment would be to approach the matter on the basis of a two-tier structure, namely a Convention and a protocol which South Africa felt would properly and adequately protect the interests of all the role players. South Africa shared the concerns expressed by India and Indonesia; the Convention and Protocol were very complex and it was difficult to realign them. But South Africa was also pleased by the pragmatic approach adopted by those two countries, and was certain that the concerns of those countries could be addressed adequately by having a consolidated version for reading purposes only, which would help countries who had difficulty in interpreting the two texts to understand it and adopt it into their law ultimately. For those reasons, South Africa supported the many Delegates who, at this and the previous meetings, had expressed themselves in favour of a two-tier structure.

16. The Delegate of Namibia indicated that with some reluctance, his Delegation supported the two-tier system because it realized that to not do so would be a step backwards. Namibia did so in the belief that there would be an authentic text of convenience before the Diplomatic Conference. The Delegate of Namibia therefore supported those who had proposed that the two-tier structure be retained, and in particular the Delegates of India and South Africa.

17. The Delegate of Egypt also expressed his support for the position adopted by South Africa, and would welcome a consolidated text that could be prepared and submitted to the Diplomatic Conference.

18. The Delegate of Canada indicated that the comment of the Canadian Delegation would cover four issues, these being the need for a consolidation; the structure of the instruments; the role of the organizations involved; and the timing of work.

19. The Canadian Delegation favoured the preparation of a consolidated text, since the consolidation prepared for the Legal Committee meeting had highlighted interpretation difficulties as to the reading of the Convention/protocol as a single instrument. Some of those difficulties had been addressed at this meeting, but not all. In order to continue this constructive work, it would be important to have an updated version of the consolidation available at the Diplomatic Conference. At this point, a good amount of work had been invested in the preparation of such document, and it should continue between now and the Diplomatic Conference. This would be in line with the time concerns expressed and would be to the benefit of the project. Having a consolidation might ease the sale of the instruments to politicians, governments, officials and members of the industry. It was also important to have only one version of the consolidated text, in order to avoid the existence and the use of several versions. This would ensure certainty and predictability. Finally, on the issue of consolidation, questions had been raised as to its legal value and whether any legal value should be authentic, official, or non-official. These important questions needed to be resolved. To be fair to both structures contemplated, it was also important not to forget that a question had been raised with regard to the legal value of the Convention on its own, without a protocol. That was not clear either. Canada was a party to the Vienna Convention on the Law of Treaties, and it was Canada's view that the Convention alone may not be a treaty because it did not on its own create legal obligations. The Convention would only become a treaty when it was modified by a protocol, which would be ratified by a State.

20. On the second issue, the structure of the instruments, Canada would go with the consensus at the end of the discussions, or at the Diplomatic Conference. In fact, during the three sessions this subject had been discussed and States had expressed their views, but the decision to that effect had never been taken. At first, some States had been against the dual structure, while others had favoured it. During the course of the session, some States had changed their positions to favour the dual structure. At the end of the day, the record showed that only one State favoured the single instrument but that many States had not spoken to this issue. Canada had always been flexible in this regard. It had always been the view of Canada that technically, both structures, whether a single instrument or dual, were legally feasible and that both structures would come to the same result. Implementation would be no harder, whether it was a single instrument or a Convention framework with protocols. For many States, when the treaty became the law of the land, the acceptance should not be different as long as the principles behind the instruments were to the same effect. Furthermore, both approaches should not endanger cooperation between two organizations; UNIDROIT and ICAO should continue working together.

21. The Delegate of Canada recalled that another legal concern which had been raised at the previous meeting was related to the equal treatment of mobile objects or mode of transportation before the law. It was Canada's view that either approach would not resolve this question. One would always implement one Convention or protocol before another, and they would be on equal treatment in the end. That being said, Canadian consultations with industry had recognized the value and the legitimacy of the present Convention and Protocol structure in achieving both harmonization of private law in relation to asset-based financing and the harmonization of different legal norms with various industries in relation to the same subject matter. It was a very sound principle for legal policy development, and Canada commended UNIDROIT for the work achieved. Canada also commended ICAO for its involvement and cooperation in the development of the two instruments so far.

22. The Delegate of Canada believed that the skeleton which the Convention provided for the development of the project was a good one. It was recognized here in the Committee's work. It was also recognized in the railway and satellite sectors at this point. There was no doubt that this was the path that should be followed in the future, and Canada commended UNIDROIT to continue its work on that basis and maintain the present momentum. Canada certainly did not wish to "reinvent the wheel". Thus, there was no doubt in the mind of the Canadian Delegation that with a Diplomatic Conference held under both organizations, it would be possible to adopt the Convention now under review. Canadian consultations had also indicated that the innovative form and structure of these instruments should not be an obstacle to their implementation by States and effective use by members of the industry. In this regard, the consultations indicated that before endorsing this approach, wide support by all States and by the industry involved should be clear in order to achieve broad implementation of those two instruments. Canada's consultations also indicated that its industry would prefer a single instrument, but could certainly live with a dual structure. What was important here was to develop the best product that would attract the highest number of ratifications, and a product with which everybody would be very comfortable. On that basis, it was Canada's view to remain flexible as to structure, be it a Convention and protocol or a single instrument based on the said Convention. Canada could certainly contemplate adopting the Convention in a single instrument for aircraft. Article R provided that the Convention and protocol should be read as a single instrument. If a single instrument was adopted for one industry, this would not preclude the possibility of a dual instrument approach for other industries. In any event, it was important to show both sides of the coin appropriately, and Canada would go with the consensus.

23. In summary, the Canadian Delegation commended the work of the two organizations and commended them to continue working in cooperation. The role of both organizations should be kept in mind when crossing the bridge between policy development and the operation of the instruments. That being said, it was Canada's view that those concerned could remain flexible until the Diplomatic Conference, and not at any point endanger the so-precious timing and momentum gained.

24. For the reasons which had been expressed at this and the previous meeting, especially by the Delegates of Germany, France, the United States and the United Kingdom and by the Observer from UNIDROIT, the Delegate of Spain believed that the dual structure was appropriate. The Delegate of Spain wished to emphasize two points that his Delegation felt were very important in support of this dual structure. First of all, it was a structure that was legally possible, with precedents in the United Nations in the area of criminal law, unlawful trafficking in arms as well as in the international treaties dealing with minors. Secondly, there were many advantages from the point of view of convenience and flexibility. It was a useful instrument, with a structure that would ensure the success of the Convention. The Delegate of Spain nevertheless wished to mention not only the advantages but also the excesses that might result if too many protocols were associated with the Convention. The Warsaw Convention had been amended by so many protocols that serious legal problems were encountered in interpretation.

25. The Delegate of Turkey also supported the dual structure in principle, and was also in favour of a consolidated text, although only for interpretation purposes.

26. The Delegate of Greece, whose State was a Member of UNIDROIT, wished to endorse the work already done. The Greek Delegation supported the dual structure of the text, comprising the Convention and aircraft protocol, for the reasons cited by other Delegates.

27. The Delegate of Nigeria was in complete support of the position stated by South Africa, and was also of the view that the Convention and Protocol should be ratified by as many States as possible within the shortest possible time.

28. The Observer from the Aviation Working Group supported the two-tier structure, the comments made by UNIDROIT and the need for an informal consolidation prepared by the two Secretariats in advance of the Diplomatic Conference. The AWG believed it was essential that the two Secretariats

work together between now and the Diplomatic Conference; co-sponsor the Diplomatic Conference in a constructive, cooperative way; and prepare appropriate documentation. The AWG thought that the partnership between the two Secretariats was strong, and the mix of the Delegations between the generalists, on the one hand, who were involved in commercial law and private international law, and the aviation specialists, on the other, produced an appropriate balance that would produce documents which would serve the aviation sector certainly and other sectors as well. Having worked on these documents for years, it was the Aviation Working Group's observation that the more one worked on them, the more comfortable one became. The Observer from the AWG had personally noticed over the last few days a number of new Delegations who, having taken the time to work closely with the documents, had increased their comfort level. The answer to any anxiety that people had had earlier in this meeting might simply be to continue to study the documents carefully, review them, and become experts on them. Together with an appropriate, jointly prepared consolidation, this would go a long way towards addressing the concerns that people had had when the meeting had commenced. The AWG would stand prepared to help in any appropriate technical capacity.

29. The Delegate of Indonesia indicated that his Delegation had not changed its position in regard to this issue, and was consistent with Indonesia's preference for a single instrument.

30. The Third Vice-Chairman then offered some points for reflection and suggested conclusion, and observed that there was certainly a common thread in the discussion to the effect that both structures were legally possible. There could be questions as to the validity of the Convention without a protocol, but these matters could be resolved. The meeting could thus start from the premise that both approaches were legally possible.

31. The meeting had heard from a number of States who felt very strongly in favour of the dual structure approach. Some States had said quite strongly that a single structure approach was what they wanted. Other States reluctantly agreed with the dual structure approach. The Third Vice-Chairman believed that the States that would be willing to go along with the dual structure approach—either because that was what they wanted or because they would be willing to agree to it—formed a majority of the views expressed. It was important, however, that people leave this meeting with a feeling of satisfaction. In that context, the Third Vice-Chairman thought that the meeting should focus on the issue of having a consolidated text and deal with that issue. He did not think that the solution of relegating the idea of a consolidated text to some time after a Diplomatic Conference was particularly helpful in meeting the concerns that had been expressed at this meeting. A consolidation—perhaps weak, perhaps good—had been offered by the Rapporteur, and could form the basis for improvement to take into account the decisions taken at this meeting. The Committee could perhaps work on the basis that this consolidation would be updated to reflect the work undertaken at this meeting, and would be updated in a timely fashion so that Delegates would receive it in their States in short order, so that they could use it in the consultations they may wish to have with their industry and other ministries of government. As many States had pointed out, a consolidation might not be the answer to all the problems in understanding these instruments, but it certainly went a certain way in helping the comprehension. It would thus be fair to have an updated consolidation available to States. The Third Vice-Chairman also thought that if the meeting followed this idea, it would be fair to anticipate that the consolidation could be used at the Diplomatic Conference by those States who wished to use it, and could be given some more formal character by a resolution of the Diplomatic Conference, or whatever action the Diplomatic Conference decided it wished to take.

32. As to the respective roles of the Secretariats involved, the Third Vice-Chairman observed that a wish had been expressed that they should continue to work closely together on this project. The Legal Committee could do nothing better than to endorse that wish, which was an excellent wish and which was called for. This would thus be expressed as a wish of the Committee in its report. As far as the actual participation of the UNIDROIT Secretariat in the development of the consolidation that came out of this meeting, he would expect that the ICAO Secretariat could find the means to involve the UNIDROIT Secretariat in that task.

33. The Delegate of the United States agreed in large measure with the Third Vice-Chairman's effort to provide a summation for the report of the Committee. There were two matters, however, that the United States wished to explore further. The first was that in the development of a consolidated text, the United States thought it was absolutely critical to assure that there were appropriate, cooperative and effective relations between the two organizations. For that to be done between the two organizations, the United States suggested that the meeting request the Rapporteurs of both organizations to work together and be responsible for that documentation. The Delegate of the United States knew that the Rapporteur of UNIDROIT would be willing to undertake that task, and could be aided by the Secretariats of both organizations. He thought this would be the appropriate way to proceed, and in fact would establish the reality of what the Third Vice-Chairman had other suggested in his good summation that there be effective coordination between the two bodies.

34. The Delegate of the United States did not wish to speak in terms of numbers, but had kept track of the various speakers and believed it was completely correct to say that there was a very strong majority in favour of the two-tier structure, not simply a majority. Although some had supported the two-tier structure reluctantly, the large majority of speakers had favoured that solution. The United States believed that that was the appropriate and fair characterization to be included in the report so that the flavour of meeting could be properly presented to the ICAO Council.

35. The Delegate of Afghanistan fully supported the conclusions offered by the Third Vice-Chairman, as well as the proposal by the Delegate of South Africa.

36. The Observer from IATA believed that the Third Vice-Chairman had had a difficult task in trying to sum up a rather extensive debate of the last two meetings, and commended him for trying to find an appropriate balance between reflecting the views expressed and still opening a pathway ahead that would be effective and efficacious. Also, in his capacity as Rapporteur, the Third Vice-Chairman had provided a great service in drafting informally a single text which had been invaluable during the course of consideration of the Convention and Protocol. IATA fully supported and endorsed the view that the Third Vice-Chairman had expressed, to the effect that updating that document would be of immense assistance to all Delegations in the period between the conclusion of this meeting and the Diplomatic Conference.

37. The Observer from IATA wished to dispose of one issue that Delegates should not be concerned with, having to do with the legal validity of the Convention per se, in the two-tiered system. The documents clearly provided, first of all, that the Convention and a protocol would be read as a single instrument. Secondly, the documents clearly provided that the Convention could not come into force as an international legal instrument without a protocol coming into force. Taking into account what the Delegate of Canada had stated earlier in the meeting, it was virtually inconceivable that a State would sign and ratify the Convention alone, because the Convention alone had no legal status as an instrument, without a protocol. If that was the case, i.e. that any State considering its interests would sign and then ratify a protocol as well as a Convention, the issue of the legal status faded away very rapidly. Having some experience not only as an international lawyer but in connection with the development of the Vienna Law of Treaties, the Observer from IATA could assure all Delegates that not only was this process absolutely legal and proper, but there really was no problem. The Observer from IATA did not think that anyone should be left wondering about the legal status of the Convention, since that was quite clear.

38. The Observer from IATA thought that the summation just offered by the Third Vice-President was very clear, and that his urging of the cooperation between UNIDROIT and ICAO was not only apt but was essential, and that the sooner a modified single text could be produced based on the work which the Third Vice-Chairman had already done, taking into account the discussion and decisions of the past two weeks, the sooner the preparations could go forward for an effective Diplomatic Conference. There would be a requirement for consultations between now and then. The Aviation Working Group had offered its expertise and assistance, and that should be gratefully accepted. The

Observer from IATA had no doubt whatsoever that there would be a number of meetings around the world between now and the Diplomatic Conference which would help clarify issues that needed clarification, consolidate issues which needed consolidation—all of which would lead to a higher appreciation and understanding of the text. The Observer from the AWG had been absolutely clear when he had said that the comfort level rose in direct proportion with the discussion and exposure to the instruments. The Observer from IATA was also sure that there would be new colleagues around the table at the Diplomatic Conference who had not been involved in the process to date, and who would have questions that would have to be responded to. Their comfort level would be increased and enhanced as they became more familiar with the text.

39. In commending the Committee on the work done at this Session, the Observer from IATA looked forward to the report which would issue from this meeting, which would make clear that these documents now, as amended, as taken into account in the informal consolidated text, were ready and ripe to move forward as quickly as possible to a Diplomatic Conference.

40. The Observer from UNIDROIT wished to join previous speakers who had commended the Third Vice-Chairman on his success in steering this difficult item through potentially rough waters. The Third Vice-Chairman's summary that both structures were legally possible was of course welcome. The Observer from UNIDROIT did not think that the three joint sessions had had doubt in this respect. The Convention as such would never be operational, but the substance—with valuable, modernizing, forward-looking principles of the law of secure transactions—was in the Convention and therefore one could not say that it was, as such, worthless. It was the general part which was made operational by the equipment-specific protocols.

41. Referring to the summary which the Third Vice-Chairman had offered in terms of the interventions in favour of either of the two alternatives, the Observer from UNIDROIT trusted that the record would clearly indicate that there had been three distinct groups, with a vast majority of countries who strongly supported the two-tier structure, two or three reluctantly able to live with it, and one country which would support it in either case. The Observer from UNIDROIT also thought that it would be very advisable for this meeting of the legal Committee were to give a clear mandate to the Council of ICAO—as he would do with the Governing Council of UNIDROIT—for a joint elaboration of an integrated reading version which would make working with the two documents easier, as soon as possible.

42. The Third Vice-Chairman concurred that there had clearly been three groups, and that to indicate there had been a strong preference for the dual structure would be a statement of fact. The Delegates of the United States and UNIDROIT had suggested that there be a clear mandate to authorize rapporteurs to work closely in preparation of a consolidated text, and the Third Vice-Chairman assumed that this would take place later on down the road. The way he saw it, the Legal Committee had just met and had made some changes. The Committee had had the honour of the presence of the Secretary General of UNIDROIT, who would have to refer back to his constituency before giving his agreement to all of the changes which the Committee had made. It might well appear to those constituents that some of the changes needed to be rethought. The reference made by the Third Vice-Chairman to developing a consolidated text “immediately” was to be interpreted as within a week or two. This task would be entrusted to the Secretariat, presumably with the approval of the Chairman of the Legal Committee who would be elected eventually. The consolidated text would be circulated as the Legal Committee's thinking on the subject. Once there was a formal indication of the position of UNIDROIT on the subject, it would be appropriate to develop some further text that took into account the UNIDROIT views.

43. The Delegate of the United States commended the Third Vice-Chairman on his efforts to arrive at an appropriate solution. It did, however, remain for some further coordination and cooperation potential to be developed, and the United States thought that this could be done without any delay whatever between the two bodies. While recognizing the need for the Secretary General of UNIDROIT

to consult with his constituency and take whatever steps were necessary to establish that formal process, the Delegate of the United States failed to see why the Committee could not start off on the right foot quickly and immediately. The results of this meeting would undoubtedly be in the hands of the Rapporteur for UNIDROIT without delay, and it would be appropriate for the Third Vice-Chairman to consult with him, in his individual and personal capacity, to discuss those problems that might have arisen in terms of the proper approach to consolidating the text. The United States believed that it would be very appropriate at this time to start off on the right foot. It was surely something that could be done easily and expeditiously. The Third Vice-Chairman indicated that although the work of the Legal Committee could not be made dependent on the will of someone who was not a member of the Legal Committee, he would speak with the Rapporteur for UNIDROIT.

44. The Observer from the Aviation Working Group commended the Rapporteur and the Secretariat, but wished to point out that a small number of people present at this meeting had already carefully reviewed the draft consolidation and had comments. He assumed that that handful of people were invited to submit those comments to the Rapporteur, and sought confirmation of this. The Third Vice-Chairman wished to reassure those present that the consolidation was a mechanical exercise which would not touch upon any of the principles involved. In the process of consolidation, even a mechanical one, it was always useful to consult, and it would be foolish to ignore any special views which might be offered on how a consolidation was to take place. He would therefore have no difficulty receiving comments from anyone who had comments to offer, provided that they were given promptly.

45. The Third Vice-Chairman then drew the Committee's attention to **LC/31-WP/19**, containing the **Report of the Informal Working Group on Article XXII of the draft Protocol**. Introducing the report, the Delegate of Sweden, as Chairman of the Informal Working Group pointed out that two words had been omitted in the draft. The proposed second sentence to the Article should, as the group had agreed the previous day, read as follows (missing words shown in italics): "However, with respect to rights or interests not covered *or affected* by the present Convention, the Geneva Convention shall not be superseded." The intention had been to make a complete provision to the extent possible. In the original draft, the wordings that had set out the relationship were just the last few ones, commencing with "as it relates to aircraft as defined in this Protocol and to aircraft objects". As the group saw it, the Geneva Convention could still apply to such aircraft unless there was an international interest registered in it. If there was an international interest registered in it, the Convention would apply and other interests in the aircraft would be affected in the way that they could lose in a dispute over priority in the aircraft. A sentence had therefore been added, spelling out that rights or interests that are not covered or affected and that could not be subject to an application of the Convention could still be governed by the Geneva Convention. That was the thrust of the wording. Once again, in practice this meant that if there was no international interest registered in an aircraft, the Geneva Convention could still be applicable to that aircraft and States may still use their system in relation to interests registered according to the Geneva Convention rule or to which the Geneva Convention rule could apply.

46. The Observer from the Aviation Working Group, who had been involved in the meeting of the Informal Working Group, believed that this was an appropriate way to address the issue identified by the ICAO Secretariat. The balance was the need to ensure the privacy of this treaty for anything it affected, against the need to preserve the Geneva Convention to the extent that it was not directly addressed or affected by this treaty. The two other approaches which had been suggested were either much more complicated and therefore apparently unacceptable, or too general and unacceptable from the AWG's point of view.

47. The Delegate of Italy congratulated the Delegate of Sweden for having arrived at the text in WP/3-19 which, in the view of the Italian Delegation, was very clear and complete and was able to take into account the different positions.

48. The Third Vice-Chairman observed that there was no dissent from this text and proposed that it be included in the Protocol as drafted. He therefore added his own congratulations to the Informal Working Group and its Chairman for having provided the meeting with such an acceptable solution.
49. The Committee then directed its attention to **LC/31-WP/20**, which contained the **Report of the Drafting Committee**. It was recalled that a large number of items had, in the course of the Committee's work, been referred to the Drafting Committee for resolution or refinement. As a result of its work, the Drafting Committee had made a number of modifications which were reflected in the text as set out in the attachment to WP/3-20.
50. At the time of adjournment, the Chairman of the Drafting Group had provided a detailed introduction to LC/31-WP/3-10, further consideration of which was deferred to the next meeting.
51. The meeting adjourned at 1230 hours.

LEGAL COMMITTEE – 31ST SESSION

SUMMARY MINUTES OF THE FOURTEENTH MEETING (CONFERENCE ROOM 1, THURSDAY, 7 SEPTEMBER 2000, AT 1400 HOURS)

Third Vice-Chairman of the Legal Committee: Mr. G. Lauzon

Secretary: Dr. L.J. Weber, Director, Legal Bureau

Agenda Item 3: International Interests in Mobile Equipment (Aircraft Equipment)

1. The Third Vice-Chairman recalled that at the previous meeting, the Chairman of the Drafting Committee had provided an overview of the changes to the draft Convention and the draft Protocol which the Drafting Committee was proposing in LC/31-WP/20. The Third Vice-Chairman invited the meeting to review the Report of the Drafting Committee, Article by Article.
2. Referring to Article 1 (*Definitions*), the Delegate of France had difficulty with the proposed inclusion of the words “and includes a debtor in possession if permitted by the applicable insolvency law” for the definition of the term “insolvency administrator”. The text proposed might give one to understand that this was always the case, i.e. would always include a debtor in possession. The Delegate of France suggested that the wording be modified to indicate that the term “may involve” a debtor in possession, to better reflect the idea that the legal systems of States would recognize bankruptcy or insolvency. The Chairman of the Drafting Committee indicated that it was clear the concept of “debtor in possession” did not exist in all insolvency systems. However, the intention had been that the definition should extend to such persons in all cases where the concept was permitted by the applicable insolvency law. It was for this reason that the Drafting Committee had not agreed to the modification just referred to by the Delegate of France. The Third Vice-Chairman observed that the text proposed in WP/20 did give rise to an intellectual problem, since as worded it could be understood to mean that the concept of an insolvency administrator would include a debtor. The Third Vice-Chairman requested the Secretariat to review the wording.
3. The Delegate of Sweden recalled that the Committee had referred Article 8, paragraph 3 (Vesting upon judicial intervention) to the Drafting Committee, and wished to know why it was not the subject of a report in WP/20. The Chairman of the Drafting Committee recalled that the point which had been referred to the Drafting Committee on the basis of the report of the Rapporteur had concerned the words “reasonably commensurate”. The Rapporteur had questioned whether that would enable the vesting of the object by the court where the amount of the secured obligation was in excess of the value of the object, and the Drafting Committee had been satisfied that that was the case. The Chairman of the Drafting Committee recalled that the concern expressed by Sweden related to where the value of the object was more than the secured obligations, and therefore where the debtor would appear to be getting an object that was worth more than he was owed. The Drafting Committee considered that the wording of “reasonably commensurate” did not raise a problem with the debtor

getting an amount that was considerably in excess of what he was owed; that there was a margin of appreciation offered by the “reasonably commensurate”; and that it was not necessary to make a change. On a suggestion put forward by the Observer from the Aviation Working Group and supported by the Delegate of Sweden, the word “reasonably” was deleted from the text.

4. Some background information on the proposed deletion of Article 15.1 c) was provided by the Chairman of the Drafting Committee, who recalled that in the new Article III in the Protocol, a list had been included of the provisions in the Convention which were to be applied in respect of contracts for sales and prospective sales, and the way in which Article III made the Convention work in respect of sales and contracts of sales. References to international interests were to be read as references to contracts of sales, and references to prospective international interests were to be read as reference to prospective sales. The provision in respect of contracts of sales in Article 15.1 c) of the Convention became redundant, since it duplicated what had been achieved through Article III of the Protocol. The Third Vice-Chairman observed that acceptance of the proposed deletion would depend upon what the Committee decided in respect of Article III of the Protocol.

5. On a suggestion put forward by the Delegate of India, New Article 15 (1A), relating to certain proprietary rights to be given to the Supervising Authority, was transferred to Article 16.

6. Referring to new paragraph 5 of Article 26 (*Legal personality; immunity*), which would allow the Registry to waive the immunity conferred by paragraph 4 of that Article, the Delegate of France wished to record his objection, since he believed that it did affect the substance.

7. The Chairman of the Drafting Committee reminded the meeting of the context of the proposed amendment to Article 28(6) (*Priority of competing interests*), recalling that the change had arisen in the context of the Committee’s consideration of clarification of the provisions relating to priority of charges over engines. The effect of Article 28(6) had not appeared entirely clear because of the inclusion of the words “or after its removal from”. They had seemed to give rise to ambiguity as to how an interest in an item held prior to its installation would apply when that was installed on an object. The Chairman of the Drafting Committee pointed out that Article 28(6) was not exclusively concerned with engines, because it was concerned with holders of interest in an item rather than holders of international interests, and it could therefore apply to some item of equipment that an interest existed in, that was then attached to a larger item, because this was a provision in the Convention and not in the Protocol. It was concerned therefore with the subsistence of that right vis-a-vis the holder of an international interest who benefited from the Convention. The position of aircraft engines was dealt with later on in a more specific way in the Protocol. Aircraft engines were themselves objects in terms of the Convention and Protocol, in which international interests could exist; therefore, the priority and preservation of those interests was a matter dealt with in the Protocol rather than by the general rules of more limited application in the Convention.

8. The Third Vice-Chairman informed the meeting that Articles 40 (*Sale and prospective sale*), 41 (*Exclusivity of choice of forum*) and 42 (*Jurisdiction under Article 12(1)*) and Article XX (*Modification of jurisdiction provisions*) of the Protocol were to be considered as somewhat of a package. Some background information in this respect was provided by the Chairman of the Drafting Committee, who recalled that the basic change which the Drafting Committee had been asked to make was to provide for exclusive jurisdiction in Article 41.1 on the basis of an agreement between the parties for such jurisdiction. The Article provided that the courts of the Contracting State chosen by the parties would have exclusive jurisdiction with the qualification, unless otherwise agreed, i.e. the agreement may not provide for such exclusive jurisdiction in all circumstances. The text of paragraph 2 of Article 41 had been deleted and was now included within Article 41, paragraph 1. The changes that had then been made in respect of the opening words of Article 41.1, i.e. the inclusion of the words “subject to Articles 42 and 43”, were intended to make clear the relationship between Article 41, providing for exclusive jurisdiction based on the party’s choice, and the jurisdiction in respect of remedies provided for under Article 42 and for orders against the Registrar under Article 43.

This was intended to clarify the relationship between the jurisdictional provisions. Some additional language had been included in Article 42, paragraphs 1 and 2, as proposed by the Delegation of the United States, to clarify the basis of jurisdiction of the courts under Article 42, paragraphs 1 and 2.

9. An editorial suggestion put forward by the Delegate of India in connection with Article 42.1 was accepted.

10. The Delegate of France was concerned that too much text had been deleted from Article 41, and suggested that the Article refer to “the courts of a Contracting State chosen by the parties *to a transaction of any claim*”. The French Delegation did not wish to see a situation in which anybody who felt they were a party could consider that they were covered by this Article. The Observer from the Aviation Working Group agreed that the use of the word “transaction” after “parties” would avoid the ambiguity which might arise if the words “to an agreement” were used, because of the contract of sale issue.

11. The Delegate of the United States was not comfortable with the drafting suggestion put forward by the Delegate of France. The United States would have preferred to have dealt with this matter in the Drafting Committee, for the reason that the word “transaction” was not a defined term, and might inadvertently introduce an element that could expand or contract the meaning of the sentence. For example, it might be so construed as to exclude the assignment of a claim which was then subject to an agreement as to the appropriate tribunal. The Delegate of the United States wondered if the Delegate of France might be willing to leave the text as it was, with the understanding that those who were interested in the issue would examine it after this meeting and if a proposed change was appropriate, make it at the Diplomatic Conference. To introduce language in this very important provision which may alter the scope without careful observation was something the Committee should be very cautious about. The United States Delegation would, for example, wish to consult with others about how the term “transaction” was defined in their systems, and what effect it might have on this Article.

12. The Delegate of Canada believed that in Article 41, paragraph 1, the words “in respect of any claim brought under this Convention” should follow the words “have exclusive jurisdiction”. Without taking a position on the proposal of the Delegate of France, the Delegate of Canada believed that his Delegation’s remark would be even more valid if the words “to a transaction” were included after “by the parties”.

13. The proposals put forward by the Delegates of France and Canada were the subject of consultations during a brief recess called by the Third Vice-Chairman, after which the Chairman of the Drafting Committee indicated that Members of the Drafting Committee considered the suggestion put forward by France to be a sensible proposal which would clarify the text without making any change of substance. A second issue which had been noted concerned Article 42, paragraph 1. The paragraph referred both to the courts chosen by the parties and to the courts of a Contracting State on the territory of which the object was situated; this reference to the court chosen by the parties did not appear in Article 42, paragraph 2, however. This was an error which had arisen out of the speed with which the jurisdictional provisions had been considered and had not been noted earlier. The Chairman of the Drafting Committee, while recognizing that not all Members of the Committee had been consulted, wished to put forward a proposal for a change in respect of Article 42, paragraph 1 in order to align it with Article 41. As amended, Article 42, paragraph 1 would read “The courts of a Contracting State chosen by the parties and the courts on the territory of which the object is situated ...”. The omission of the reference to the courts chosen by the parties should also be corrected in Article 42, paragraph 2. It was further pointed out by the Observer from the Aviation Working Group that the use of the word “agreement”, suggested earlier by the Delegate of Colombia as an alternative to the word “transaction” proposed by France, had not met with support during the consultations because the word “agreement” was a defined term which would not pick up an assignment of an international interest and would not pick up a contract of sale. The Delegate of the

United States concurred that the word “agreement” could not replace the proposal of the Delegate of France.

14. As a Member of the Drafting Committee, the Delegate of India could give his consent to the redrafting suggested by the Chairman for Article 42, paragraph 1, but did not think that any modifications were necessary to Article 42, paragraph 2.

15. Some clarifications were offered in response to concerns expressed by the Delegate of India. The Third Vice-Chairman observed that there was a majority in favour of the proposals put forward by the Delegate of France and by the Chairman of the Drafting Committee, which would be retained, with the understanding that the concerns of the Delegate of India would be noted in the report of the meeting and could form the basis for reopening the issue at the time of the Diplomatic Conference.

16. Referring to the proposed deletion of Article Q (*Criminal and tortious liability*), the Delegate of Sweden indicated that he did not oppose such deletion but wished to point out that in WP/3-13, Sweden had presented a suggestion regarding Article 28. Article Q had been drafted by a group of States to address the concerns raised by Sweden related to Article 28. The Swedish Delegation did not wish to burden the Committee by bringing up the proposal on Article 28, but reserved its position until the time of the Diplomatic Conference. Sweden also requested that the Committee note that in the consultation it had had with interested parties, reworded versions of Article Q had been suggested that may address the problem. Such proposals might be put to the Diplomatic Conference.

17. The Delegate of France requested that the Committee note a comment which the French Delegation wished to record with respect to Article 44 (*General jurisdiction*), which was not addressed in the text of the Report of the Drafting Committee but which had nevertheless been the subject of a proposal by France in that group. The Drafting Committee had not had the requisite time to take the French Delegation’s proposed amendment into consideration. The same was true in this meeting, although the matter would probably be brought up at the Diplomatic Conference. The proposal related to a replacement of the current wording with a text indicating that except as provided in Articles 41 and 43, the courts of a Contracting State on whose territory the debtor is situated shall have jurisdiction (or may exercise jurisdiction) in respect of claims brought under the Convention. The Delegate of the United States indicated that if mention of this was to be included in the report, the United States would want also included in that section of the report that a strong concern had been raised that such a change would, in very major ways, alter the structure of the jurisdiction provisions in a very negative fashion.

18. There were no further views regarding the text of the draft Convention and the Committee directed its attention to the draft Protocol, also attached to LC/31-WP/3-20. Some paragraph renumbering and other editorial matters were referred to the Secretariat for verification.

19. When considering Article V(3) (*Formalities and effects of contract of sale*), the Delegate of Canada expressed concern with the second sentence of the paragraph, which concluded with the words “or until expiry of the period specified in the registration.” Canada’s concern was that in the context of a prospective sale, the parties were presumably negotiating and a registration was effected in the Registry. It was assumed that in the great bulk of cases, the parties would reach an agreement and that that initial registration would set the priority or at least would be the record of that sale. As the clause presently read, there was a suggestion that when making a prospective registration of a sale, one must specify a period during which that registration was effective. If that was so, in the case of the successful sale there would be the need to renew the registration or implement a new registration. Although the clause did not say that it was a requirement that a period of registration be specified, the Delegate of Canada drew the attention of the Committee to Article 20 of the Convention which used exactly the same words to deal with registrations of international interests. He believed it was well understood in that context that a period must be specified when one was registering an international interest. Since the same words and the same formulation were used in both Articles, the conclusion would be that one must specify a period for a prospective registration, and the Canadian Delegation

thought that was a mistake. The Delegate of Canada suggested, however, that the problem could be readily addressed very simply by including after the word “period”, the words “if any”. That would leave it open to the parties. If they wanted to specify a period, they could; otherwise, that registration of the prospective sale would be permanent, unless the parties wanted to discharge it. The Observer from the Aviation Working Group supported this suggestion, which the Committee agreed to.

20. The Delegate of South Africa informed the meeting that the change proposed by the Drafting Committee to Article XV(2) (*Modification of assignment provisions*), in respect of which South Africa had first raised the issue, did address his Delegation’s concerns.

21. Referring to Article XIX (*Additional modifications to Registry provisions*), the Delegate of Australia was not entirely convinced that the language being used captured the spirit or intent of the modifications that had been proposed in the Plenary. His concern was that in attempting to capture the basis on which funds could be recovered for the costs of the operation of the Supervisory Authority, reference was made exclusively to supervising and regulating the International Registry. There was no reference at all to the Supervisory Authority itself, and the responsibilities of the authority as set out in Article 16(2) (*The Supervisory Authority and the Registrar*) of the Convention could be read as going beyond the kinds of activities that would necessarily be captured by the terms used in WP/3-20. Some language which his Delegation had proposed and which seemed to have been accepted by the Chair and endorsed, at least tacitly, by the Plenary had not been retained. The Chairman of the Drafting Committee indicated that the text in WP/3-20 had appeared to be the most economical way of achieving the desired result. During the Drafting Committee’s deliberations, he had forgotten that some language had been proposed earlier by the Delegate of Australia which the Committee should have considered in this context.

22. On a suggestion put forward by the Delegate of India, it was agreed that the language of the paragraph referred to above by the Delegate of Australia would be retained, but would be supplemented by the words relating to the Supervisory Authority at paragraph 3:83 of the Report of the Legal Committee.

23. Without further comment, the Legal Committee completed its review of the Report of the Drafting Committee in LC/31-WP/3-20, and the meeting adjourned at XXXX HOURS.

DCME – IP/4
29/10/01
English and French only

THIRD REPORT OF THE INTERNATIONAL REGISTRY TASK FORCE

October 10, 2001

Professor Herbert Kronke
Secretary General
UNIDROIT
Via Panisperna 28
00184 Rome, Italy

The Honorable Professor Herbert Kronke:

Third Report of International Registry Task Force

Enclosed is the Third Report prepared by the Registry Task Force consistent with term of reference 1.(e) of the Proposal concerning the Establishment of The International Registry (UNIDROIT CGE/Int.Int./3- WP/30) adopted in Rome in March, 2000.

The Registry Task Force is ready to assist on request by way of clarification, advice, or drafting concerning implementation of the International Registry.

The Third Report with documentation is currently being sent to the ICAO Director of Legal Bureau.

Sincerely,

Georges Grall, Co-Chairman
France

Joseph R. Standell, Co-Chairman
United States

THIRD REPORT OF THE INTERNATIONAL REGISTRY TASK FORCE

(for Registration of Interests in Aircraft Objects)

- I. Introduction
- II. Work in Geneva (September 10-12, 2001)
- III. Assigned Papers
- IV. Cost of the Registry
- V. Timing of the Registry
- VI. Other Outstanding Issues
- VII. Future Work

Attachments:

- Attachment 1 – Draft Regulations for the International Registry
- Attachment 2 – Draft Outline on Private-Law Aspects of the Relationship between the Supervisory Authority and the Registry
- Attachment 3 – Liability of the International Registry
(previously titled “Cost of Insurance for the International Registry System”)
- Attachment 4 – Funding/Cost Recovery Methods for the New International Registry

THIRD REPORT OF THE INTERNATIONAL REGISTRY TASK FORCE

Respectfully submitted to UNIDROIT and ICAO
on October 10, 2001

I. INTRODUCTION.

1. The following countries, inter-governmental organizations, and non-governmental organizations are active participants of the Task Force: Brazil, Canada, Finland, France, Ireland, Japan, Singapore, Sweden, Switzerland, United States, ICAO, UNIDROIT, IATA, and AWG. Other countries such as Norway, Spain and Portugal are not presently active.

2. The Task Force was formed at the Joint Session in Rome in March 2000. The Task Force was asked to consider certain Terms of Reference (UNIDROIT CGE/Int.Int./3-WP/30; ICAO Ref. LSC/ME/3-WP/30). France and the United States were appointed co-chair.

3. The first meeting was in Paris in June 2000. The Task Force prepared documents relating to Request for Proposals for the International Registry. Additionally, certain expert papers were also submitted. (See First Report with attachments, as submitted to the Secretariats on July 28, 2000.)

4. The Task Force met informally in Montreal in August/September 2000 incident to the ICAO Legal Committee's 31st Session. Nine countries, an inter-governmental organization, and a non-governmental organization volunteered to prepare preliminary papers in six expert subject areas.

5. The Task Force met in Dublin in January 2001. Documents relating to the acquisition process for the International Registry were approved for submission to the Secretariats. All assigned papers were discussed.

6. The Task Force met in Washington, DC, in February 2001 to finalize discussion of a document titled "Basic Features of the International Registry", which document was made an attachment to the Request for Proposals.

7. The work of the Task Force in Dublin and Washington, DC, was submitted to the Secretariats in a Second Report dated February 20, 2001. The Second Report attached final acquisition documents and recommendations as to their issuance (Second Report, II. 10.)

8. The Task Force met in Geneva in September 2001 to finalize expert papers, and consider cost and timing of the International Registry.

II. WORK IN GENEVA (September 10-12, 2001).

9. The meeting in Geneva was graciously hosted by the Swiss delegation. The Task Force wishes to acknowledge its gratitude to the University of Geneva and its Faculty of Law for its extraordinary cooperation in making its facilities and services available for use by the Task Force.

10. The meeting was completed as planned despite the events occurring in the United States on September 11, 2001.

III. ASSIGNED PAPERS.

11. The following papers were presented and discussed in Geneva, and are submitted as attachments to this Third Report.

12. "Draft Regulations for the International Registry" (Switzerland and Japan). Switzerland has been primarily responsible for the presentation, response to discussion, and final revision of the Draft Regulations.

13. Preparing comprehensive Draft Regulations has been a particularly difficult undertaking. It represents an attempt to reflect the requirements of the Convention and Aircraft Equipment Protocol, as well as to describe the International Registry, and to provide important user information about matters such as applications for registration, searches, and fees.

14. The Draft Regulations were considered section-by-section. Consensus was achieved.
15. Although the Draft Regulations represent the best present efforts of the Task Force, they must be considered as an on-going process. That is because the answers to many important questions concerning design, cost, and timing are not known at this time. It is believed that when answers are known they may be accommodated in the structure of the Draft Regulations.
16. “Private-Law Aspects of the Relation between the Supervisory Authority and the Registry including Proprietary Rights in Software/Hardware.” This paper is the result of unification of two papers separately assigned to UNIDROIT/France and Ireland/Singapore. The legal aspects of proprietary rights are intrinsic to the relationship between the Supervisory Authority and the Registry. Depending on the countries where the Supervisory Authority and the Registrar are located, domestic private law (common or statute law) and international private law will apply. Therefore, once these countries are chosen, the contractual relationship between the Supervisory Authority and the Registrar can be identified.
17. However, this study considers four areas pertinent to any private-law arrangements between the Supervisory Authority and Registrar:
- Rights, Duties and Liabilities in Setting up and Running the Registration system
 - Proprietary Rights
 - Infrastructure-related Aspects
 - Dispute Resolution (measures against the Registrar, immunity of the Supervisory Authority, Arbitration).
18. “Liability of the International Registry” (Canada and Sweden). Cost of insurance to compensate for errors or omissions of the Registrar may be a significant element of the overall cost of operating the Registry, which will be principally supported by user fees.
19. It was stated that cost information has been difficult to develop because of the reluctance of insurance carriers to discuss premium costs in the absence of specific information about the design of the Registry and the extent of liability risk and limitations. Nevertheless, an attempt to quantify the cost is attached to the paper.
20. It is significant to note that the paper attempts to assist in the development of Article 27 1.– of the Convention with respect to the bracketed language relating to exceptions from liability.
21. Consideration by the Task Force of the draft language of the proposed Article 27 focused largely on the scope of force majeure. After considerable discussion, the Task Force decided to defer further consideration pending the input of certain Task Force members. While full consensus on all aspects of the wording of Article 27 has not been reached, considerable progress has been made. Nevertheless, Task Force members may express their respective views with regard to Article 27 at the Diplomatic Conference.
22. The paper discusses alternative methods to traditional insurance company coverage, as allowed under Convention Article 27 2.- in the form of “a financial guarantee.”
23. “Funding/Cost Recovery Methods for the New International Registry” (Finland and the AWG). The paper includes information about use and cost assumptions; funding cost options; and a specific Cost Recovery Mechanism.
24. As noted in paragraph 19 concerning Cost of Insurance, it is extremely difficult to quantify the eventual cost of the Registry. While competent technical review of the proposed Registry seems to suggest that start-up costs for development of hardware, software, and security will be manageable, it is difficult to quantify global costs at this time. It was pointed out that on-going costs relating to numbers of personnel needed to support the system are not known at this time. An example was given that the nature of the system’s “help desk” to assist users may greatly affect cost. Nevertheless, an attempt to address costs was made to the extent possible based on the limited information provided.

25. Presentations regarding electronic access and interaction with the International Registry software were made by SITA (prototype) on September 10 and by Bureau Veritas on September 11. (At previous meetings, Canada and Singapore have made presentations.)

IV. COST OF THE REGISTRY.

26. As discussed in paragraphs 18 through 24 above, the Task Force is aware of the importance of minimizing Registry costs and of the desirability that information relating thereto be available at the Diplomatic Conference.¹

27. Determining costs will depend in part on making decisions with respect to system variables (e.g. nature of help desk), with input from technical system developer(s) and potential system operator(s).

V. TIMING OF THE REGISTRY.

28. Decisions made during the Diplomatic Conference concerning ratification and entry into force will affect when the Registry becomes operational.² There was concern expressed about delay in the Registry becoming operational. It was suggested that the Diplomatic Conference consider the desirability of advancing the process for establishment of the International Registry prior to creation of the Supervisory Authority by setting up an appropriate interim mechanism, for example, a Provisional Supervisory Authority, in accordance with the Vienna Convention.

VI. OTHER OUTSTANDING ISSUES.

29. In addition to the cost and timing of the International Registry, other issues may need to be resolved, as illustrated in paragraph 27 of the Task Force's Second Report.

VII. FUTURE WORK.

30. There was consensus that there remained much to be done with respect to establishment of the International Registry, and that the Task Force might continue to contribute if appropriately constituted as a committee at the Diplomatic Conference.

On behalf of the *ad hoc* Task Force this 10th day of October, 2001:

Georges Grall, France

Joseph R. Standell, USA

Attachment 1

Draft regulations for the International Registry-09/14/2001.

Convention on international interests in mobile equipment Protocol to the Convention on international interests in mobile equipment on matters specific to aircraft equipment

Regulations for the International Registry

(art. 16 2 c of the Convention and XVII of the Protocol)

DRAFT

CONTENTS

CHAPTER 1	GENERAL PROVISIONS
CHAPTER 2	STRUCTURE OF THE REGISTRY
CHAPTER 3	PERSONAL DATA RECORDS

¹ With the Second Report, the Task Force provided Request for Proposal documents and a recommended schedule for delivery thereof, which is one method of deriving cost information.

² The Second Report provides some timing information incident to a competitive acquisition approval. See Second Report, VI. Paragraph 26. "c" and particularly Request for Proposal, paragraph 2.i.

CHAPTER 4	AIRCRAFT OBJECT FILE
CHAPTER 5	APPLICATION FOR REGISTRATION IN THE REGISTRY
CHAPTER 6	REGISTRATION IN THE REGISTRY
CHAPTER 7	OTHER REGISTRATIONS
CHAPTER 8	DURATION OF REGISTRATION
CHAPTER 9	SEARCHES IN THE REGISTRY
CHAPTER 10	OPERATIONAL COMPLAINTS
CHAPTER 11	CONFIDENTIALITY
CHAPTER 12	STORAGE OF DATA
CHAPTER 13	STATISTICS
CHAPTER 14	RELATIONS WITH THE SUPERVISORY AUTHORITY
CHAPTER 15	RELATIONS WITH THE ENTRY POINTS
CHAPTER 16	FEES
CHAPTER 17	FINAL PROVISIONS

CHAPTER 1 GENERAL PROVISIONS

- 1.1 The International Registry (hereinafter: the Registry) is a notice-based electronic registration system. It has a scalable (Internet or Intranet) architecture. Its is established for the registrations provided for in the Convention on international interests in mobile equipment (hereinafter: the Convention) and in the Protocol to the Convention on international interests in mobile equipment on matters specific to aircraft equipment (hereinafter: the Protocol).
- 1.2 The Registry can be accessed 24 hours a day, 7 days a week, except for maintenance (performed outside peak periods) or technical problems.
- 1.3 Technical support is provided to users by a help desk of the Registry, which is available 24 hours a day, 7 days a week via telephone and/or electronic mail.
- 1.4 The Registry drafts and provides the electronic forms required for its operation.
- 1.5 The technological structure used for the electronic transmission of data to the Registry must be established in compliance with international practice and standards, in order to provide an efficient, reliable and secured access to the database by means of electronic transmission.

CHAPTER 2 STRUCTURE OF THE REGISTRY

- 2.1 The Registry is composed of personal data records and of aircraft object files.
- 2.2 A personal data record is kept for each (natural or legal) person, and for any other entity, identified in an application to the Registry.
- 2.3 An aircraft object file is kept for the identification and registration of each aircraft object; it is numbered and shows the relevant data from the personal data records. All registrations concerning an aircraft object are effected on its allocated file.

CHAPTER 3 PERSONAL DATA RECORDS

- 3.1 Natural persons
 - 3.1.1 Personal data records concerning natural persons may include their complete name, birth date, permanent address and their electronic address.
- 3.2 Legal persons
 - 3.2.1 Personal data records concerning a legal person may include their legal name, the address of the relevant office, their juridical form and their electronic address.

3.3 Other entities

3.3.1 Personal data concerning other entities may include their name, permanent address and electronic address.

3.4 Each personal data record receives an identification number when it is established.

3.5 The Registry's electronic system must ensure the recognition of electronic signatures (as defined by the relevant international provisions) with a high degree of security. The Registrar specifies the conditions of use and of recognition of electronic signatures.

CHAPTER 4 AIRCRAFT OBJECT FILE

4.1 A separate aircraft object file is kept for each airframe, helicopter or aircraft engine, allowing their identification.

4.2 The aircraft object file concerning an airframe must contain the following information:

- type of aircraft and name of the manufacturer;
- registration mark and State of registry;
- manufacturer's serial number.

4.3 The aircraft object file concerning a helicopter must contain the following information:

- type of aircraft and name of the manufacturer;
- registration mark and State of registry;
- manufacturer's serial number;
- designation of the engine(s).

4.4 The aircraft object file concerning an aircraft engine must contain the following information:

- designation of the engine and name of the manufacturer;
- manufacturer's serial number.

4.5 Each aircraft object file receives an identification number when it is established.

CHAPTER 5 APPLICATION FOR REGISTRATION IN THE REGISTRY

5.1 Each application for registration in the Registry must be submitted using the relevant electronic official form provided by the Registry.

5.2 The application form must contain :

- the date of the application;
- the applicant's name, with all the information enabling the keeping of a personal data record or, if such record already exists, with the number of the personal data record;
- the designation of the aircraft object affected by the registration, with all the information enabling the keeping of an aircraft object file or, if such file already exists, with the number of the aircraft object file;
- the type of transaction to be registered;
- the designation of the parties;
- the duration of the registration, if applicable.

CHAPTER 6 REGISTRATION IN THE REGISTRY

6.1 The aircraft object file records the date and time of reception of the application for registration, in chronological order with a sequentially ordered file number.

6.2 As soon as the registration is effected, all interested parties, including any entry point, receive a notice of the registration setting out all the data concerning the aircraft object.

SECTION 7 OTHER REGISTRATIONS

- 7.1 For the purposes of these regulations, the terms “other registrations” include notably applications for the amendment, the extension or the discharge of a registration.
- 7.2 The applications mentioned in paragraph 7.1 must be submitted using the relevant official electronic form provided by the Registry.
- 7.3 The application form must contain :
- the date of the application;
 - the file number of the aircraft object;
 - the names of the parties with all information enabling the keeping of a personal data record or, if such record already exists, with the number of the personal data record;
 - the kind of registration which is requested.
- 7.4 The registration is effected on the file of the relevant aircraft object, and mentions the date and time of reception of the application for registration. It is assigned a sequentially ordered number.
- 7.5 As soon as the registration is effective, all interested parties to the registration, including any entry point, receive a notice of the registration setting out all the data concerning the aircraft object.

CHAPTER 8 DURATION OF REGISTRATION

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

CHAPTER 9 SEARCHES IN THE REGISTRY

- 9.1 Access to the Registry for searches is open to any person and does not require the establishment of a specific interest.
- 9.2 [Any data contained on the file of aircraft objects may be searched.]
- 9.3 Searches and requests for searches certificates are made by electronic means.
- 9.4 For purposes of Article 18 (5) of the Convention and Article XIX (1) of the Protocol, a registration shall be “searchable” only against the “legal search criterion”. The legal search criterion shall be the name of the manufacturer, the model of the aircraft object and the manufacturer’s serial number of the aircraft object.
- 9.5 Upon receipt of a request for a search certificate (against a legal search criterion; art. 9.4) , the Registrar issues either a registry search certificate stating the data contained in the file of the relevant aircraft object or a certificate indicating that there is no information in the Registry relating to that object.
- 9.6 Upon request, the certificates mentioned in paragraph 9.5 are issued on an official paper document.

CHAPTER 10 OPERATIONAL COMPLAINTS

- 10.1 Any person may file a complaint with the Supervisory Authority concerning the operation of the Registry.
- 10.2 A matter concerns the operation of the Registry when it relates to general procedures and policies of the Registry and does not involve specific adjudication by the Supervisory Authority. 10.3 A person making a complaint shall substantiate its assertions. 10.4 The Supervisory Authority shall promptly consider complaints and where, on the basis of that consideration, it determines changes in the procedures or policies are appropriate, it shall so instruct the Registrar.

- 10.5 The Registrar may correct manifest errors in the Registry where such corrections are not prejudicial.

CHAPTER 11 CONFIDENTIALITY

- 11.1 The Registrar must ensure the confidentiality of all data in the Registry which are not stated on aircraft object files.
- 11.2 The Registrar must also ensure the confidentiality and integrity of the messages transmitted by way of cryptographic and encoding.

CHAPTER 12 STORAGE OF DATA

- 12.1 Storage of the registry's data must ensure their historical record as well as point-in-time reporting of all operations performed.
- 12.2 All data registered in the Registry must be stored on electronic media.
- 12.3 Discharged registrations must be indicated as such on the aircraft object files
- 12.4 All data stored in the registry must be frequently backed-up on electronic media and stored in a secure area at a separate location from the Registry's hardware.
- 12.5 In the case of a system failure, the Registrar must ensure a restoration of the records to the point-in-time the system failed. The Registrar must also ensure the restoration of registrations in the case of improper manipulation.

CHAPTER 13 STATISTICS

- 13.1 The Registrar keeps updated registration statistics which will be published in an annual report. This report is electronically accessible to any person.

CHAPTER 14 RELATIONS WITH THE SUPERVISORY AUTHORITY

- 14.1 The Registrar draws up a report at the end of each calendar year, to be submitted with statistical data to the Supervisory Authority.
- 14.2 If necessary, this report includes proposals of the Registrar to improve the Registry's functioning. The Supervisory Authority may approve these proposals if it deems them appropriate.
- 14.3 Any request for modification of these regulations or of the structure of fees must be submitted by the Registrar to the Supervisory Authority, which has sole authority to approve such requests.
- 14.4 The Registrar is not bound by the confidentiality rule (paragraph 11.1) in its relations with the Supervisory Authority.
- 14.5 The Registrar must comply with the directives which are periodically issued by the Supervisory Authority.

CHAPTER 15 RELATIONS WITH THE ENTRY POINTS

- 15.1 The Registrar keeps an updated list of contracting States which have designated an entity in their territory as the entity through which the information required for registration shall or may be transmitted to the Registry (entry point).
- 15.2 The Registrar consults with the entry point before fixing and individualizing the registration procedure and the coordination of operations concerning that entry point. Any application for registration which does not comply with these procedure and coordination rules shall be electronically rejected.

CHAPTER 16 FEES

- 16.1 The Registrar collects a fee for each of the following operations:
- initial registration of an international interest ;
 - other registrations (amendment, extension, discharge);
 - searches;
 - search certificates;
 - such other matters as may be determined.
- 16.2 Fees, including fees arising from operations channeled through entry points, must be paid to the Registrar, prior to the requested operation.
- 16.3 Fees are collected according to a schedule issued by the Supervisory Authority.

CHAPTER 17 FINAL PROVISIONS

- 17.1 The present regulations take effect on...
- 17.2 Publication (to be determined, see art. 16 paragraph 2 (d) of the Convention and the corresponding footnote).

Attachment 2

INTERNATIONAL REGISTRY TASK FORCE

Private-Law Aspects of the Relationship between the Supervisory Authority and the Registry
Submitted by France, Ireland, Singapore and the UNIDROIT Secretariat

I. Anticipated Scenario

The following consideration are assuming that:

The Supervisory Authority (SA) is either a state A or an intergovernmental Organisation with its seat in State A (a civil-law jurisdiction) and

The Registry (R) is a private entity, e.g. a company or a non profit corporation organised under the laws of and having its (principal) place of business in State B (a common-law country).

Further discussions may assume

- that the Registry too is a public-law entity, but distinct from a state;
- that the Supervisory Authority is located in a common-law jurisdiction and the Registry in a civil law-law country or both in a common law country.

The remaining scenarios, i.e. that the SA is an intergovernmental Organisation and the Registry is run by a State or that the SA is an intergovernmental Organisation and the Registrar an officer of that Organisation, will not be discussed as Supervisory Authority and Registry, in these cases, would not be linked with each other by a private-law arrangement. In particular in the latter case the headquarters agreement between the Organisation and the host State would have to be adjusted with regard to its privileges and immunities provisions so as to ensure that the Registrar/the Registry can fulfil its obligations under the Convention. The same would apply to Article 26 (2) of the Convention. Domestic private law of the host State would to a large extent become irrelevant.

II. Texts of draft Instruments

The following remarks are based on the texts as submitted to the Diplomatic Conference.

III. Hierarchy of Relevant Sources of Law

The hierarchy of the relevant sources is reflected in the following order:

1. Convention and Protocol
2. Regulations to be made or approved in accordance with Article 16 (2) (d) Convention.
3. Mandatory provisions of private law (e.g. property, trusts, company and insolvency law, Contracts, restitution, torts), applicable by virtue of operation of the rules of conflict of laws.
4. Contractual agreement as governed by the (dispositive or suppletive) rules (of law) chosen by the parties.

Whether the Regulations insofar as mandated by the “treaty system” and established by the SA actually enjoy the assumed position within the hierarchy of sources may not be certain and may vary from one jurisdiction to another one. Whether other rules of public international law, such as general principles or customary public international law do have an impact and where they are positioned within the hierarchy of sources would also appear to depend on the domestic law, including, but not limited to, the constitutional provisions of the country where the two bodies are located or whose courts are seised of any dispute.

If, in fact, the Regulations, under the relevant domestic law, rank second, i.e. higher than mandatory rules of private law, the relationship between SA and R would to a considerable extent depend on the SA and Contracting States may wish to take a particularly pro-active stance in the consultations provided for in Article 16 (2) (d).

Finally, if the Regulations were not yet established when the private-law relationship is established, i.e. the contract entered into, the inter-temporal aspects would have to be addressed in the contract and the Regulations.

IV. **Problem Areas**

Any private-law arrangement between the SA and the R is likely to cover four problem areas:

1. Rights, Duties, and Liabilities in Setting up and Running the Registration System;
2. In Particular: Proprietary Rights including Intellectual Property;
3. General, Infrastructure-Related Aspect;
4. Dispute Resolution.

1. Rights, Duties, and Liabilities in Setting up and Running the Registration System

a. Convention and Protocol

The “top layer” within the hierarchy of sources contains the following relevant provisions:

- | | | |
|--|---|--|
| <ul style="list-style-type: none"> – Article 16 (2) (b)-(i)
Article XVI, XIX (3), (4) | → | <p>on <u>appointment</u> and <u>dismissal</u> of Registrar and <u>regulating</u> the <u>conduct</u> of registration procedures by the Registry</p> <p>[note: to the extent contracting States do not establish a prerogative for other means, details may be specified, sanctions for non-compliance defined etc. through private-law arrangements, in particular contractual agreements, Article 16(3)]</p> |
| <ul style="list-style-type: none"> – Article 17
Article XVIII | → | <p>on <u>registration</u> requirements, certificates, <u>search</u>, <u>confidentiality</u></p> <p>[note: as such not subject to contractual arrangements, but SA may seek guarantees, establish modes of monitoring and impose “soft” sanctions for non-compliance before administrative action is taken]</p> |

- Articles 18, 19, 20, 21, 23, 24, 25 → on who may register and search, type of Registry, certificates, duration, discharge, confidentiality
- Article 27 → on liability of Registrar for damages
- Article XIX (1), (2) [note: not subject to private-law arrangements but related to mandatory taking of insurance]

b. Regulations

The draft Regulations drawn up by the Swiss delegation clarify many points concerning the rights, duties, and liabilities relating to the setting up and running of the Registration System. Three chapters are particularly relevant to the relationship between the SA and the Registrar:

- Chapter 10 (operational complaints)
- Chapter 14 (the Registrar/SA relationship)
- Chapter 15 (relationship with the entry points)
- Chapter 16 (fees).

c. Mandatory Provisions of Private Law

aa. Contract

Depending on the jurisdiction where the Registry is located and what types of specific contracts are available under common law and statute, the SA and R may enter into such contract (e.g. a “contract for services”). Freedom of contract both as regards the freedom to enter a particular contract and the freedom to determine on what terms to do so are the starting point in all legal systems.

In common law jurisdictions the courts have for some time been willing to imply terms into contracts and this willingness is characteristic of the common law system. Statute will in both common law and civil law systems also imply terms into contracts. It will, for example, attach a legal consequence directed to the conclusion of a particular type of contract. The relevant statute or case law may also provide for mandatory rules (e.g. with regard to formal requirements, legality, void contracts, other matters of public policy).

Although the SA and the R are free to choose the law that shall govern their contracts, their choice may not restrict the application of mandatory provisions, which are applicable in accordance with the relevant rules of private international law. For example, the forum’s private international law is likely to state that parties are precluded from departing from its own (i.e. the forum’s) or the mandatory rules of the law of the country in which the parties are established.

These mandatory rules may be even more restrictive in certain civil-law countries than in some common law jurisdictions. For example, mandatory rules may limit the freedom of contract in the following areas or on the following grounds (for illustrations, see Annex):

- (1) competition law (both anti-trust and trade practices);
- (2) currency regulations, price-index clauses;
- (3) insolvency law;
- (4) labour law;
- (5) special statutory provisions for certain types of contracts (e.g. lease in France);
- (6) general doctrines of the law of contractual obligations (e.g. fraud, disparity, protection against unfair standard terms, hardship, force majeure, etc).

While in principle the conflict-of-laws rules of the court or the arbitral tribunal seised of a dispute would determine whether those mandatory rules are in fact applied, for all practical purposes it is advisable to assume that such rules will apply if in force in the locus registri (either because part of the lex contractus or by virtue of modern theories on the applicability of mandatory rules not

forming part of the *lex contractus*, e.g. Article 3 and 7, Rome Convention on the Law Applicable to Contractual Obligations of 1980¹, Article 11, Inter-American Convention on the Law Applicable to International Contracts of 1994²).

Therefore, once the country where the R is located is chosen (and only then) the mandatory rules governing the contractual relationship between SA and R can be identified to any meaningful extent.

bb. Torts

The conduct of the Registry may give rise to claims in tort under one legal system whereas those claims would be characterised as contractual under another legal system. Different conflict-of-laws rules would then be relevant and the governing substantive law would depend on those conflict rules. This situation, however, escapes predictability.

There are cases of non-performance of contractual duties, which under certain legal systems give equally rise to claims in tort. This, again, may be different with regard to vicarious liability. Also, whether non-pecuniary harm has to be compensated depends on the qualification and varies considerably from one system to another.

If an action in tort lies under the applicable *lex delicti* the relevant provision may be of public policy³. This, in turn, may raise the issue whether and in which circumstances the Supervisory Authority is to waive the Registrar's immunity (cf. Article 26 (5) Convention).

It is noted, moreover, that the infringement of intellectual property rights (*infra* IV 2) are characterised under some systems as tort/delict (cf. Annex E).

d. Contractual Agreement as Governed by the Dispositive Rules Chosen by the Parties.

aa. Issues which may be subject to contractual agreement between SA and R.

- Who are the eligible users and how is confidentiality to be secured?
- Technical requirements (how to ensure that the conversion-imposed requirements are complied with the setting up the system?)
- Choice of location and facilities
- Ensure that R is operational by convention-imposed date
- Responsibilities (developing design, software, hardware, specifications, provide site, security of data entered, duration of storage the data, security of transactions, training of users, reports, statistics).
- Costs recovery from users (fees) and sharing of income (self-financing envisaged, start-up costs, profit factor to be foreseen? Does SA get share as reimbursement of its expenses?).
- Will R be entitled to recover what it pays in damages to third parties when instructions from SA were complied with?

¹ Article 7 – Mandatory rules. 1. When applying under this Convention the law of a country, effect may be given to the mandatory rules of the law of another country with which the situation has a close connection, if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the contract. In considering whether to give effect to these mandatory rules, regard shall be had to their nature and purpose and to the consequences of their application or non-application. 2. Nothing in this Convention shall restrict the application of the rules of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the contract.

² Article 11, Inter-American Convention on the Law Applicable to International Contracts of 1994. 1. Notwithstanding the provisions of the preceding articles, the provisions of the law of the forum shall necessarily be applied when they are mandatory requirements. 2. It shall be up to the forum to decide when it applies the mandatory provisions of the law of another State with which the contract has close ties

³ Example in French civil law where exemption clauses referring to tort and quasi tort liability are forbidden cf. Article 1382 & 1383 of the French civil code.

bb. Applicable Substantive Contract Law

In theory, the parties (i.e. SA and R) would be free to choose the national (domestic) law governing their contract.

However, the choice of the Registry's (or the SA's) own domestic law may not seem proper because it is not neutral and/or not apt to govern this very peculiar international relationship.

Alternatively, the parties may elect the UNIDROIT Principles of International Commercial Contracts (1994) as the body of rules governing their contract. The recommended choice of law clause reads either: "This contract shall be governed by the UNIDROIT Principles (1994) [except as to Articles...]" or "This contract shall be governed by the UNIDROIT Principles (1994) [except to Articles...] supplemented when necessary by the law of [jurisdiction X]".

Currently, the Principles (i.e. Part I of the Principles, Part II is in preparation) deal with the following subject matters: General (freedom of contract, form, mandatory, rules, usages, good faith and fair dealing, notice, etc), Formation, Validity, Interpretation, Content, Performance, Non-Performance.

The "Principles have been recognised by numerous arbitral awards as "generally accepted rules of international commercial practice" or *lex mercatoria*. They have been agreed upon by several public and private parties (e.g. the UN) to arbitral proceedings as the functionally best suited set of rules and therefore the ones governing their contract. Moreover, they have served as model for domestic law reform in Latin America, Europe and Asia. Finally, they have been recommended (in combination with the Vienna Sales Convention) for the trade in perishable goods by the International Trade Centre, a joint UNCTAD/WTO Organisation.

Even after completion of Part II, dealing with agency, assignment, third parties' rights, set-off, limitation of actions and waiver, the "Principles" will not provide rules for each and every issue. Therefore, both the choice of the "Principles" in general and the selection of either of the above choice of law clause would be made in the light of the otherwise applicable dispositive rules pertaining to the issues mentioned (*supra* aa).

Consequently, the parties may wish to have certain special dispositions applied to them which, will prevail over the UNIDROIT Principles. But such an analysis can only be made once the SA and the R are known.

On the basis of these assumptions, the contract would deal with the problem areas in a detailed ("American style") document setting forth the applicability of the UNIDROIT Principles as well as rights, duties and liabilities of the parties not (yet) covered by the "Principles".

2. Proprietary Rights (incl. Intellectual Property)

a. Convention and Protocol

- Article 26 (4) (b) → on immunity of assets, documents, databases (incl. software) and archives from seizure or other legal (or administrative) process
[note: see *supra*, IV 1 a, regarding Article 17 Conv., Article XVIII Prot.]

b. Private Law Arrangements

aa. Private International Law

From the view of private international law (conflict of laws) it is noted that:

- (1) Intellectual property rights are generally considered to be "territorial", i.e. recognised only within the territory of the state which has granted those rights.
- (2) International treaties may affect the basic rule.

- (3) If the R is located in a common law jurisdiction (or Quebec c.f. articles 1260-1298 Code civil) not only contractual devices (for the applicable law see supra IV 1 c-d) but also a trust (the SA being the beneficiary and/or the settlor and the Registrar the trustee) may be an appropriate solution for regulating the rights and duties of the parties. In this case, customary conflict of law rules, on average, would provide that the law of the country where the trust property is situated or where the trust was set up and/or where it is administered governs. According to some systems the conflict rules pertaining to property rights apply only as far as the trustee's position is concerned whereas the settlor's as well as the beneficiary's position are characterised as contractual. Moreover, in States that have ratified the 1985 Hague Convention on the Law applicable to Trusts, articles 6 to 11 of the convention would have to be taken into account.

bb. Substantive Law

(1) General

Under Article 16 (4) the SA shall own all proprietary rights in the data and the archives of the Registry. This decision was taken in light of the fact that the Registrar enjoys only a fixed term of appointment. It was necessary therefore to make provision for the ongoing protection of the electronic system of the International Registry System and the information therein.

A separate issue which needs to be addressed is who will be the owner of the intellectual property rights in the software and who will be entitled to the royalties.

(2) Proprietary Interests in Software and Data

It is likely that much of the software required to operate the Registry is already in existence and very little may need to be developed ab initio. In that instance, it is a matter of ensuring that adequate licensing arrangements are entered into which protect the interests of the Registrar in the daily use of the software and the interests of the Supervisory Authority both during the contract and at the end. Nevertheless, it is conceivable that some particular software elements will be developed specifically for the system and the proprietary rights therein would depend upon:

- who is the creator or developer;
- whether the creation or development was done upon the instruction of the client (the Registrar or Supervisory Authority), and any contractual terms between the developer and the Registrar or Supervisory Authority dealing with ownership

It should also be remembered, however, that such newly developed software may not be readily distinguishable from existing pre-written software and indeed may have no operational or commercial value independent of such other software. It is suggested that the best interests of the Supervisory Authority and the Registrar would be to seek to license such software rather than seek to acquire ownership rights therein.

Similarly, it is suggested that analogous rights relating to, for example, the creation and layout of the International Registry Website, and the registration, use and upkeep of its domain name, protection of any relevant trademarks and copyright of material published therein etc. can also be met through normal contractual and licensing arrangements.

It is also evident that, in the lead up to the appointment of the Registrar, practical arrangements would have to be put in place to store backup copies of the data together with the electronic archives of data in a separate and secure location on an ongoing basis.

International agreements (GATT Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 15 April 1994, Annex 1c part 2, Article 10(1)), European Community legislation (cf. Directive 91/250/EEC of 14 May 1991) as well as probably all domestic legislation establish the principle that the rights in question belong to the software's designer or creator. Recognition of this principle under national law may be subject to reciprocity (cf. Article L 111-5 of the French Code on intellectual property).

However, there may be specific rules under the applicable law (e.g. the SA's, the R's law and the law of the creator's place of business or any law applicable by virtue of the parties' choice).

For example French case law gives the priority in software which has been commissioned to an independent designer to the latter, and if the principal (i.e. the ordering party) wishes to become the owner contractual provision to this effect has to be made.

As far as the *data bases* (made up of a structure, the "container", and the data, the "content") are concerned and *subject to the principle* provided for in *Article 16(4)*, *two systems* of protection exist and may apply depending on the place *where the SA and the R are located*.

Firstly, under international regulations (cf. GATT, quoted previously) the *designer of the data base for the registration system* may be particularly protected because of the originality of the structure (the "container").

Secondly, under the Directive 96/9/EC of 11 March 1996, the manufacturer of the database may be protected (even) with regard to the content if it has substantially invested intellectual or material resources in the setting-up, the verification or presentation of the database. These rights are granted to both EC and non-EC nationals on condition that the latter's State of origin has entered into an agreement with the EC in this respect.

These rights expire fifteen years after the completion of the database.

(3) Hardware and other property

As has been suggested with regard to existing standardised software, the ICT hardware and other additional equipment necessary for the operations of the system can be purchased by the Registrar for the Registry or leased from one or more service providers.

(4) Who are the likely 'owners' of proprietary interests? The impact of the choice of the Registrar and business models

It is assumed herein that, in keeping with normal commercial practices, the Registrar will have engaged the services of one or more service providers in order to carry out the responsibilities on behalf of the International Registry.

The establishment and day-to-day running of the International Registry will involve the following entities:

- the Supervisory Authority;
- the International Registry itself;
- the Registrar and
- any service providers/suppliers contractually engaged by the Registrar

While it is clear that the Supervisory Authority will be separate to and independent of the Registrar (unless the SA were to be an intergovernmental Organisation and the R one of its officers), the International Registry and the service provider, other matters such as the set up of the International Registry, the legal personality of the Registrar and its relationship with the Registry, have yet to be fully determined. Hence, because the Registrar will be vested with legal personality, it is assumed that, for practical purposes, the Registrar will have full powers to, for example, enter into contracts and conduct a wide range of business transactions to provide for its everyday operations. It is also assumed that the Registrar will act on behalf of the International Registry in this regard and that the latter will not have a separate legal capacity in this respect.

The issue of protection of proprietary interests will be very dependent on the model of business operation of the Registry. The major working tools of the Registry will be Information and Communications Technology (ICT) software, services and equipment. In relation to ownership of such assets, a common situation is for different parties to own different elements of the overall suite of software and hardware in a particular electronic system, such as the system envisaged under the Convention and Protocol. It is very difficult to envisage how a single party such as the Registrar could

purport to own the entire technical infrastructure for the International Registry service, especially in the light of the envisaged use of Internet-type technologies and infrastructures. In reality, there will probably be a complex matrix of contractors, sub-contractors and licensors, operating under specific service level agreements.

Thus, one model of operation would be to have one or more service providers, in a contractual relationship with the Registrar, owning all hardware and software, but providing the Registrar and the Supervisory Authority with an irrevocable or fixed term licence for its use. In any event, the Supervisory Authority should, as a practical arrangement prior to appointing the Registrar, satisfy itself that the Registrar would have proper service level agreements and licensing arrangements in place to ensure that the service can function as envisaged. The Authority should also ensure that the Registrar has arrangements in place to implement such upgrades and new releases of software etc. as may be required from time to time. This has the merit of removing major complexities about ownership of intellectual property rights from the relationship, unless the International Registry, Registrar or the Supervisory Authority wants, and wishes to pay for, full and complete ownership.

Accordingly, it is considered that the arrangement may be largely a matter of contract between the Registrar and the Registrar's contractual partners.

(5) Termination and Transition

Clearly, therefore, a change of Registrar or a change of service provider will require a fresh set of arrangements. These can be verified by the Supervisory Authority in the lead up to the appointment of a new Registrar. It is also essential that a smooth handover is achieved if a change of Registrar or change of one of the Registrar's key ICT suppliers or contractor arises. Specific contractual clauses dealing with transitional arrangements are very common in such circumstances.

3. General, Infrastructure-Related Aspects

(1) Either the Registrar or the State where the R is located will have to provide the necessary infrastructure, such as, office building (incl. maintenance, rent) and conservation building, communication system, insurance, security, staff (employment contract, social security, retirement pension), legal expenses.

The contract (for the applicable law see supra IV 1 c-d) would have to set forth the details such as who has to provide what by which date at whose expense.

(2) The same applies, *mutatis mutandis*, and barring impact by the final drafting of the privileges and immunity provisions of the Convention to permits and taxes.

4. Dispute Resolution

a. Authority for taking measures against the Registrar under the terms of the Convention

As a matter of principle, international law of procedure tends to concentrate jurisdiction and to channel it to courts, which have particular expertise and are locally well positioned, i.e. close to the subject matter; this would indicate the R's centre of administration as the proper forum.

Article 43 (1) of the Convention states that “[t]he 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”.

Paragraphs 2 and 3 of Article 43 enable the courts of the State on whose territory the Registrar has its administrative headquarters to direct the Registrar to take measures to modify or withdraw registration.

The Registrar benefits from functional immunity under Article 26 (4) of the Convention. This immunity may be waived according to Article 26(5) by the SA; paragraph 4 of Article 43 should take that into account.

b. Authority to take measures against the Registrar in accordance with International Regulations

Any such measures will have to be considered in the light of the final draft of the Regulations. For the current draft, cf. points 10.5 and 14.5.

c. Immunity of the Supervisory Authority

Under the Convention, the Registrar's (functional) immunity may be waived by the Supervisory Authority whereas no analogous provision has been made as far as the SA's immunity is concerned. This flows from the assumption that the SA will be an intergovernmental Organisation which enjoys such immunity. While this does not raise concerns in general, the IRTF draws the negotiating States' attention to the fact that this *may not be an appropriate* result as far as the *private-law relationship between SA and the R* is concerned. The SA may, for example, breach its contract or harm the R through delictual conduct.

In order to avoid a denial of justice, Article IX, section 31 of the 1947 Convention on Privileges and Immunities of Specialized Organizations calls upon such Organisations to make provision for the settlement of disputes arising out of contractual and other private-law relationships or to waive their immunity in case such disputes arise.

Although Article 26 of the Convention only provides for a waiver of the R's immunity (cf. Article 26 (5)), it is submitted that the immunity granted to the SA itself under Article 26 (2) may also be waived under general principles. However, the negotiating States may wish to establish this expressly in Article 26.

d. Dispute Resolution Through Arbitration

Advantages of arbitration do not have to be discussed here (confidentiality, expertise, expeditious procedure, sometimes cost). The major disadvantage of dispute resolution by arbitration would be that, as rule, no appeal lies against the award rendered by the arbitration tribunal. However, the parties to the arbitration agreement (SA and R) may, given the peculiarities of this case, provide for a special review procedure. Moreover, the general remedies against enforcement of an award are available.

If arbitration is chosen as the dispute resolution mechanism, the following issues have to be considered:

- Formulation of the arbitration clause (e.g. "any dispute, controversy or claim arising out of or relating to [...], or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNICITRAL Arbitration Rules as present in force");
- Applicable rules of arbitration (e.g. UNICITRAL Rules of 1976, the ICC Rules of 1998 etc.);
- Choice and appointment of arbitrators;
- Recognition and enforceability of awards (not all contracting States may also be contracting States of the 1958 New York Convention).

If the parties were to opt for arbitration, both institutional and ad-hoc arbitration proceedings may be taken into consideration:

- (1) The Permanent Court of Arbitration at The Hague, applying its optional arbitration rules between international organisations and private parties of July 1996 (on condition that the SA is an international organisation).
- (2) The International Court of Arbitration of the International Chamber of Commerce or other permanent arbitral institutions such as the Stockholm Chamber, the Vienna Chamber, the London Court of International Arbitration or the various regional centres such as Cairo, Kuala Lumpur etc.
- (3) If the parties were to opt for ad-hoc arbitration they may wish to select the UNICITRAL Rules of 1976 as the framework governing any proceedings.

However, the insertion of forum selection or arbitration clauses into the contract should take national regulations concerning mandatory rules (cf. IV 1 c) into account.

ANNEX

The purpose of this Annex is to give examples of mandatory rules as referred to *supra*, IV 1 c aa. The examples reflect mostly French and European Union law.

Delegations from other countries are invited to submit additional examples of problem areas or specific mandatory provisions.

(1) Competition law

The SA and the R may wish to include a non-competition clause in their contract. In some legal systems, non-competition clauses are prohibited and therefore void. In others, they may be required if public economic interests are at stake. In others still, they are prohibited in principle, but individuals and corporations may obtain exemptions which are justified by considerations of public economic policy (cf. for example, Article 81 (3) [formerly Article 85] Treaty of Rome).

(2) Currency regulations; price-index clauses

Some legal systems *require* prices, fees, interests, etc., owed under a contract, to be indicated in local currency. Moreover, the debtor may have the *right* to perform in one (mostly the local) currency even if the contract provides for payment in another one. Currency regulations are without any exceptions mandatory.

Under some legal systems, the use of price-index clauses (“sliding scales”) are either prohibited⁴ or subject to approval by some authority such as the central bank.

(3) Labour Law

Statutes on individual labour relations (contracts) as well as collective industrial relations (e.g. regulating collective bargaining etc.) frequently are mandatory. This may have an impact on the internal organisation of the Registry (rights and duties of its employees) as well as on the relationship between the Supervisory Authority and the Registrar if the latter were to be a natural person and employee of the former (see, however, *supra*, III).

(4) General doctrines of contract law; special legislation concerning standard term contracts

According to doctrines such as “frustration of contracts”, “théorie de l’imprévision”, “eccessiva onerosità”, “Wegfall der Geschäftsgrundlage”, “hardship”, etc., a judge or arbitrator may, under many legal systems, intervene to restore an imperilled or lost equilibrium of a (mostly long-term) contract. In order to avoid unforeseeable results of any such intervention, the parties may establish themselves under which conditions the terms of their contract can be re-negotiated.

(5) Criminal offences entailing civil liability

The violation of certain rights (e.g. the infringement of intellectual property rights) may be a criminal offence (e.g. counterfeit, reproduction and distribution unauthorised by the author, unlawful publishing⁵). Therefore, the Registrar and its officers and employees who are not the developers or creators of the software, the databases, etc., have to be cautious not to commit any such offence. Committing a criminal offence may in turn entail civil liability for damages whether or not other requirements for liability in tort or contract are fulfilled.

⁴ In France, Article 79-3 of the Decree of 30 December 1958 as amended.

⁵ GATT Agreements on offences relating to pirating, and French code on intellectual property: Articles L. 335-2 to 335-10 and L. 343-1 to 343-4 punishable by fines and/or imprisonment.

Liability of the International Registry
(presented by Canada and Sweden)

1. Overview

In preparation for the second meeting of the Registry Task Force Canada and Sweden were asked to prepare a paper on “Cost of Insurance (Article 27, Alternative A – Strict Liability/Describe What Constitutes Force Majeure)”.

After preliminary investigations, it became apparent that any quotations for insurance costs would not be useful since these costs would be conditioned by the design and extent of liability of the International Registry. These are matters that have yet to be settled at the Diplomatic Conference. Consequently, this report focuses almost entirely on the issue of liability.

Initially an attempt was made to describe the Registry System on the basis of existing texts and reasonable assumptions. This was contained in a document entitled *Description of the International Registry created pursuant to the draft Convention on International Interests in Mobile Equipment and the draft Protocol on Matters specific to Aircraft Equipment*. That document set out the main legal, organizational, administrative and technological issues relating to the International Registry according to the draft Convention on International Interests in Mobile Equipment and the draft Protocol on Matters specific to Aircraft Equipment as well as the risks of damage due to failure to make the Registry available or to corruption of the content of the Registry.

During the discussions within the group and with the insurers it became evident that Article 27 of the Convention needed further refinement. As a result a number of amendments are proposed. The amendments relate for the most part to four different questions: the definition of the events that should be covered by the liability, a limitation of the liability in cases of *force majeure*, a limitation of liability in case of contributory fault and a possibility for the Supervisory Authority to determine the extent of the insurance coverage.

2. Risks covered by the liability of the Registrar

The following risks were identified as those that reasonably ought to fall within the scope of liability of the Registrar:

- (a) failure of software to correctly identify persons transmitting data or to detect corruption of data in the transmission process (*i.e.*, failure of the PKI technology);
- (b) failure in the “handling” of data once it has been received by the Registry;
- (c) failure to disclose or to accurately disclose to a searching party data in the database when the required search criterion is used;
- (d) failure to have sufficiently modern technology to address the risk of hackers, subject to the limitation that new technology that becomes available after the Registry is in operation should be required only when it can be implemented without substantial cost and disruption to the operation of the Registry; or
- (e) failure to operate the Registry when the factor requiring it to be shut down does not constitute *force majeure*.

The most patent risk is with item (b). This risk could be reduced through the use of technology and the minimization or, if possible, the elimination of human involvement in the handling of registration data.

An important question in relation to the risk of damage is the quantum of damages arising from a single event. Generally, damages can occur either because information in the system has been altered or corrupted or because the system was inoperative for a period longer than the permitted shutdown time.

The quantum of damage relating to the former cases is dependent on whether the liability of the Registrar would cover events that lead to the total corruption of the Registry system, with massive damages as a result, or if it is only to cover events relating to single registrations or single aircraft. With modern technology, the making of duplicate copies of the Registry and taking all necessary precautions, total corruption of the system would only occur in the cases of *force majeure*: meteorite strikes, acts of war, *etc.* Therefore, liability would only extend to cases where a single interest or all interests in a single aircraft are lost and the total amount of direct damage would not rise above the total value of an aircraft.

In cases of failure to operate the system for the prescribed time periods, the losses would encompass costs related to interest and losses of income due to the fact, for instance, that anticipated agreements were not concluded. The actual losses would probably be substantially less than the damages arising from the other cases mentioned above.

An attempt was also made to assess the level of risk. Information was gathered on compensation for damage paid by comparable national registries in Canada and Sweden.

In examining Canadian registries, it became apparent that one could rely on the Canadian experience only in a very general way as predictive of what might happen under an international system.

Indeed the *Personal Property Security Acts* of the provinces of Alberta, British Columbia, Saskatchewan and Manitoba specifically provide that the registry will be liable only with respect to hardcopy registrations and searches. The Atlantic Provinces systems are completely electronic and user driven. Consequently, in this respect they are as close to the proposed system as any in Canada (or the world). Under these systems, the only basis on which a claim can be made against the registry is to recover loss resulting from reliance on a printed search result issued by the registry. There appears to be no basis for a claim against the registry for loss resulting to a registering party as a result of failure of the system. Possibly, the reasoning here is that a registering party can immediately do a search and discover within seconds of effecting a registration whether or not the information transmitted has entered the database.

The Ontario system is much less specific on the liability of the registry. The Ontario Act focuses exclusively on loss resulting from reliance on a defective search result. The Ontario Registrar informed us that there have been no claims and no complaints from anyone using electronic access to the system which has been in operation for about 12 years in its current form.

In summary, on the basis of anecdotal information from the Canadian systems, modern computer technology reduces the potential for loss to a very low level. However, for the reasons noted above, it would be a wrong to surmise that the experience with the Canadian systems is conclusive proof that the number of claims will be negligible.

In Sweden a notice-based computerized system for registration of ownership of, and interests in real estate has been operating since 1972. The State is the Registrar and as such absolutely liable for all damage. During the period 1990–1999 rights of an estimated value of 200 billion US \$ were subject to registration. The total amount of damages paid during the same period were less than 250 000 US \$.

3. Liability provision

Based on the above assumption of the risks that ought to be covered by the strict liability of the Registrar, the following amended version of Article 27 of the Convention (Art. 40 of the Consolidated Text) is proposed (new wording underlined).

Article 27 – Liability and insurance

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, and its officers and employees, within

the operation of the Registry or from a malfunction of the international registration system except where the damage is caused by an event of an inevitable and irresistible nature.

1bis. For the purposes of paragraph 1 of this Article:

(a) neither the factual inaccuracy of data transmitted by a user nor the unauthorised use of an electronic signature obtained from a user is considered an error or omission;

(b) acts or circumstances arising prior to receipt of registration information at the Registry shall not be considered as being part of the operation of the Registry; and

(c) an amendment or corruption of data in the Registry database resulting from unauthorised external access to the database by a person not using an authorised signature that could not be prevented by using the best practices and standards in current use in electronic registry operation, including those related to back-up and security systems, shall not be considered as an error or omission.

1ter. Compensation under paragraph 1 of this Article may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.

2. The Registrar shall provide insurance or a financial guarantee covering the liability referred to in this Article to the extent determined by the Supervisory Authority.

Article XIX, paragraph 5 of the Protocol (Art. 40(2) of the Consolidated Text) to be deleted.

It should be pointed out that a definition of “user” might be appropriate.

4. Reasons for the amendments to the liability provision

Two amendments are suggested to paragraph 1 of the Article. The first amendment consist of the addition of the clause “within the operation of the Registry” and is in itself not intended as a limitation of the liability but only as a link to paragraph 1bis. The second amendment contains a limitation of the liability in case of *force majeure*; see below. It is for consideration whether the use of the expression “officers and employees” ought not best be replaced by the broader expression “servants and agents” more commonly found in international agreements (*e.g.*, the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air).

Two new paragraphs are added, paragraphs 1bis and 1ter. Paragraph 1bis is added to provide a definition of what falls outside of the management of the Registry and what is not an error or omission of the Registrar. (a) The first subparagraph in paragraph 1bis reflects the basic principle that the Registrar would have no liability for information provided to it by the person requesting registration of an interest. It also addresses cases where the damage is due to an unauthorized act by someone using an unauthorized signature obtained from a person having authority to access the registry data base. (b) The second subparagraph is intended to define the point from which the Registrar is liable for corruption of the information sent to or from it. In practice, the result of the provision is that the Registrar will be liable for anything that happens within its firewalls, but have no liability for corruption of information at any other point. This means *e.g.*, that a person requesting a registration will have to check that its request has duly reached the Registry. It was noted that a person could only get hold of a signature from three sources, the user, the Registry or the supplier of signatures. For reasons of fairness it is suggested that the Registrar be liable in the cases where the signature is obtained from someone else than the user. (c) Finally, the third subparagraph deals with the problem of hackers. It is suggested that the Registrar be required to put in place technology designed to guard against intrusion by hackers. However, the level of responsibility would not exceed the capabilities of available software. To balance this, the Registrar should be required to put in place new software where this would be warranted by best practices and standards in current use in electronic registry operation.

Paragraph 1ter is new. It implements the normal principles of contributory negligence.

Finally one amendment is suggested to paragraph 2. The present text of paragraph 2 sets out that liability should be covered to “the extent provided by the Protocol”. The Protocol states in Article XIX, paragraph 5 (Article 40(2) of the Consolidated Text) that “The Registrar shall provide insurance or a financial guarantee covering all liability under this Convention.” However, it is not possible to get insurance to an unlimited amount. Insurers do for different reasons have to set a specific insurance amount. The consequence is that the present draft requires at least an additional guarantee. Such a guarantee would have to be set at a level that probably only States normally could cover. The question is whether coverage for an unlimited amount is needed. Above, the assumption is made that the liability of the Registrar would not cover total corruption of the system and that the maximum amount of damage would not exceed the maximum value of an aircraft. On the basis of this assumption, the insurance amount could well be limited in fact. If such an approach is accepted, the question arises as to who should determine the limit. One solution is that it be determined by the Diplomatic Conference and be set in either the Convention or the Protocol. A need to amend such a limit can however arise due to the development of new aircraft. It would be unpractical if the Convention or the Protocol would have to be amended just for such a reason. It is thus proposed that the Supervisory Authority determine the extent of the insurance.

5. *Force Majeure*

Traditionally *force majeure* is described in terms of irresistible events that cause damage. This concept includes event such as natural catastrophes, political risks, *i.e.* acts of war, insurrections, terrorist attacks, *etc.* and some other events such as strikes. The main reasoning behind the concept is that damages that occur under such exceptional circumstances are inherent risks of life and should rest with the victim. (Of course *ex gratia* compensation is in some cases paid by States.)

The more interesting questions arise when one tries to construe this concept in relation to a web-based system. Generally two sources of exceptional damage can be identified, a total breakdown of the web and a corruption of the registry system caused by a computer virus. Above it is suggested that the Registry will bear no liability in respect of communications outside of its firewalls. Therefore it will not bear liability in a case where all communications on the web fail regardless of whether the failure is to be considered as *force majeure* or not. The virus case is more interesting. A virus may either penetrate the system itself or be carried, *e.g.* by an e-mail. In cases it is carried in by an e-mail as an attachment to it, someone has to open the attachment for the virus to become active. Such an act by an employee of the Registry ought to be regarded as an error or even as a negligent act, given the information currently available on how viruses work. In such a case the Registrar could not escape liability. The case where a virus enters directly can be compared with a hacker situation. The Registry should have systems to prevent unauthorised entry by both persons and data. If the systems fail to protect against the virus and are nevertheless state-of-the-art, the virus may be regarded as being in the nature of *force majeure*.

6. *Alternative methods to cover the liability*

In International Law several methods for covering liability are used. These are generally insurance, guarantees, pledge and declarations of self-insurance.⁶ Article 27 paragraph 2 the Convention (Art. 42(2) of the Consolidated Text) stipulates that the Registrar shall provide insurance or a financial guarantee, *i.e.* two of the abovementioned four forms of security. The Convention would have to be amended in order for the Registrar to be able to use a pledge or a declaration of self-insurance.

Insurance has been discussed above. Guarantees can take on different forms, but legally they mean that a person other than the person exposed to liability commits itself to cover the liability of the

⁶ See *e.g.*, the 1999 *Protocol on Liability and Compensation for Damage resulting from the Transboundary Movements of Hazardous Wastes and their Disposal* (the Basel Protocol) or the 1996 *Convention on Liability and Compensation for Damage in Connection with Carriage of Hazardous and Noxious Substances by Sea* (the HNS-Convention).

liable person. There is no reason to discriminate between the different forms for guarantees so long as the format provides a legally binding commitment in the jurisdiction of the Registrar.

It could of course be accepted if the Registrar wanted to deposit bonds or any other collateral to guarantee its liability. Such collateral would probably be deposited with the Supervisory Authority. However, it could be difficult to determine a scheme of replacement of such bonds if they were to be drawn upon to cover a specific damage. Furthermore, it is debatable how the Supervisory Authority should handle such security.

Generally, declarations of self-insurance in international agreements are acceptable only when coming from States. The Registry would be a separate international person and thus legally not connected to any State. A declaration of insurance by the Host State would legally speaking be a guarantee. A declaration of self-insurance by the Registrar would not have a great value, as its total worth in capital will not be substantial.

Against this background, no amendment of Article 27, paragraph 2 is proposed in this respect. Neither pledge, nor declaration of self-insurance seems to be suitable forms for security in relation to the liability of the Registrar.

Attachment 4

Funding/Cost Recovery Methods for the New International Registry October 2001

Discussion-Paper Prepared by Finland and the AWG
for the International Registry Task Force

Funding/Cost Recovery Methods for the New International Registry

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Funding/Cost Recovery Methods for the New International Registry

The International Registry Task Force (**IRTF**), created by the Third Joint Session, met in Paris 21-23 June 2000. The results of that meeting were reported to and generally approved by the ICAO Legal Committee, meeting 28 August – 8 September 2000. The Legal Committee asked the IRTF to continue its work on a variety of topics.

One such topic is the funding of and cost recovery methods for the new International Registry (**IR**). Finland and the AWG were assigned that topic, which, in accordance with the *modus operandi* of the IRTF, entails the preparation of this discussion-paper. This paper will be attached to the final Report of the IRTF, and, as such, will be made available to upcoming Diplomatic Conference.

The primary purposes of this paper are to outline such funding and cost recovery options, and, equally, to provide an analytic framework and lexicon for their development and assessment. ((This lexicographical objective is centered on capturing fundamental concepts in key defined terms – which might be used by the IRTF and others in discussing any financial modeling of the IR. See glossary of key terms contained in **part A-1** of the **annex** hereto.))

This paper is organized as follows. Preliminary matters are addressed in **Part I**. The options for funding the initial costs of the IR are outlined in **Part II**. Issues relating to the cost recovery – or amortization – of such costs will be addressed in **Part III**. Finally, **Part IV will provide tentative and hypothetical estimates of cost recovery and transaction fees based on the limited information received to date**. In that regard, reference will be made to a list of principal questions for the diplomatic conference, or, if delegated thereby, the Supervisory Authority. See **part A-2** of the **annex** hereto.

A preliminary, cautionary note on this paper is in order. While, in line with the working methods of the IRTF, we have taken a systematic approach to the identified topics, it may well be the case that (as this is an electronic registry) the relatively small funding amounts may justify more streamlined and informal approaches to such topics.

Part I Preliminary Matters

A review and summary of the relevant provisions in the texts, and a statement of basic assumptions, are required to establish a framework for discussing the IR's possible funding options and cost-recovery methods.

A Provisions in Texts relating to Creation of IR and Cost Recovery

The draft Convention on International Interests in Mobile Equipment (**Convention**)¹ as applied to aircraft objects through the Aircraft Equipment Protocol (**Aircraft Protocol**)² contain provisions relating to the creation of the IR and the general standard applicable to the setting of user fees for the IR.

First and foremost, Convention Art. 16(2)(a) provides that the Supervisory Authority shall “establish or provide for the establishment of the International Registry.” For purposes of this paper, it is assumed that the points of entry that a State may designate under Convention Art. 17(4) and Aircraft Protocol Art. XVIII (**Designated Entry Points**) are not part of the IR, as such. Thus, their initial and operation funding requirements, as well as cost recovery and fee-setting arrangements relating thereto, fall outside of the Convention/Aircraft Protocol, and, accordingly, are not under international

¹ References in this paper to the Convention are to the text as amended by the ICAO Legal Committee. See *Report of the 31st session of the Legal Committee* (Doc 9765-LC/191), Attachment D, Part I.

² References in this paper to the Aircraft Protocol are to the text recently amended by the ICAO Legal Committee. See *Report of the 31st session of the Legal Committee* (Doc 9765-LC/191), Attachment E, Part I.

consideration.³ For our purpose, questions remain as to the proper characterization of communication systems between the IR and the Designated Entry Points.

Secondly, under Convention Art. 16(2)(h), the Supervisory Authority is to “set and periodically review” the fees to be charged “for the services and facilities” of the IR.

Aircraft Protocol Art. XIX(3) sets the general standard for the setting of such fees, namely, to “recover the reasonable costs of establishing, operating and regulating the [IR] and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and the discharge of the duties contemplated by Article 16(2) of the Convention.”⁴ However, the Convention/Aircraft Protocol does not address matters relating to the initial funding of the IR (**Initial Funding Costs**), that is, the costs to create the IR. Nor does it set out the means by which ongoing operational expenses of the IR will be funded prior to their recovery through user fees (**Operational Funding Costs**). (The Initial Funding Costs and the Operational Funding Costs, where appropriate, will be referred to collectively as **Registry Costs**.) Finally, the Convention/Protocol does not establish a detailed mechanism for fee-based recovery of the Registry Costs (**Cost Recovery Mechanism**).

The failure to address the Registry Costs and/or the Cost Recovery Mechanism in the texts – or through a resolution at the diplomatic conference – would have the effect of placing such matters under the residual authority of the Supervisory Authority. The desirability of so tasking the Supervisory Authority, with or without guidelines or parameters, is a question of policy for States.

B Basic Assumptions to be taken into Account

Two sets of interrelated assumptions are central to the funding of the IR: assumptions relating to the anticipated use of the IR (**Registry Use Assumptions**) and those relating to the Registry Costs (**Registry Cost Assumptions**).

B.1 Registry Use Assumptions

In addition to their relevance for the technical design of the IR, the Registry Use Assumptions are germane to the timing and particulars of the Cost Recovery Mechanism. Importantly, they may affect cost allocations among users, particularly between early and later users of the system.

While it is outside the scope of this paper to address the specifics underlying the Registry Use Assumptions, they relate to the number and timing of filings, searches, and issued certificates. The key assumptions⁵ include:

- 1) the number and the specific identity of ratifying States, as well as the timing of their respective ratifications;⁶
- 2) the size of future markets for aircraft equipment;

³ This assumption is made in view of the Convention's definition of the “International Registry” (the “international registration facilities established for purposes of” the Convention/Aircraft Protocol), and, more pertinently, direct comments to that effect made at the Legal Committee meeting. *See Report of the 31st session of the Legal Committee* (Doc 9765-LC/191) at para. 3:86.

⁴ As with the estimated costs of the Registrar, it is important to establish the estimated costs of the Supervisory Authority, and to do so prior to the setting of the initial fees. In view of the distinct possibility that ICAO or an organ thereof may act as the Supervisory Authority, *see* Part II(C) *infra*, a request that the ICAO Council authorize the preparation of a preliminary budget, including its supervisory expenses, has been noted. *See Report of the 31st session of the Legal Committee* (Doc 9765-LC/191) at para. 3:84.

⁵ The AWG has prepared a Memorandum dated 18 July 2000 for IRTF addressing select aspects of the these assumptions.

⁶ It is particularly noteworthy that a relatively small number of States account for a relatively large percentage of potential IR- use transactions. *See id.* at footnote 6 and accompanying text.

- 3) future transactional terms, including the average terms of different types of transactions and the frequency of amendments to such transactions;
- 4) future transactional practices, including the number of searches and certificates that transaction parties come to require; and
- 5) the extent to which pre-existing transactions are brought into the system, and whether the same is done on a mandatory⁷ or voluntary basis.

For purposes of this paper, the key point to note is that in attempting to prudently forecast use-related figures for the IR (that is, the number of IR “transactions” over which the Registry Costs may be spread), **material assumptions** must be made. These assumptions, by necessity, will be **speculative**.

The foregoing underscores the need for the Cost Recovery Mechanism to contemplate adjustment – and re-amortization – based on the inevitable lack of correspondence between the initial Registry Use Assumptions and the actual use of the IR. See Part III, below.

B.2 Registry Cost Assumptions

As noted above, while estimates relating to the Registry Costs Assumptions (i.e., the costs negotiated as part of the Registrar selection process and the estimated costs of the Supervisory Authority) should be available shortly, associated policy questions require consideration at this stage.

The first such question is whether the Cost Recovery Mechanism should contemplate adjustments to reflect inaccuracies in the Registry Cost Assumptions. In other words, should increases or decreases in actual IR costs be translated into revised fee schedules. If so, according to what criteria and over what period of time. In addition, are the answers to these questions the same for Registrar and Supervisory Authority (bearing in mind that the former reports to the latter, and the latter reports to the Contracting States).

The answer to these policy questions will provide certain incentives, including efficiency-related incentives, which must be considered by interested parties. The diplomatic conference will ultimately need to settle these matters – or provide an appropriate mechanism for doing so.

These matters are addressed further in Parts III and IV below.

Part II Funding Costs

A threshold question requiring attention is how the Funding Costs will be advanced.

To economize on time and effort, we have not addressed the options for financing the Operating Funding Costs. Two reasons support that approach. First, such options are similar to those available to finance the Initial Funding Costs. Secondly, the amounts may be small enough to permit their amortization from fees collected in the ordinary course.

There are at least five general options, elements of which may be combined.

A Host State Funding

One option for addressing the Initial Funding Costs is simply for the Host State to provide such funds. This option would eliminate most issues associated with the Initial Funding Costs (but may raise issues for potential Host States). As funding is an important aspect of a State's cost/price proposal, its willingness to fund would be a factor.

⁷ If pre-existing interests are subject to mandatory registration, which remains a possibility, it is anticipated that the filing fees associated therewith would be nominal. *See Report of the 31st session of the Legal Committee* (Doc 9765-LC/191), Attachment D, Part I, footnote 5. The cited notation seeks to address the concerns of those who feel that parties to existing transactions ought not *indirectly finance* a registry which primarily regulates future priority disputes.

It is entirely up to the Host State candidates to decide whether they will require repayment of any such initial funding. If repayment is required, the next question is whether that Host State would expect interest, and, if so, at what rate. These matters would impact the economic value of the cost/price funding proposal.⁸

Host State funding could also take the form of a guarantee or other form of credit support or enhancement, rather than direct financing. This may be more acceptable to Host State candidates. Without limiting the possible options, the Host State could:

- (a) guarantee to a commercial lender the repayment of principal and interest at specified times, if the Cost Recovery Mechanism does not generate sufficient funds; or
- (b) under defined conditions, commit to repay and replace that commercial lender.

B Registrar funding

A variation of the foregoing is to permit the operation of the IR by a private entity (sponsored – through the proposal process – by a State, or, alternatively, joint venturing with that State). The private entity could agree, as part of its contribution to the proposal, to advance the Initial Funding Costs (and/or the Operating Funding Costs).

In sum, options A and B above are matters for consideration by States wishing to host the IR, and, if appropriate, any private partners associated with their proposals.

C Supervisory Authority funding

A third option would have the Supervisory Authority, or, should the concept be agreed, the provisional Supervisory Authority,⁹ advance the Initial Funding Costs, presumably, but not necessarily, as an intermediary between the IR and ratifying States.

The allocation of financial responsibility under this option depends upon the identity of the Supervisory Authority, in general, and whether non-State Parties are constituent members of the Supervisory Authority.

Turning to particulars, Convention Arts. 1 and 16(1) point to the Aircraft Protocol for designation of the Supervisory Authority. Aircraft Protocol Art. XVI(1) leaves the matter open for resolution at the diplomatic conference.

The ICAO Legal Committee has recommended that the ICAO Council consider accepting the role of the Supervisory Authority, if so requested.¹⁰ The ICAO Council, in turn, has decided that the “functions of the Supervisory Authority...were acceptable in principle.”¹¹

In its working paper for the ICAO Council, the Secretary General of ICAO noted that, should the Council accept that role, it should also consider setting up a special body for this purpose along the lines of the arrangements set up under the Joint Financing Agreements or of the MEX Convention.¹² The special body could consist of Council Members or Experts from States Parties to the Convention/Aircraft Protocol. That group (**States Parties Group**) would report, through the ICAO Council, to States Parties to the Convention/Aircraft Protocol.¹³

⁸ As this paper addressing funding/cost recovery, these aspects of the Host State's proposal are noted. That is not meant to suggest that the other factors, most importantly technical capacity and experience, are secondary. In fact, they are primarily under the evaluation criteria.

⁹ See *Report of the 31st session of the Legal Committee* (Doc 9765-LC/191) at para. 3:72.

¹⁰ id. at para. 3:80.

¹¹ See *Summary of Decisions of the 161st Council* (C-DEC 161/9) at para. 10(d).

¹² See *Report of the 31st session of the Legal Committee* (C-WP/11381) at para. 3.2.2.4.

¹³ This arrangement could potentially reduce the aggregate amount payable by users of the IR. That would occur if, following precedent, State Experts in the States Parties Group are directly funded by their respective governments.

In the event that the ICAO Council acts, in some form, as the Supervisory Authority or provisional Supervisory Authority, two potential options for advancing the Initial Funding Costs present themselves.

First, should a States Parties Group arrangement be employed, States Parties could contribute the Initial Funding Costs pursuant to an agreed formula. The obvious advantage to this option is the correspondence between use and funding: all but only those States involved in the new treaty system would pay for the creation of the associated IR. A disadvantage is that the set of State Parties will change from time-to-time and cannot be known *ex ante*. Thus, ICAO might serve as coordinating function under this option.

Secondly, ICAO could advance such repayable funds made available through standard or special budgetary arrangements. This option – which may raise administrative issues – would have the effect of distributing the cost among all potential user States, rather than the actual users. There are policy-based arguments in favor and against such an approach.

It is also possible to contemplate a combination of the two foregoing options, namely, a repayable outlay by ICAO of the Initial Funding Costs for the account of State Parties, signatories States or some other grouping of States.

D Ratifying States funding

The above-noted State Parties Group funding option – linked to the Supervisory Authority – is but one example of a distinct concept. That concept is the funding by the group of States that ratify the Convention/Aircraft Protocol.

Such an arrangement need not be linked to the Supervisory Authority. The sponsoring Organizations, the Depositary or the Registrar itself could coordinate funding arrangements with such States. In any event, the advantages and disadvantages of the States Parties Group funding option noted-above would be present in any variant of ratifying State funding.

E Commercial funding (with or without Host State support)

A variety of IR funding options involving arms-length, commercial financing exist. For purposes of simplicity, we define “commercial funding” as an extension of credit on terms where the risk of loss on account of non-repayment, large or small, is factored into and compensated by a commercial rate of interest (added to the lender's borrowing costs).

Commercial funding could be secured (e.g., by an assignment of future revenues of the IR) or unsecured, guaranteed by a credit-worthy entity (e.g., the Host State, as noted above) or not. Possible creditors include, without limitation, financial institutions and manufacturers.

There are a few threshold points worth noting in any assessment of the commercial funding options.

First, and most obviously, a commercial rate of interest will add to the aggregate amount of the Initial Funding Costs, thus increasing the ultimate amounts payable by users. Users may raise concerns. The higher the rate of interest, the more significant the point.

Secondly, the actual source of repayment (and the nature of its commitment) must be clearly identified. Is it the general credit of the Registrar, and, if so, is the Registrar credit-worthy. The answer to the latter question will be affirmative if the Registrar is a meaningful governmental entity or supported by one, the loan is full recourse to the Registrar or its guarantor, and the necessary waivers of sovereign immunity are in place.

If, on the other hand, the Registrar is a special purpose entity designed solely to perform this function, it will not be credit-worthy. Commercial financing would not be available in that case – absent risk-mitigating factors, of which there are two. The funding can be secured by adequate collateral or guaranteed by a credit-worthy entity.

Third, and following from the above-point, would an assignment of future revenues – future fees payable by users – constitute adequate security to a commercial lender. Given the speculative nature of the Registry Use Assumptions, it is reasonable to assume that the projected revenues of the IR will not alone constitute adequate security. A fuller statement of the foregoing is that a commercial lender, acting as such, would either not extend such a credit or would only do so at high rates of interest.

Without knowing the amount of the Initial Funding Costs – which requires, inter alia, definitive Registry Cost Assumptions, it is difficult to say more about the commercial funding options (that are not centered on repayment obligations of a credit-worthy entity). This fact itself has procedural implications.

Part III Cost Recovery Mechanism: Amortization of Registry Costs

However the Registry Costs are funded, a Cost Recover Mechanism will be required to recover or “amortize” such costs. It must also adjust the fee schedule based on inaccuracies in the Registry Use Assumptions, and, to the extent agreed at the diplomatic conference, the Registry Cost Assumptions.

To simplify and streamline the following discussion, we will express the Cost Recovery Mechanism formulaically, as follows:

$$(F)RCs \% [(F)U/T1s+(F)U/T2s +(F)U/T3s] = Fs$$

where –

(F)RCs = Forecasted Registry Costs – that is, Forecasted Initial Funding Costs + Forecasted Operating Costs (over an agreed period);

(F)U/T1s = Forecasted Use Transactions related to filings;

(F)U/T2s = Forecasted Use Transactions related to searches;

(F)U/T3s = Forecasted Use Transactions related to the issuance of certificates;

Fs = Transactional Fees payable to the IR –

((This formula is oversimplified in that it will be necessary to have differentiated fees for (a) filings, searches, and the issuance of certificates, and (b) each of the foregoing in respect of aircraft engines, airframes and helicopters.))

The following items arise in connection with the Cost Recovery Mechanism.

A Period of time for cost recovery/fee schedule

The Registry Use Assumptions have a temporal element. Over what period of time should the Registry Costs be amortized.¹⁴ In other words, what is the forecast (F) period (**Forecast Period**).

There are two points that favor a relatively long Forecast Period.¹⁵ First, a long Forecast Period will avoid/minimize the risk of financially penalizing early ratifiers of the Convention/Aircraft Protocol by placing disproportionate fee responsibilities on aviation industry participants located in those States. Secondly, and as a corollary, the longer the Forecast Period, the lower the actual fees chargeable per transaction. Both of these points may have ratification implications.

B Mechanism for adjustment of initial fee schedule

Whatever the Forecast Period, the Cost Recovery Mechanism must contemplate adjustment and re-amortization based on the inevitable lack of correspondence between the initial Registry Use Assumptions and the actual use of the IR. Subject to policy decisions at the diplomatic conference, the same may be necessary for inaccuracies associated with the Registry Cost Assumptions.

¹⁴ It is possible, though not strictly speaking necessary, to link this question to the parallel matter of the period of time over which the Operating Funding Costs will be forecasted – for purposes of their amortization.

¹⁵ This assertion suggests that the 5 year appointment period for the Registrar in Aircraft Protocol Art. XVI(2) may be too short. The diplomatic conference should consider this point.

The basic questions in this regard relate to:

- (a) the criteria for adjustment;
- (b) the length of the revised Forecast Period (raising similar issues to those noted above, if less acutely); and
- (c) whether any classification or other substantive changes may be made (e.g., adjusting allocations between types of use transactions or categories of aircraft equipment).

On the procedural side, questions relating to the respective roles and responsibilities of the Registrar, Supervisory Authority, Contracting States (and, depending on the agreed funding arrangements, the Host State) also need to be addressed. By way of example, what is the appropriate timing of, and documentation for, use, cost and revenue reports by the Registrar, and the cost figures of the Supervisory Authority.

It seems appropriate to have any party providing the initial funding involved in adjustments to the repayment schedule and/or mechanism.

C Applicable/imputed interest rate

An element of the forecasted Registry Costs – F(RC) – is the interest rate, or imputed interest rate, applicable to the funding.

Depending upon the incentives and profile of the funding entity, that rate could range from 0% (subsidized funding) to the funder's borrowing rate (concessionary funding) to the funder's borrowing rate plus a risk premium (commercial funding). Such incentives and profile might be considered in evaluating the funding options – should the magnitude of the amounts so justify.

As noted above, the risk of non-repayment may be mitigated by several factors or a combination of factors, including (a) a full or partial guarantee by a creditworthy entity, and/or (b) security for the loan. It also may be the case that the funding entity is prepared, on commercial or policy grounds, to extend the repayment term of the loan pursuant to a pre-agreed formula. That would also lessen the risk of non-repayment, but might put more pressure on the interest rate and adjustments thereto.

Part IV Hypothetical Estimates of Cost Recovery and Transaction Fees

In Part III, a formula was provided to assist in calculating end-user transactions (Fs), a matter of interest to the Diplomatic Conference and States that will consider ratifying the Convention/Aircraft Protocol.

To iterate, that formula is –

$$(F)RCs \% [(F)U/T1s+(F)U/T2s +(F)U/T3s] = Fs$$

where –

(F)RCs = Forecasted Registry Costs – that is, Forecasted Initial Funding Costs + Forecasted Operating Costs (over an agreed period);

(F)U/T1s = Forecasted Use Transactions related to filings;

(F)U/T2s = Forecasted Use Transactions related to searches;

(F)U/T3s = Forecasted Use Transactions related to the issuance of certificates;

Fs = Transactional Fees payable to the IR

While appreciating the desire to address this matter with precision, we start by noting that (a) very limited information has been provided to us regarding the Registry Cost Assumptions, particularly the Initial Funding Costs and the Operating Funding Costs, and (b) Registry Use Assumptions are unknown, and, in some cases, unknowable.

Nonetheless, and with a view towards providing a general frame of reference, we now will fill in that formula with tentative and wholly hypothetical figures, which should not be seen as reflecting actual amounts or expectations.

We have only received Registry Cost information from one party that has expressed an interest in developing the IR. That entity has estimated **Initial Funding Costs** at approximately US \$ 650,000 and yearly **Operating Funding Costs** at approximately US \$ 200,000.

Scenario One

If one randomly assumes (i) that the Host State would provide the funding yet expect repayment over a period of 10 years (in our terminology, a 10 year Forecast Period), without charging interest on this US \$ 2,650,000, 10 year outlay, (ii) 5,000 yearly registrations, 5,000 yearly searches, and 5,000 yearly certificates (i.e., 150,000 IR transactions over that 10 year period), and (iii) all fees are the same (which will likely not be the case, see below) the results (in US Dollars) are as follows:

US\$ 2,650,000 % US\$ 150,000 = US\$ 17

Scenario Two

If one more conservatively assumes double the expenses and half the IR transactions, the transaction fees are US \$ 70, calculated as follows:

US\$ 5,300,000 % US\$ 75,000 = US\$ 70

If we now more realistically contemplate that fees will differentiate amount registrations, searches and certificates, **scenario one** fees might realistically **range from 5 to 50 US Dollars** and **scenario two** fees from **35 to 115 US Dollars**.

These figures are given to help establish a range, yet, as noted, are based on Assumptions which are speculative.

Annex

to Finland/AWG prepared discussion-paper on Funding/Cost Recovery Methods for the new International Registry

A-1 Glossary of Key Terms

Cost Recovery Mechanism – mechanism for recovery of Registry Costs through user fees, as adjusted from time-to-time.

Forecast Period – length of time over which Registry Costs will be recovered through user fees.

Initial Funding Costs – costs to create the IR.

Operating Funding Costs – expenses relating to the ongoing operational and supervision of the IR.

Registry Costs – Initial Funding Costs plus Operational Funding Costs.

Registry Cost Assumptions – assumptions relating to Registry Costs used in setting, and, as appropriate, adjusting fee schedules.

Registry Use Assumptions – assumptions relating to the use of the International Registry in setting, and, as appropriate, adjusting fee schedules.

A-2 Key Questions for the Diplomatic Conference/Supervisory Authority

- i) What are the Registry Cost Assumptions.
- ii) What are the Registry Use Assumptions.
- iii) What is the Forecast Period.
- iv) What are the criteria and procedures for adjusting the fee schedules, once set.
- v) Which of the identified funding options or combination thereof is appropriate: Host State funding; Registrar funding; Supervisory Authority funding; Ratifying State funding; or Commercial funding.
- vi) What is the interest rate for any funding.

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**REPORT OF THE THIRD JOINT SESSION
OF THE SUB-COMMITTEE OF THE ICAO LEGAL COMMITTEE
AND THE UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS**
The attached document reproduces the Report previously issued under LC/31-WP/3-6.

THIRD JOINT SESSION
(Rome, 20 – 31 March 2000)

REPORT

Approved on behalf of the third Joint Session of the UNIDROIT Committee of Governmental Experts and the Sub-Committee of the ICAO Legal Committee for the preparation of a draft Convention on International interest in Mobile Equipment.

Dr. Emilia Chiavarelli
Chairman of the Third Joint Session

Rome, 16 August 2000

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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. Espinola, 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 Espinola 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. Espinola, 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 Espinola (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. The 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 1 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 clarifications 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 rights 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 clarifications 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 G.T. 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.

ATTACHMENT A

LIST OF PARTICIPANTS

MEMBERS OF UNIDRIT / 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 LORTIEMs 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 E UK
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

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

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, Chairman of the Joint Session 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, Second Vice-Chairman of the Joint Session
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 VOZHYZHOV 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
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SOUTH AFRICA (*)	Mr Enver DANIELS Mr Nasser SOLOMON Ms Gloria Tomatoe SEROBE, First Vice-Chairman of the Joint Session Ms Swazi Bajabulile TSHABALALA Mr Gasant ORRIE Mr Khalatse C. MAROBELA Ms Nozipho SITHOLE Mr Ntobeleo MAQUBELA Mr Edward X. MAKAYA
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SWEDEN (*)	Mr Henrik KJELLIN
SWITZERLAND (*)	Mr Laurent NOËL Mr Bénédicte 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, *Co-ordinator of the*
Aviation Working Group
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
RAIL WORKING GROUP

Mr David GECHT
Mr Howard ROSEN, *Co-ordinator of the Rail*
Working Group
Mr Louis P. WARCHOT
Ms Karin KILBEY

SPACE WORKING GROUP

Mr Dara PANAHY

* * *

ADVISER TO THE PUBLIC
INTERNATIONAL LAW WORKING GROUP

Ms Christine CHINKIN

ATTACHMENT B

LIST OF WORKING PAPERS

Title	ICAO References LSC/ME/S
Draft Agenda	WP/1
Second Joint Session (24 August □ 3 September 1999): report	Int.Int./2 – Report
<i>Ad hoc</i> Drafting Group (Rome, 25-27 November 1999): report	WP/2
Public International Law Working Group (Cape Town/en route to Pretoria, 8-11 December 1999): report	WP/3
Preliminary comments (submitted by the Government of France)	WP/4
Summary comments on the international registration system and its effects (submitted by the Government of Portugal)	WP/5
Comments (submitted by the Government of the United States of America)	WP/6
Comments (submitted by the Government of the United States of America): corrigendum	WP/6 Corrigendum
Comments (submitted jointly by the Aviation Working Group and the International Air Transport Association)	WP/7

Discussion-purpose memorandum on public aircraft equipment (submitted by the Aviation Working Group)	WP/8
Comments (submitted by the Government of Egypt)	WP/9
Comments (submitted by the Secretariat of UNCITRAL)	WP/10
Declarations and derogations (presented by the ICAO Secretariat)	WP/11
Remedies and interim relief (submitted by the ICAO Secretariat)	WP/12
Comments (submitted by the Government of the Federal Republic of Germany)	WP/13
Proposal regarding the substantive sphere of application of the preliminary draft Convention (submitted by the UNIDROIT Secretariat)	WP/14
Sphere of application and main provisions (submitted by the Government of Italy)	WP/15
Proposals regarding the establishment and management of the International Registry (submitted by the Government of the Federal Republic of Germany)	WP/16
Proposal regarding Article 3 of the preliminary draft Convention (submitted by the French delegation)	WP/17
Public International Law Working Group (Rome, 20 and 21 March 2000): report	WP/18
Proposal regarding Articles XI and XXX of the preliminary draft Aircraft Protocol (submitted by the Government of Japan)	WP/19
Special Working Group on Article 3 of the preliminary draft Convention: report	WP/20
Proposal regarding the International Registry (submitted by the Government of Portugal)	WP/21
Comments (submitted by the International Federation of Insolvency Practitioners) (INSOL International)	WP/22
Draft Report – Plenary Session: 20 March 2000	WP/23
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
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
Draft Report – Plenary Session: 21 March 2000	WP/26
Special Working Group on Article 3 of the preliminary draft Convention: second report	WP/27
Special Working Group on Article 3 of the preliminary draft Convention: second report: corrigendum	WP/27 corr.
Restricted Group of the Drafting Committee (Saturday 25 March 2000): Public International Law Provisions	WP/28
Restricted Group of the Drafting Committee (Monday 27 March 2000): Public International Law Provisions	WP/28 corr.
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
Proposal concerning the establishment of the International Registry (submitted jointly by the delegations of France and the United States of America)	WP/30
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
Draft Report – Plenary Session: 22 March 2000	WP/32
Draft Report – Plenary Session: 23 March 2000	WP/33
Draft Report – Plenary Session: 24 March 2000	WP/34
Draft Report – Plenary Session: 27 March 2000	WP/35
Restricted Group of the Drafting Committee: report	WP/36
Draft Report – Plenary Session: 28 March 2000	WP/37
Draft Report – Plenary Session: 30 March 2000	WP/38
Draft Report – Plenary Sessions: 20-30 March 2000	WP/39
Drafting Committee: report	WP/40

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.

DCME –IP/6
31/10/01
English only

DIPLOMATIC CONFERENCE TO ADOPT A MOBILE EQUIPMENT CONVENTION AND AN AIRCRAFT PROTOCOL

(Cape Town, 29 October to 16 November 2001)

(Presented by the Space Working Group)

Since 1997 we have made a concerted effort to work with UNIDROIT to create a global set of uniform legal standards that would apply to the financing of space assets.

We underscore the urgent need to create a common set of legal standards within which space assets can be financed.

Forty years ago satellite technology was the exclusive domain of governments. The migration of that technology from governments to the commercial sector began in the 1970's and has proceeded at such a rapid pace that today over 60% of the assets now deployed in space are for commercial purposes. This medium of communications has become so ingrained in our daily lives that it is easy to overlook just how dependent the world has become on satellites. Television and radio broadcasts are now delivered to areas of the world previously lacking access. Who would question the changes brought about by the deluge of information now freely available around the world on the internet? Consider how commonplace it is for all of us to use wireless phones, pagers and e-mail. Add to this list weather forecasting, multispectral imagery and global positioning technology. And consider the benefits of telemedicine: a rural doctor unable to interpret a patient's x-ray or diagnose an illness can now have the capability to transmit that x-ray to a university specialist half way around the world.

But these benefits are not available to all people. Much of the world lacks access to the technological advances we have just listed. The information highway does not pass by everyone's home. Voice communication is not easily accessible to all. The advances in medicine are not available to everyone. It is an all-too-familiar story of a widening gap: the industrialized nations are rapidly increasing their rate of technological absorption, but the less developed parts of our planet are doing so at a much slower pace.

Satellites are an ideal means for narrowing the information gap between the “haves” and “have-nots.” One geosynchronous satellite can bring information to literally hundreds of millions of people. But satellites are not free. A typical geosynchronous satellite costs \$250mm. Three decades ago the sources of those funds were governments. But governments are no longer in a position to sponsor the systems that can manage and distribute the vast amount of information now available. Nor are governments well suited to develop new applications for better use of information. Privately owned companies have risen to address these needs, and the cost for doing so continues to decline. But these companies are largely focused on industrialized countries where the markets are larger and where their financial interests are protected by well-developed legal systems. Countries with unclear legal systems do not attract the global financial resources necessary to build the communications systems that would most benefit their people.

The trillions of dollars that flow through the capital markets everyday are constantly searching for opportunities that maximize returns and minimize risk. One of the key risks that investors continually evaluate is the adequacy of legal protection. The need to create trust in judicial systems has never been greater than it is today. The bedrock of asset-based satellite financing is a lender's belief that his interests will be protected. The lender needs to have “legal transparency” and “certainty of fairness” – the knowledge that a body of law exists and that a judicial system will apply that body of law in a fair manner. Those conditions are not uniformly available throughout the world. Capital flows to where it will be safe and where disputes between a lender and a borrower can be fairly resolved in a court of law. UNIDROIT and its Space Working Group have been working for the past four years to develop a globally uniform set of legal standards which, if adopted by governments, will allow capital to more easily flow to regions of the world that do not fully enjoy the vast benefits of satellite technology.

Because space has no national boundaries, the conduct of human activity in space has largely been the responsibility of the United Nations. Through decades of work the United Nations has developed a body of space treaties and principles that guide the relationships between nation states. These treaties have proven to be very effective in ensuring the peaceful and equitable sharing of responsibilities among all governments.

But the rapid development of commercial technologies that utilize the environment of space now require the creation of new legal procedures which go beyond existing treaties to ensure that all people can equally benefit from that technology. These new commercial principles will act in concert with existing international treaties, and will also be effective in addressing the requirements of the global capital markets. That is why the UNIDROIT Space Working Group exists, and it is the underlying purpose behind the draft Protocol that has been distributed at this conference.

UNIDROIT and the Space Working Group are presenting themselves at this conference to respectfully request that as you consider the merits of the Convention On International Interests In Mobile Equipment and the associated Aircraft Protocol, that you also consider the Protocol on Space Assets in the same light.

Space is a distant, foreign and inhospitable environment. The satellites that go into this environment are truly marvels of human engineering that can bring significant benefits to every person on this planet. To accomplish that task will require a common set of legal standards. We ask for your help, advice and comments to achieve that goal.

DCME –IP/7

1/11/01

**TEXT EXTRACTED FROM DCME–IP/4, ATTACHMENT 3,
PUBLISHED IN ENGLISH AND FRENCH ONLY
“THIRD REPORT OF THE INTERNATIONAL REGISTRY TASK FORCE”**

Article 27 – Liability and insurance

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, and its officers and employees, within the operation of the Registry or from a malfunction of the international registration system except where the damage is caused by an event of an inevitable and irresistible nature.

1bis. For the purposes of paragraph 1 of this Article:

(a) neither the factual inaccuracy of data transmitted by a user nor the unauthorised use of an electronic signature obtained from a user is considered an error or omission;

(b) acts or circumstances arising prior to receipt of registration information at the Registry shall not be considered as being part of the operation of the Registry; and

(c) an amendment or corruption of data in the Registry database resulting from unauthorised external access to the database by a person not using an authorised signature that could not be prevented by using the best practices and standards in current use in electronic registry operation, including those related to back-up and security systems, shall not be considered as an error or omission.

1ter. Compensation under paragraph 1 of this Article may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.

2. The Registrar shall provide insurance or a financial guarantee covering the liability referred to in this Article to the extent determined by the Supervisory Authority.

PART TWO

DOCUMENTS ADOPTED BY THE CONFERENCE

FINAL ACT

**of the Diplomatic Conference to Adopt a Mobile Equipment Convention
and an Aircraft Protocol held under the joint auspices of the
International Institute for the Unification of Private Law and
The International Civil Aviation Organization**

Signed at Cape Town on 16 November 2001



CAPE TOWN

16 NOVEMBER 2001

FINAL ACT

of the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held under the joint auspices of the International Institute for the Unification of Private Law and The International Civil Aviation Organization at Cape Town from 29 October to 16 November 2001

The Plenipotentiaries at the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol, held under the joint auspices of the International Institute for the Unification of Private Law and the International Civil Aviation Organization, met at Cape Town, at the invitation of the Government of the Republic of South Africa, from 29 October to 16 November 2001 for the purpose of considering the draft *Convention on International Interests in Mobile Equipment* and the draft *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*, prepared by three Joint Sessions of a Committee of Governmental Experts of the International Institute for the Unification of Private Law and a Legal Sub-Committee of the International Civil Aviation Organization, as well as by the Legal Committee of the International Civil Aviation Organization.

The Governments of the following fifty-nine States were represented at the Conference and presented credentials in due and proper form:

Angola, the Republic of	Japan
Argentine Republic, the	Jordan, the Hashemite Kingdom of
Australia	Kenya, the Republic of
Bahrain, the State of	Lebanese Republic, the
Belgium, the Kingdom of	Lesotho, the Kingdom of
Benin, the Republic of	Libyan Arab Jamahiriya, the Socialist People's
Botswana, the Republic of	Malawi, the Republic of
Brazil, the Federative Republic of	Mexican States, the United
Burundi, the Republic of	Namibia, the Republic of
Cameroon, the Republic of	Netherlands, the Kingdom of the
Canada	Nigeria, the Federal Republic of
Chile, the Republic of	Oman, the Sultanate of
China, the People's Republic of	Pakistan, the Islamic Republic of
Congo, the Republic of the	Republic of Korea, the
Costa Rica, the Republic of	Russian Federation, the
Côte d'Ivoire, the Republic of	Singapore, the Republic of
Cuba, the Republic of	South Africa, the Republic of
Czech Republic, the	Spain, the Kingdom of
Egypt, the Arab Republic of	Sudan, the Republic of the
Ethiopia, Federal Democratic Republic of	Sweden, the Kingdom of
Finland, the Republic of	Swiss Confederation, the
French Republic, the	Thailand, the Kingdom of
Germany, the Federal Republic of	Tonga, the Kingdom of
Ghana, the Republic of	Turkey, the Republic of
Hellenic Republic, the	Uganda, the Republic of,
India, the Republic of	United Arab Emirates the
Iran, the Islamic Republic of	United Kingdom of Great Britain and
Ireland	Northern Ireland, the
Italian Republic, the	United Republic of Tanzania, the
Jamaica	United States of America, the

The following eleven international Organisations and groups were represented by Observers:

African Civil Aviation Commission (AFCAC)
 Aviation Working Group (AWG)
 European Organisation for the Safety of Air Navigation (EUROCONTROL)
 European Community
 Hague Conference on Private International Law
 International Air Transport Association (IATA)
 Intergovernmental Organisation for International Carriage by Rail (OTIF)
 International Mobile Satellite Organization (IMSO)
 Rail Working Group (RWG)
 Space Working Group (SWG)
 United Nations

The Conference unanimously elected as President Mr. Medard Rutojjo Rwelamira (South Africa) and further unanimously elected as Vice-Presidents:

First Vice-President – Mr. Harold S. Burman (United States)
 Second Vice-President – Mr. Gao Hongfeng (China)
 Third Vice-President – Mr. Souleiman Eid (Lebanon)
 Fourth Vice-President – Mr. Jório Salgado Gama Filho (Brazil)
 Fifth Vice-President – Mr. John Atwood (Australia)

The Joint Secretariat of the Conference was the following:

For the International Institute for the Unification of Private Law:

Secretary General – Mr. Herbert Kronke, Secretary-General
 Executive Secretary – Mr. Martin Stanford, Principal Research Officer
 Deputy Secretary and Conference Officer – Ms. Marina Schneider, Research Officer
 Deputy Secretary – Ms. Frédérique Mestre, Research Officer
 Assistant Secretary – Ms. Lena Peters, Research Officer

For the International Civil Aviation Organization:

Secretary General – Mr. Ludwig Weber, Director of the Legal Bureau
 Executive Secretary – Mr. Silvério Espínola, Principal Legal Officer
 Deputy Secretary – Mr. Jiefang Huang, Legal Officer
 Assistant Secretary – Mr. Arie Jakob, Legal Officer
 Conference Officer – Mr. Michael J. Blanch, Chief, Conference & Office Services
 Section

Other officials of both Organisations also provided services to the Conference.

The Conference established a Commission of the Whole, composed of all States represented at the Conference, which was chaired by Mr. Antti T. Leinonen (Finland), and the following Committees:

Credentials Committee

Chairman: Mrs. Joyce Thompson (Ghana)
 Members: Costa Rica
 Ghana
 Oman
 Singapore
 Spain

Drafting Committee

Chairman: Sir Roy Goode (United Kingdom)

Members: Argentina
Canada
China
France
Germany
Jamaica
Japan
Lebanon
Mexico
Nigeria
Russian Federation
South Africa
United Arab Emirates
United Kingdom
United States

Final Clauses Committee

Chairman: Mr. Kenneth O. Rattray (Jamaica)

Members: Canada
China
Cuba
Egypt
France
Jamaica
Kenya
Pakistan
Saudi Arabia
Senegal
Singapore
Sweden
Switzerland
United States

Following its deliberations, the Conference adopted the texts of the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*.

The said Convention and Protocol have been opened for signature at Cape Town this day.

The texts of the said Convention and Protocol are subject to verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within a period of ninety days from the date hereof as to the linguistic changes required to bring the texts in the different languages into conformity with one another.

The Conference furthermore adopted by consensus the following Resolutions: (*)

IN WITNESS WHEREOF the Delegates,

GRATEFUL to the Government of the Republic of South Africa for having invited the Conference to South Africa and for its generous hospitality,

HAVE SIGNED this Final Act.

(*) The texts of the five Resolutions adopted by the Diplomatic Conference are reproduced in Annexes IV, V, VI, VII and VIII respectively.

DONE at Cape Town on the sixteenth day of November of the year two thousand and one in two originals of which the English, Arabic, Chinese, French, Russian and Spanish languages are equally authentic. The Convention and the Protocol shall be deposited with the International Institute for the Unification of Private Law. A certified copy of each instrument shall be delivered by the said Organisation to the Governments of each of the negotiating States.

RESOLUTION NO. 1

**relating to the Consolidated Text of the Convention on International
Interests in Mobile Equipment and the Protocol to the Convention
on International Interests in Mobile Equipment on Matters
specific to Aircraft Equipment**

MINDFUL of the objectives of the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*;

DESIROUS of facilitating the application and implementation of the Convention and the Protocol;

TAKING INTO ACCOUNT Article 6, paragraph 1 of the Convention, which states that the Convention and the Protocol shall be read and interpreted together as a single instrument;

HAVING AGREED to entrust the Joint Secretariat of the Conference, namely the Secretariats of the International Institute for the Unification of Private Law (UNIDROIT) and of the International Civil Aviation Organization (ICAO), with the drawing up of a consolidated text to facilitate the implementation of the rules contained in the Convention and the Protocol in a user-friendly manner;

THE CONFERENCE:

HEREBY TAKES NOTE OF the Consolidated Text of the *Convention on International Interests in Mobile Equipment* and the *Protocol thereto on Matters specific to Aircraft Equipment* as set out in the **Attachment** to this Resolution.

Attachment

CONSOLIDATED TEXT

**of the Convention on International Interests in Mobile Equipment and
the Protocol to the Convention on International Interests in
Mobile Equipment on Matters specific to Aircraft Equipment**

THE STATES PARTIES,

AWARE of the need to acquire and use aircraft 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 and mutual 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,

MINDFUL of the principles and objectives of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944,

HAVE AGREED upon the following provisions:

CHAPTER I – SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1 – Definitions

For the purposes of this Convention, “this Convention” means the *Consolidated Text of the Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*.

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;

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

(c) “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 lb 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;

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

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

(f) “airframes” means airframes (other than those used in military, customs and 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;

(g) “assignment” means a contract which, whether by way of security or otherwise, confers on the assignee associated rights with or without a transfer of the related international interest;

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

(i) “authorised party” means the party referred to in Article 25(3);

(j) “Chicago Convention” means the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944, as amended, and its Annexes;

(k) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;

(l) “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;

- (m) “conditional buyer” means a buyer under a title reservation agreement;
- (n) “conditional seller” means a seller under a title reservation agreement;
- (o) “contract of sale” means a contract for the sale of an aircraft object by a seller to a buyer which is not an agreement as defined in (a) above;
- (p) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;
- (q) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;
- (r) “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 aircraft object is burdened by a registrable non-consensual right or interest;
- (s) “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;
- (t) “guarantee contract” means a contract entered into by a person as guarantor;
- (u) “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;
- (v) “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;
- (w) “insolvency administrator” means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;
- (x) “insolvency proceedings” means bankruptcy, liquidation or other 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;
- (y) “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 this Convention is prevented or suspended by law or State action;
- (z) “interested persons” means:
 - (i) the debtor;
 - (ii) any guarantor;
 - (iii) any other person having rights in or over the aircraft object;
- (aa) “internal transaction” means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant aircraft object under Article 3(4) is located, in the same Contracting State at the time of the conclusion of the contract and where the interest created by the transaction has been registered in a national registry in that Contracting State which has made a declaration under Article 66(1);

(bb) “international interest” means an interest held by a creditor to which Article 2 applies;

(cc) “International Registry” means the international registration facilities established for the purposes of this Convention;

(dd) “leasing agreement” means an agreement by which one person (the lessor) grants a right to possession or control of an aircraft object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment;

(ee) “national interest” means an interest held by a creditor in an aircraft object and created by an internal transaction covered by a declaration under Article 66(1);

(ff) “non-consensual right or interest” means a right or interest conferred under the law of a Contracting State which has made a declaration under Article 52 to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organisation;

(gg) “notice of a national interest” means notice registered or to be registered in the International Registry that a national interest has been created;

(hh) “pre-existing right or interest” means a right or interest of any kind in or over an aircraft object created or arising before the effective date of this Convention as defined by Article 76(2)(a);

(ii) “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;

(jj) “proceeds” means money or non-money proceeds of an aircraft object arising from the total or partial loss or physical destruction of the aircraft object or its total or partial confiscation, condemnation or requisition;

(kk) “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;

(ll) “prospective international interest” means an interest that is intended to be created or provided for in an aircraft 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 aircraft object), whether or not the occurrence of the event is certain;

(mm) “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;

(nn) “registered” means registered in the International Registry pursuant to Chapter V;

(oo) “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;

(pp) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 53;

(qq) “Registrar” means the person or body appointed under Articles 27(4)(b) and 28;

(rr) “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;

(ss) “regulations” means regulations made or approved by the Supervisory Authority pursuant to this Convention;

(tt) “sale” means a transfer of ownership of an aircraft object pursuant to a contract of sale;

(uu) “secured obligation” means an obligation secured by a security interest;

(vv) “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 aircraft object to secure the performance of any existing or future obligation of the chargor or a third person;

(ww) “security interest” means an interest created by a security agreement;

(xx) “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;

(yy) “Supervisory Authority” means the Supervisory Authority referred to in Article 27;

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

(aaa) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which Article 52 applies) which has not been registered, whether or not it is registrable under this Convention; and

(bbb) “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.

Article 2 – The international interest

1. This Convention provides for the constitution and effects of an international interest in aircraft objects and associated rights.

2. For the purposes of this Convention, an international interest in aircraft objects is an interest, constituted under Article 10, in airframes, aircraft engines or helicopters:

- (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
- (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 applicable law determines whether an interest to which the preceding paragraph applies falls within sub-paragraph (a), (b) or (c) of that paragraph.

4. An international interest in an aircraft object extends to proceeds of that aircraft 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.

3. Without prejudice to paragraph 1 of this Article, this Convention shall also apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State which is the State of registry, and where such registration is made pursuant to an agreement for registration of the aircraft it is deemed to have been effected at the time of the agreement.

4. For the purposes of the definition of “internal transaction” in Article 1 of this 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.

Article 4 – Where debtor is situated

1. For the purposes of Article 3(1), 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 sub-paragraph (d) of the preceding paragraph 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.

Article 6 – Application to sale and prospective sale

The following provisions of this Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer, respectively:

Articles 3 and 4;
Article 26(1)(a);
Article 32(4);
Article 33(1) (as regards registration of a contract of sale or a prospective sale);
Article 38(2) (as regards a prospective sale); and
Article 43.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 42 (other than Article 42(3) and (4)), Chapter X, Chapter XI (other than Article 55), Chapter XII and Chapter XIII (other than Article 76) shall apply to contract of sales and prospective sales.

Article 7 – 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 this Convention.

Article 8 – 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 aircraft object for the purposes of Articles 10(c) and 11(1)(c) of this Convention.

Article 9 – Choice of law

1. This Article applies only where a Contracting State has made a declaration pursuant to Article 71(1).

2. 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, wholly or in part.

3. 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 – CONSTITUTION OF AN INTERNATIONAL INTEREST; CONTRACTS OF SALE*Article 10 – 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 aircraft object of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the aircraft object to be identified; 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.

Article 11 – Formalities and effects of contracts of sale

1. For the purposes of this Convention, 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 Convention.
2. A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.

CHAPTER III – DEFAULT REMEDIES*Article 12 – Remedies of chargee*

1. In the event of default as provided in Article 17, the chargee may, to the extent that the chargor has at any time so agreed and subject to any declaration that may be made by a Contracting State under Article 70, exercise any one or more of the following remedies:
 - (a) take possession or control of any aircraft object charged to it;
 - (b) sell or grant a lease of any such aircraft object;
 - (c) collect or receive any income or profits arising from the management or use of any such aircraft object.

2. The chargee may alternatively apply for a court order authorising or directing any of the acts referred to in the preceding paragraph.

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

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

4. A chargee giving ten or more working 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 the preceding paragraph. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

5. Any sum collected or received by the chargee as a result of exercise of any of the remedies set out in paragraph 1 or 2 shall be applied towards discharge of the amount of the secured obligations.

6. Where the sums collected or received by the chargee as a result of the exercise of any remedy set out in paragraph 1 or 2 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 distribute the surplus among holders of subsequently ranking interests which have been registered or of which the chargee has been given notice, in order of priority, and pay any remaining balance to the chargor.

Article 13 – Vesting of aircraft object in satisfaction; redemption

1. At any time after default as provided in Article 17, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any aircraft 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 aircraft 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 commensurate with the value of the aircraft 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 17 and before sale of the charged aircraft 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 12(1)(b) or ordered under Article 12(2). 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 12(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 42.

Article 14 – 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 17, the conditional seller or the lessor, as the case may be, may:

(a) subject to any declaration that may be made by a Contracting State under Article 70, terminate the agreement and take possession or control of any aircraft object to which the agreement relates; or

(b) apply for a court order authorising or directing either of these acts.

Article 15 – Additional remedies of creditor

1. In addition to the remedies specified in Articles 12, 14 and 20, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in such provisions:

(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. The registry authority in a Contracting State shall, subject to any applicable safety laws and regulations, honour a request for de-registration and export if:

(a) the request is properly submitted by the authorised party under a recorded irrevocable de-registration and export request authorisation; and

(b) the authorised party certifies to the registry authority, if required by that authority, that all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.

4. A chargee proposing to procure the de-registration and export of an aircraft under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed de-registration and export to:

(a) interested persons specified in Article 1(z)(i) and (ii) of this Convention; and

(b) interested persons specified in Article 1(z)(iii) of this Convention who have given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

Article 16 – Additional remedies under applicable law

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 22.

Article 17 – 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 12 to 15 and 20.

2. Where the debtor and the creditor have not so agreed, “default” for the purposes of Articles 12 to 15 and 20 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

Article 18 – Debtor provisions

1. In the absence of a default within the meaning of Article 17 of this Convention, the debtor shall be entitled to the quiet possession and use of the aircraft object in accordance with the agreement as against:

(a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 42(5) or, in the capacity of buyer, Article 42(3) of this Convention, unless and to the extent that the debtor has otherwise agreed; and

(b) the holder of any interest to which the debtor's right or interest is subject pursuant to Article 42(5) or, in the capacity of buyer, Article 42(4) of this Convention, but only to the extent, if any, that such holder has agreed.

2. Nothing in this Convention affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to an aircraft object.

Article 19 – Standard for exercising remedies

Any remedy given by this Convention in relation to an aircraft object 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 agreement except where such a provision is manifestly unreasonable.

Article 20 – Relief pending final determination

1. Subject to any declaration that it may make under Article 71(2), 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 aircraft object and its value;
- (b) possession, control or custody of the aircraft object;
- (c) immobilisation of the aircraft object;
- (d) lease or, except where covered by sub-paragraphs (a) to (c), management of the aircraft object and the income therefrom; and
- (e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom.

2. For the purposes of the preceding paragraph, "speedy" in the context of obtaining relief means within such number of working 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. Ownership or any other interest of the debtor passing on a sale under sub-paragraph (e) of paragraph 1 of this Article is free from any other interest over which the creditor's international interest has priority under the provisions of Article 42 of this Convention.

4. In making any order under paragraph 1 of this Article, 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
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.

5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of the preceding paragraph.

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

7. With regard to the remedies in Article 15(1):

- (a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than five working days after the creditor notifies such authorities that the relief specified in Article 15(1) is granted or, in the case of relief

granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with this Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

8. Nothing in the preceding paragraphs affects the application of Article 19 or limits the availability of forms of interim relief other than those set out in paragraph 1.

9. Paragraphs 2 and 7 shall not affect any applicable aviation safety laws and regulations.

10. Paragraphs 1, 2, 3, 5, 7 and 9 of this Article apply only where a Contracting State has made a declaration under Article 71(2) and to the extent stated in such declaration.

Article 21 – Procedural requirements

Subject to Article 70(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 22 – Derogation

Any two or more of the parties referred to in this Chapter may at any time, by agreement in writing, exclude the application of Article 23 and, in their relations with each other, derogate from or vary the effect of any of the preceding provisions of this Chapter, except as stated in Articles 12(3) to (6), 13(3) and (4), 15(2), 19, 20 and 21.

Article 23 – 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 71(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 other than a default

constituted by the opening of insolvency proceedings 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. With regard to the remedies in Article 15(1):

(a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with this Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

9. No exercise of remedies permitted by this Convention 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 non-consensual rights or interests of a category covered by a declaration pursuant to Article 52, shall have priority in insolvency proceedings over registered interests.

13. The provisions of this Convention 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 71(3) whether it will:

(a) cure all defaults other than a default constituted by the opening of insolvency proceedings 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 the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take 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 24 – Insolvency assistance

1. This Article applies only where a Contracting State has made a declaration pursuant to Article 71(1).

2. 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 23.

Article 25 – De-registration and export request authorisation

1. This Article applies only where a Contracting State has made a declaration pursuant to Article 71(1).

2. Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Convention and has submitted such authorisation for recordation to the registry authority, that authorisation shall be so recorded.

3. 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 15(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.

4. 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 15.

CHAPTER IV – THE INTERNATIONAL REGISTRATION SYSTEM*Article 26 – 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 subrogations under the applicable law;
 - (d) notices of national interests; and
 - (e) subordinations of interests referred to in any of the preceding sub-paragraphs.
2. For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

Article 27 – The Supervisory Authority

1. There shall be a Supervisory Authority which shall be the international entity designated by a Resolution adopted by the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol.
2. Where the international entity referred to in the preceding paragraph is not able and willing to act as Supervisory Authority, a Conference of Signatory and Contracting States shall be convened to designate another Supervisory Authority.
3. The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and

experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.

4. The Supervisory Authority shall:
 - (a) establish or provide for the establishment of the International Registry;
 - (b) appoint and dismiss the Registrar;
 - (c) ensure that any rights required for the continued effective operation of the International Registry in the event of a change of Registrar will vest in or be assignable to the new Registrar;
 - (d) after consultation with the Contracting States, make or approve and ensure the publication of regulations dealing with the operation of the International Registry;
 - (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
 - (f) supervise the Registrar and the operation of the International Registry;
 - (g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;
 - (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
 - (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention; and
 - (j) report periodically to Contracting States concerning the discharge of its obligations under this Convention.

5. The Supervisory Authority may enter into any agreement requisite for the performance of its functions including any agreement referred to in Article 40(3).

6. The Supervisory Authority shall own all proprietary rights in the data bases and archives of the International Registry.

7. The first regulations shall be made by the Supervisory Authority so as to take effect upon the entry into force of the Convention and the Protocol.

Article 28 – The Registrar

1. The first Registrar shall operate the International Registry for a period of five years from the date of entry into force of the Convention and the Protocol. Thereafter, the Registrar shall be appointed or re-appointed at regular five-yearly intervals by the Supervisory Authority.

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

3. The fees referred to in Article 27(4)(h) shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 27(4) of this Convention.

Article 29 – Designated entry points

1. Subject to paragraph 2, a Contracting State may at any time designate an entity or entities in its territory as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or a right or interest under Article 53 in either case arising under the laws of another State. A Contracting State making such a designation may specify the requirements, if any, to be satisfied before such information is transmitted to the International Registry.

2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of aircraft engines.

Article 30 – Working hours of the registration facilities

The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated at least during working hours in their respective territories.

CHAPTER V – MODALITIES OF REGISTRATION

Article 31 – Registration requirements

1. In accordance with this Convention, the regulations shall specify the requirements, including the criteria for the identification of the aircraft object:

- (a) for effecting a registration (which shall include provision for prior electronic transmission of any consent from any person whose consent is required under Article 33);
- (b) for making searches and issuing search certificates; and, subject thereto,
- (c) for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.

2. The Registrar shall not be under a duty to enquire whether a consent to registration under Article 33 has in fact been given or is valid.

3. Where an interest registered as a prospective international interest becomes an international interest, no further registration shall be required provided that the registration information is sufficient for a registration of an international interest.

4. The Registrar shall arrange for registrations to be entered into the International Registry data base and made searchable in chronological order of receipt, and the file shall record the date and time of receipt.

Article 32 – Validity and time of registration

1. A registration shall be valid only if made in conformity with Article 33.

2. A registration, if valid, shall be complete upon entry of the required information into the International Registry data base so as to be searchable.

3. 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.

4. 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 provided that the registration was still current immediately before the international interest was constituted as provided by Article 10.

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

6. A registration pertaining to an aircraft object shall be searchable in the International Registry data base according to the name of its manufacturer, its manufacturer's serial number and its model

designation, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

Article 33 – Consent to registration

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 either party with the consent in writing of the other.

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 34 – Duration of registration

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

2. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

Article 35 – Searches

1. Any person may, in the manner prescribed by this Convention and the regulations, make or request a search of the International Registry by electronic means concerning interests or prospective international interests registered therein.

2. Upon receipt of a request therefor, the Registrar, in the manner prescribed by the regulations, shall issue a registry search certificate by electronic means with respect to any aircraft 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.

3. A search certificate issued under the preceding paragraph shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.

Article 36 – List of declarations and declared non-consensual rights or interests

The Registrar shall maintain a list of declarations, withdrawals of declarations, and of the categories of non-consensual right or interest communicated to the Registrar by the Depositary as having been declared by Contracting States in conformity with Articles 52 and 53 and the date of each such declaration or withdrawal of declaration. Such list shall be recorded and searchable in the

name of the declaring State and shall be made available as provided in this Convention and the regulations to any person requesting it.

Article 37 – 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 38 – 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, without undue delay, procure the discharge of the registration after 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, without undue delay, procure the discharge of the registration after 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. For the purpose of the preceding paragraph and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest or the person in whose favour a prospective sale has been registered shall take such steps as are within its power to procure the discharge of the registration no later than five working days after the receipt of the demand described in such paragraph.

4. 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, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.

5. Where a registration ought not to have been made or is incorrect, the person in whose favour the registration was made shall, without undue delay, procure its discharge or amendment after written demand by the debtor delivered to or received at its address stated in the registration.

Article 39 – 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 40 – 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 such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.

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.

4. The assets, documents, data bases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process.

5. For the purposes of any claim against the Registrar under Article 41(1) or Article 56, the claimant shall be entitled to access to such information and documents as are necessary to enable the claimant to pursue its claim.

6. The Supervisory Authority may waive the inviolability and immunity conferred by paragraph 4 of this Article.

CHAPTER VII – LIABILITY OF THE REGISTRAR

Article 41 – Liability and financial assurances

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 and its officers and employees or from a malfunction of the international registration system except where the malfunction is caused by an event of an inevitable and irresistible nature, which could not be prevented by using the best practices in current use in the field of electronic registry design and operation, including those related to back-up and systems security and networking.

2. The Registrar shall not be liable under the preceding paragraph for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which it received that information nor for acts or circumstances for which the Registrar and its officers and employees are not responsible and arising prior to receipt of registration information at the International Registry.

3. Compensation under paragraph 1 may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.

4. The Registrar shall procure insurance or a financial guarantee covering the liability referred to in this Article to the extent determined by the Supervisory Authority in accordance with the provisions of this Convention.

5. The amount of the insurance or financial guarantee referred to in the preceding paragraph shall, in respect of each event, not be less than the maximum value of an aircraft object as determined by the Supervisory Authority.

6. Nothing in this Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under this Article.

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

Article 42 – 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. A buyer of an aircraft object under a registered sale acquires its interest in that object free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.

4. A buyer of an aircraft object acquires its interest in that object subject to an interest registered at the time of its acquisition.

5. A conditional buyer or lessee acquires its interest in or right over that object:

(a) subject to an interest registered prior to the registration of the international interest held by its conditional seller or lessor; and

(b) free from an interest not so registered at that time even if it has actual knowledge of that interest.

6. The priority of competing interests or rights 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.

7. Any priority given by this Article to an interest in an aircraft object extends to proceeds.

8. This Convention:

(a) does not affect the rights of a person in an item, other than an aircraft object, held prior to its installation on an aircraft object if under the applicable law those rights continue to exist after the installation; and

(b) does not prevent the creation of rights in an item, other than an aircraft object, which has previously been installed on an aircraft object where under the applicable law those rights are created.

9. Ownership of or another right or interest in an aircraft engine shall not be affected by its installation on or removal from an aircraft.

10. Paragraph 8 of this Article applies to an item, other than an aircraft object, installed on an airframe, aircraft engine or helicopter.

Article 43 – 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 law applicable in insolvency proceedings relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors or any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

CHAPTER IX – ASSIGNMENTS OF ASSOCIATED RIGHTS AND INTERNATIONAL INTERESTS; RIGHTS OF SUBROGATION

Article 44 – Effects of assignment

1. Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with Article 45 also transfers to the assignee:

- (a) the related international interest; and
 - (b) all the interests and priorities of the assignor under this Convention.
- 2. Nothing in this Convention prevents a partial assignment of the assignor's associated rights. In the case of such a partial assignment the assignor and assignee may agree as to their respective rights concerning the related international interest assigned under the preceding paragraph but not so as adversely to affect the debtor without its consent.
- 3. Subject to paragraph 4, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.
- 4. 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 other than defences arising from fraudulent acts on the part of the assignee.
- 5. In the case of an assignment by way of security, the assigned associated rights revert in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

Article 45 – Formal requirements of assignment

- 1. An assignment of associated rights transfers the related international interest only if it:
 - (a) is in writing;
 - (b) enables the associated rights to be identified under the contract from which they arise; 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 this Convention but without the need to state a sum or maximum sum secured.
- 2. An assignment of an international interest created or provided for by a security agreement is not valid unless some or all related associated rights are also assigned.
- 3. This Convention does not apply to an assignment of associated rights which is not effective to transfer the related international interest.

Article 46 – Debtor's duty to assignee

- 1. To the extent that associated rights and the related international interest have been transferred in accordance with Articles 44 and 45, 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
 - (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.
- 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 this Article shall affect the priority of competing assignments.

***Article 47 – 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 12, 13 and 15 to 21 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 associated rights and the related international interest and the security interest created by that assignment;
- (b) to the chargee or creditor and chargor or debtor were references to the assignee and assignor;
- (c) to the holder of the international interest were references to the assignee; and
- (d) to the aircraft object were references to the assigned associated rights and the related international interest.

Article 48 – Priority of competing assignments

1. Where there are competing assignments of associated rights and at least one of the assignments includes the related international interest and is registered, the provisions of Article 42 apply as if the references to a registered interest were references to an assignment of the associated rights and the related registered interest and as if references to a registered or unregistered interest were references to a registered or unregistered assignment.

2. Article 43 applies to an assignment of associated rights as if the references to an international interest were references to an assignment of the associated rights and the related international interest.

Article 49 – Assignee's priority with respect to associated rights

1. The assignee of associated rights and the related international interest whose assignment has been registered only has priority under Article 48(1) over another assignee of the associated rights:

- (a) if the contract under which the associated rights arise states that they are secured by or associated with the object; and
- (b) to the extent that the associated rights are related to an aircraft object.

2. For the purpose of sub-paragraph (b) of the preceding paragraph, associated rights are related to an aircraft object only to the extent that they consist of rights to payment or performance that relate to:

- (a) a sum advanced and utilised for the purchase of the aircraft object;
- (b) a sum advanced and utilised for the purchase of another aircraft object in which the assignor held another international interest if the assignor transferred that interest to the assignee and the assignment has been registered;
- (c) the price payable for the aircraft object;
- (d) the rentals payable in respect of the aircraft object; or
- (e) other obligations arising from a transaction referred to in any of the preceding sub-paragraphs.

3. In all other cases, the priority of the competing assignments of the associated rights shall be determined by the applicable law.

Article 50 – Effects of assignor’s insolvency

The provisions of Article 43 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Article 51 – 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 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.

CHAPTER X – RIGHTS OR INTERESTS SUBJECT TO DECLARATIONS BY CONTRACTING STATES*Article 52 – Rights having priority without registration*

1. A Contracting State may at any time, in a declaration deposited with the Depositary of the Protocol declare, generally or specifically:

(a) those categories of non-consensual right or interest (other than a right or interest to which Article 53 applies) which under that State’s law have priority over an interest in an aircraft object equivalent to that of the holder of a registered international interest and which shall have priority over a registered international interest, whether in or outside insolvency proceedings; and

(b) that nothing in this Convention shall affect the right of a State or State entity, intergovernmental organisation or other private provider of public services to arrest or detain an aircraft object under the laws of that State for payment of amounts owed to such entity, organisation or provider directly relating to those services in respect of that object or another aircraft object.

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

3. A non-consensual right or interest has priority over an international interest if and only if the former is of a category covered by a declaration deposited prior to the registration of the international interest.

4. Notwithstanding the preceding paragraph, a Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that a right or interest of a category covered by a declaration made under sub-paragraph (a) of paragraph 1 shall have priority over an international interest registered prior to the date of such ratification, acceptance, approval or accession.

Article 53 – 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 aircraft object as if the right or interest were an international interest and shall be regulated accordingly. Such a declaration may be modified from time to time.

CHAPTER XI – JURISDICTION***Article 54 – Choice of forum***

1. Subject to Articles 55 and 56, the courts of a Contracting State chosen by the parties to a transaction have jurisdiction in respect of any claim brought under this Convention, whether or not the chosen forum has a connection with the parties or the transaction. Such jurisdiction shall be exclusive unless otherwise agreed between the parties.

2. Any such agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of the chosen forum.

Article 55 – Jurisdiction under Article 20

1. The courts of a Contracting State chosen by the parties in conformity with Article 54 and the courts of the Contracting State on the territory of which the aircraft object is situated or in which the aircraft is registered have jurisdiction to grant relief under Article 20(1)(a), (b), (c), and Article 20(7) in respect of that aircraft object or aircraft.

2. Jurisdiction to grant relief under Article 20(1)(d) and (e) or other interim relief by virtue of Article 20(4) may be exercised either:

- (a) by the courts chosen by the parties; or
- (b) by the courts of a Contracting State on the territory of which the debtor is situated, being relief which, by the terms of the order granting it, is enforceable only in the territory of that Contracting State.

3. A court has jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 20(1) will or may take place in a court of another Contracting State or by arbitration.

Article 56 – 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 or make orders against the Registrar.

2. Where a person fails to respond to a demand made under Article 38 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 the preceding paragraph 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 57 – Waivers of sovereign immunity

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Articles 54, 55 or 56 of this Convention or relating to enforcement of rights and interests relating to an aircraft object under this 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 writing and contain a description of the aircraft object.

Article 58 – Jurisdiction in respect of insolvency proceedings

The provisions of this Chapter are not applicable to insolvency proceedings.

CHAPTER XII – RELATIONSHIP WITH OTHER CONVENTIONS

Article 59 – Relationship with the United Nations Convention on the Assignment of Receivables in International Trade

This Convention shall prevail over the *United Nations Convention on the Assignment of Receivables in International Trade*, opened for signature in New York on 12 December 2001, as it relates to the assignment of receivables which are associated rights related to international interests in aircraft objects.

Article 60 – Relationship with the Convention on the International Recognition of Rights in Aircraft

This Convention shall, for a Contracting State that is a Party to the *Convention on the International Recognition of Rights in Aircraft*, signed at Geneva on 19 June 1948, supersede that Convention as it relates to aircraft, as defined in this Convention, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

Article 61 – Relationship with the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft

1. This 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*, signed at Rome on 29 May 1933, supersede that Convention as it relates to aircraft, as defined in this Convention.

2. A Contracting State Party to the above Convention may declare, at the time of ratification, acceptance, approval of, or accession to the Protocol, that it will not apply this Article.

Article 62 – Relationship with the UNIDROIT Convention on International Financial Leasing

This Convention shall supersede the *UNIDROIT Convention on International Financial Leasing*, signed at Ottawa on 28 May 1988, as it relates to aircraft objects.

CHAPTER XIII – FINAL PROVISIONS

Article 63 – Signature, ratification, acceptance, approval or accession

1. The *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment* shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference for their adoption, held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Convention and the Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until they enter into force in accordance with Article 65.

2. The Convention and the Protocol shall be subject to ratification, acceptance or approval by States which have signed them.
3. Any State which does not sign the Convention and the Protocol may accede to them at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.
5. A State may not become a Party to the Protocol unless it is or becomes also a Party to the Convention.

Article 64 – Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by the Convention and the Protocol may similarly sign, accept, approve or accede to the Convention and the Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by the Convention and the Protocol. Where the number of Contracting States is relevant in the Convention and the Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by the Convention and the Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in the Convention and the Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

Article 65 – Entry into force

1. The *Convention on International Interests in Mobile Equipment* enters into force on the first day of the month following the expiration of three months after the date of the deposit of the third instrument of ratification, acceptance, approval or accession 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 States Parties to the Convention and the Protocol.
2. For other States the Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies and subject, in relation to such Protocol, to the requirements of sub-paragraphs (a), (b) and (c) of the preceding paragraph.
3. The *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment* enters into force on the first day of the month following the expiration of three months after the date of the deposit of the eighth instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.

4. For other States the Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article 66 – Internal transactions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that this Convention shall not apply to a transaction which is an internal transaction in relation to that State with regard to all types of aircraft objects or some of them.

2. Notwithstanding the preceding paragraph, the provisions of Articles 12(3), 13(1), 26, Chapter V, Article 42, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

3. Where notice of a national interest has been registered in the International Registry, the priority of the holder of that interest under Article 42 shall not be affected by the fact that such interest has become vested in another person by assignment or subrogation under the applicable law.

Article 67 – Future Protocols

1. The Depositary may create working groups, in co-operation with such relevant non-governmental organisations as the Depositary considers appropriate, to assess the feasibility of extending the application of the Convention, through one or more Protocols, to objects of any category of high-value mobile equipment, other than categories of aircraft objects, railway rolling stock and space assets, each member of which is uniquely identifiable, and associated rights relating to such objects.

2. The Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all States Parties to the Convention, all member States of the Depositary, member States of the United Nations which are not members of the Depositary and the relevant intergovernmental organisations, and shall invite such States and organisations to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

3. The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental organisations as the Depositary considers appropriate. Such non-governmental organisations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.

4. When the competent bodies of the Depositary adjudge such a draft Protocol ripe for adoption, the Depositary shall convene a diplomatic conference for its adoption.

5. Once such a Protocol has been adopted, subject to paragraph 6, the Convention shall apply to the category of objects covered thereby.

6. Article 59 of this Convention applies to such a Protocol only if specifically provided for in that Protocol.

Article 68 – Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. Any such declaration shall state expressly the territorial units to which this Convention applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.

4. Where a Contracting State extends this Convention to one or more of its territorial units, declarations permitted under this Convention may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. If by virtue of a declaration under paragraph 1, this Convention extends to one or more territorial units of a Contracting State:

(a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which this Convention applies or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which this Convention applies;

(b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which this Convention applies; and

(c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which this Convention applies and any reference to the national register or to the registry authority in that Contracting State shall be construed as referring to the aircraft register in force or to the registry authority having jurisdiction in the territorial unit or units to which this Convention applies.

Article 69 – Determination of courts

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

Article 70 – Declarations regarding remedies

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that while the charged aircraft 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 shall, at the time of ratification, acceptance, approval of, or accession to the Protocol, 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 71 – Declarations relating to certain provisions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will apply any one or more of Articles 9, 24 and 25 of this Convention.

2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will apply the provisions of Article 20(1), (2), (3), (5), (7) and (9) wholly or in part. If it so declares with respect to Article 20(2), it shall specify the time-period required thereby. A Contracting State may also declare that it will not apply the provisions of Article 20(4), (6), and (8), and of Article 55, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article 23 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 23.

4. The courts of Contracting States shall apply Article 23 in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

Article 72 – Reservations and declarations

1. No reservations may be made to this Convention but declarations authorised by Articles 52, 53, 61, 66, 68, 69, 70, 71, 73, 74 and 76 may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

Article 73 – Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration authorised under Article 76, at any time after the date on which the Convention and the Protocol have entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article 74 – Withdrawal of declarations

1. Any State Party having made a declaration under this Convention, other than a declaration authorised under Article 76, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. Notwithstanding the previous paragraph, this Convention shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

Article 75 – Denunciations

1. Any State Party may denounce the Convention, or the Protocol or both by notification in writing to the Depositary.

2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Convention 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 any such denunciation.

Article 76 – Transitional provisions

1. Unless otherwise declared by a Contracting State at any time, this Convention does not apply to a pre-existing right or interest, which retains the priority it enjoyed under the applicable law before the effective date of the Convention.

2. For the purposes of Article 1(hh) and of determining priority under this Convention:

(a) “effective date of this Convention” means in relation to a debtor the time when the Convention enters into force or the time when the State in which the debtor is situated becomes a Contracting State, whichever is the later; and

(b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if it has no place of business, its habitual residence.

3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when the Convention will become applicable, for the purpose of determining priority, including the protection of any existing priority, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in a State referred to in sub-paragraph (b) of the preceding paragraph but only to the extent and in the manner specified in its declaration.

Article 77 – Review Conferences, amendments and related matters

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly or at such other time as the circumstances may require for the States Parties as to the manner in which the international regimen established in this Convention has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

(a) the practical operation of this Convention and its effectiveness in facilitating the asset-based financing and leasing of the aircraft objects covered by its terms;

(b) the judicial interpretation given to, and the application made of the terms of this Convention and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and

(d) whether any modifications to this Convention or the arrangements relating to the International Registry are desirable.

3. Subject to paragraph 4, any amendment to the Convention or the Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when ratified, accepted, or approved by States in accordance with the provisions of Article 65 relating to their entry into force.

4. Where the proposed amendment to the Convention is intended to apply to more than one category of equipment, such amendment shall also be approved by at least a two-thirds majority of States Parties to each Protocol that are participating in the Conference referred to in paragraph 2.

Article 78 – Depositary and its functions

1. Instruments of ratification, acceptance, approval of or accession to the Convention and the Protocol, shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

- (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of the Convention and the Protocol;
 - (iii) each declaration made in accordance with this Convention, together with the date thereof;
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (v) the notification of any denunciation of the Convention and the Protocol together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of the Convention and the Protocol to all Contracting States;
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
- (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed the Convention and the Protocol.

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

Annex referred to in Article 25

[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 25 of this Convention. 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:

* Select the term that reflects the relevant nationality registration criterion.

(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 Convention on International Civil Aviation, signed at Chicago, on 7 December 1944; 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]

By: [insert name of signatory]
Its: [insert title of signatory]

[insert relevant notational details]

RESOLUTION NO. 2

relating to the establishment of the Supervisory Authority and the International Registry for aircraft objects

THE CONFERENCE,

HAVING ADOPTED the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*;

HAVING REGARD to Article XVII, paragraph 1 of the Protocol;

CONSCIOUS of the need to undertake preparatory work regarding the establishment of the International Registry in order to ensure that it is operational by the time the Convention and the Protocol enter into force;

CONSIDERING that the Council of the International Civil Aviation Organization (ICAO), following a recommendation made by the 31st Session of its Legal Committee, decided during its 161st Session to accept, in principle, the role of Supervisory Authority of the International Registry for the purpose of the Protocol, and to defer further decisions on this matter until after the Diplomatic Conference;

RESOLVES:

TO INVITE ICAO to accept the functions of Supervisory Authority upon the entry into force of the Convention and the Protocol;

TO INVITE ICAO to establish a Commission of Experts consisting of not more than 15 members appointed by the ICAO Council from among persons nominated by the Signatory and Contracting States to the Convention and to the Protocol, having the necessary qualifications and experience, with the task of assisting the Supervisory Authority, upon the entry into force of the Convention and the Protocol;

TO SET UP, pending the entry into force of the Convention and the Protocol, a Preparatory Commission to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry, under the guidance and supervision of the ICAO Council. Such Preparatory Commission shall be composed of persons, having the necessary qualifications and experience, nominated by the following States: Argentina, Brazil, Canada, China, Cuba, Egypt, France, Germany, India, Ireland, Kenya, Nigeria, Russian Federation, Senegal, Singapore, Switzerland, South Africa, Tonga, United Arab Emirates, and United States.

TO DIRECT the Preparatory Commission to carry out, under the guidance and supervision of the ICAO Council, the following functions:

- (1) to ensure that the international registration system be set up, in accordance with an objective, transparent and fair selection process, and that it become ready to be operated with a target date of one year from the adoption of the Convention and the Protocol, and at the latest by the time of the entry into force of the Convention and the Protocol;
- (2) to ensure the necessary liaison and co-ordination with private industry which will be users of the International Registry; and
- (3) to work on such other matters relating to the International Registry as may be required with a view to ensuring the establishment of the International Registry.

TO URGE the States participating in the Conference and interested private parties to make available, at the earliest possible date, the necessary start-up funding on a voluntary basis for the tasks of the Preparatory Commission and of ICAO, required under the two preceding resolving clauses, and to entrust ICAO with the task of administering such funds.

RESOLUTION NO. 3

pursuant to Article 2(3)(b) and (c) of the Convention

THE CONFERENCE,

HAVING ADOPTED, in Article 2(3)(b) and (c) of the Convention, provisions contemplating the adoption of Protocols on Matters specific to Railway Rolling Stock and Space Assets;

CONSIDERING that such Protocols will be applied together with the terms of the Convention and are expected also to include analogous provisions to those contained in the Aircraft Protocol;

CONSIDERING that considerable progress has already been made in relation to the development of such Protocols and such progress has been welcomed by the Conference;

CONSIDERING that the completion of such Protocols is to be expected to confer significant benefits on the international community as a whole, in particular for developing States; and

CONSIDERING IT DESIRABLE to involve as wide a range of States as possible in the process for the adoption of such Protocols and to keep the costs of such adoption to a reasonable minimum;

RESOLVES:

TO INVITE the negotiating States to work towards expeditious adoption of the draft Protocols under preparation in respect of those objects falling within Article 2(3)(b) and (c);

TO INVITE the International Institute for the Unification of Private Law (UNIDROIT) to use its good offices to facilitate such objective;

TO INVITE UNIDROIT to give all Member States of UNIDROIT and Member States of the United Nations which are not members of UNIDROIT an opportunity to participate in the negotiation and adoption of such Protocols in a cost-effective manner; and

TO INVITE the competent bodies of UNIDROIT to consider favourably the implementation of an expedited procedure for the adoption of such Protocols, and in particular to consider the diplomatic Conference required for their adoption being as short as possible consistently with the need for States to give such Protocol proper consideration.

RESOLUTION NO. 4

relating to technical assistance with regard to the implementation and the use of the International Registry

THE CONFERENCE,

MINDFUL of the objectives of the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on Matters specific to Aircraft Equipment*;

DESIROUS of facilitating the implementation of the Convention and the Protocol as well as the prompt implementation and use of the International Registry;

RESOLVES:

TO ENCOURAGE all negotiating States, international Organisations, as well as private parties, such as the aviation and financial industries, to assist the developing negotiating States in any appropriate way, including facilities and know-how necessary to use the International Registry, so as to allow them to benefit from the Convention and the Protocol as early as possible.

RESOLUTION NO. 5

relating to the Official Commentary on the Convention and Aircraft Protocol

THE CONFERENCE,

HAVING ADOPTED the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*;

CONSCIOUS of the need for an official commentary on these texts as an aid for those called upon to work with these documents;

RECOGNISING the increasing use of commentaries of this type in the context of modern, technical commercial law instruments; and

MINDFUL that the Explanatory Report and Commentary (DCME-IP/2) provides a sound starting point for the further development of this official commentary;

RESOLVES:

TO REQUEST the preparation of a draft official commentary on these texts by the Chairman of the Drafting Committee, in close co-operation with the UNIDROIT and ICAO Secretariats, and in co-ordination with the Chairman of the Commission of the Whole, the Chairman of the Final Clauses Committee and interested members of the Drafting Committee and observers that participated in its work;

TO REQUEST that such draft be circulated by the two Secretariats to all negotiating States and participating observers as soon as practicable after the conclusion of the Conference inviting comments thereon; and

TO REQUEST that a revised final version of the official commentary be transmitted by the two Secretariats to all negotiating States and participating observers as soon as practicable after the conclusion of the Conference.

CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

Signed at Cape Town on 16 November 2001



CAPE TOWN
16 NOVEMBER 2001

CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
(Cape Town, 16 November 2001)

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 and mutual 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,

TAKING INTO CONSIDERATION the objectives and principles enunciated in existing Conventions relating to such equipment,

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;

(b) “assignment” means a contract which, whether by way of security or otherwise, confers on the assignee associated rights with or without a transfer of the related international interest;

(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;

(d) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;

(e) “conditional buyer” means a buyer under a title reservation agreement;

(f) “conditional seller” means a seller under a title reservation agreement;

(g) “contract of sale” means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above;

(h) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;

(i) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;

(j) “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;

(k) “insolvency administrator” means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;

(l) “insolvency proceedings” means bankruptcy, liquidation or other 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;

(m) “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;

(n) “internal transaction” means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object located (as specified in the Protocol), in the same Contracting State at the time of the conclusion of the contract and where the interest created by the transaction has been registered in a national registry in that Contracting State which has made a declaration under Article 50(1);

(o) “international interest” means an interest held by a creditor to which Article 2 applies;

(p) “International Registry” means the international registration facilities established for the purposes of this Convention or the Protocol;

(q) “leasing agreement” means an agreement by which one person (the lessor) grants a right to possession or control of an object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment;

(r) “national interest” means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 50(1);

(s) “non-consensual right or interest” means a right or interest conferred under the law of a Contracting State which has made a declaration under Article 39 to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organisation;

(t) “notice of a national interest” means notice registered or to be registered in the International Registry that a national interest has been created;

(u) “object” means an object of a category to which Article 2 applies;

(v) “pre-existing right or interest” means a right or interest of any kind in or over an object created or arising before the effective date of this Convention as defined by Article 60(2)(a);

(w) “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;

(x) “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;

(y) “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;

(z) “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;

(aa) “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;

- (bb) “registered” means registered in the International Registry pursuant to Chapter V;
- (cc) “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;
- (dd) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 40;
- (ee) “Registrar” means, in respect of the Protocol, the person or body designated by that Protocol or appointed under Article 17(2)(b);
- (ff) “regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol;
- (gg) “sale” means a transfer of ownership of an object pursuant to a contract of sale;
- (hh) “secured obligation” means an obligation secured by a security interest;
- (ii) “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;
- (jj) “security interest” means an interest created by a security agreement;
- (kk) “Supervisory Authority” means, in respect of the Protocol, the Supervisory Authority referred to in Article 17(1);
- (ll) “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;
- (mm) “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; and
- (nn) “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.

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 7, 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
- (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 assets.

4. The applicable law determines 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 Article 3(1), 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 sub-paragraph (d) of the preceding paragraph 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.

Article 6 – Relationship between the Convention and the Protocol

1. This Convention and the Protocol shall be read and interpreted together as a single instrument.
2. To the extent of any inconsistency between this Convention and the Protocol, the Protocol shall prevail.

CHAPTER II – CONSTITUTION OF AN INTERNATIONAL INTEREST*Article 7 – 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 8 – Remedies of chargee

1. In the event of default as provided in Article 11, the chargee may, to the extent that the chargor has at any time so agreed and subject to any declaration that may be made by a Contracting State under Article 54, 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.

2. The chargee may alternatively apply for a court order authorising or directing any of the acts referred to in the preceding paragraph.

3. Any remedy set out in sub-paragraph (a), (b) or (c) of paragraph 1 or by Article 13 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.

4. A chargee proposing to sell or grant a lease of an object under paragraph 1 shall give reasonable prior notice in writing of the proposed sale or lease to:

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

5. Any sum collected or received by the chargee as a result of exercise of any of the remedies set out in paragraph 1 or 2 shall be applied towards discharge of the amount of the secured obligations.

6. Where the sums collected or received by the chargee as a result of the exercise of any remedy set out in paragraph 1 or 2 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 distribute the surplus among holders of subsequently ranking interests which have been registered or of which the chargee has been given notice, in order of priority, and pay any remaining balance to the chargor.

Article 9 – Vesting of object in satisfaction; redemption

1. At any time after default as provided in Article 11, 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 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 11 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 8(1)(b) or ordered under Article 8(2). 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 8(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 29.

Article 10 – 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 11, the conditional seller or the lessor, as the case may be, may:

- (a) subject to any declaration that may be made by a Contracting State under Article 54, 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 11 – 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 8 to 10 and 13.

2. Where the debtor and the creditor have not so agreed, “default” for the purposes of Articles 8 to 10 and 13 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

Article 12 – 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 15.

Article 13 – Relief pending final determination

1. Subject to any declaration that it may make under Article 55, 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
- (d) lease or, except where covered by sub-paragraphs (a) to (c), 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 8(3) or limits the availability of forms of interim relief other than those set out in paragraph 1.

Article 14 – Procedural requirements

Subject to Article 54(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 15 – Derogation

In their relations with each other, any two or more of the parties referred to in this Chapter may at any time, by agreement in writing, derogate from or vary the effect of any of the preceding provisions of this Chapter except Articles 8(3) to (6), 9(3) and (4), 13(2) and 14.

CHAPTER IV – THE INTERNATIONAL REGISTRATION SYSTEM

Article 16 – 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 subrogations under the applicable law;
 - (d) notices of national interests; and
 - (e) subordinations of interests referred to in any of the preceding sub-paragraphs.
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 17 – 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) ensure that any rights required for the continued effective operation of the International Registry in the event of a change of Registrar will vest in or be assignable to the new Registrar;
 - (d) 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;
 - (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
 - (f) supervise the Registrar and the operation of the International Registry;

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

(h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;

(i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and

(j) 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 27(3).

4. The Supervisory Authority shall own all proprietary rights in the data bases and archives of the International Registry.

5. 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 – OTHER MATTERS RELATING TO REGISTRATION

Article 18 – 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 (which shall include provision for prior electronic transmission of any consent from any person whose consent is required under Article 20);

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

(c) for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.

2. The Registrar shall not be under a duty to enquire whether a consent to registration under Article 20 has in fact been given or is valid.

3. Where an interest registered as a prospective international interest becomes an international interest, no further registration shall be required provided that the registration information is sufficient for a registration of an international interest.

4. The Registrar shall arrange for registrations to be entered into the International Registry data base and made searchable in chronological order of receipt, and the file shall record the date and time of receipt.

5. The Protocol may provide that a Contracting State may designate an entity or entities in its territory as the entry point or entry points through which the information required for registration shall or may be transmitted to the International Registry. A Contracting State making such a designation may specify the requirements, if any, to be satisfied before such information is transmitted to the International Registry.

Article 19 – Validity and time of registration

1. A registration shall be valid only if made in conformity with Article 20.

2. A registration, if valid, shall be complete upon entry of the required information into the International Registry data base so as to be searchable.

3. 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.

4. 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 provided that the registration was still current immediately before the international interest was constituted as provided by Article 7.

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

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

Article 20 – Consent to registration

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 either party with the consent in writing of the other.

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 21 – Duration of registration

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

Article 22 – Searches

1. Any person may, in the manner prescribed by the Protocol and regulations, make or request a search of the International Registry by electronic means concerning interests or prospective international interests registered therein.

2. Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol and regulations, shall issue a registry search certificate by electronic means 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.

3. A search certificate issued under the preceding paragraph shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.

Article 23 – List of declarations and declared non-consensual rights or interests

The Registrar shall maintain a list of declarations, withdrawals of declaration and of the categories of non-consensual right or interest communicated to the Registrar by the Depositary as having been declared by Contracting States in conformity with Articles 39 and 40 and the date of each such declaration or withdrawal of 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 and regulations to any person requesting it.

Article 24 – 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 25 – 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, without undue delay, procure the discharge of the registration after 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, without undue delay, procure the discharge of the registration after 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, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.

4. Where a registration ought not to have been made or is incorrect, the person in whose favour the registration was made shall, without undue delay, procure its discharge or amendment after written demand by the debtor delivered to or received at its address stated in the registration.

Article 26 – 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 27 – 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 such immunity from legal or administrative process as is specified in the Protocol.

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.

4. The assets, documents, data bases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process.

5. For the purposes of any claim against the Registrar under Article 28(1) or Article 44, the claimant shall be entitled to access to such information and documents as are necessary to enable the claimant to pursue its claim.

6. The Supervisory Authority may waive the inviolability and immunity conferred by paragraph 4.

CHAPTER VII – LIABILITY OF THE REGISTRAR

Article 28 – Liability and financial assurances

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 and its officers and employees or from a malfunction of the international registration system except where the malfunction is caused by an event of an inevitable and irresistible nature, which could not be prevented by using the best practices in current use in the field of electronic registry design and operation, including those related to back-up and systems security and networking.

2. The Registrar shall not be liable under the preceding paragraph for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which it received that information nor for acts or circumstances for which the Registrar and its officers and employees are not responsible and arising prior to receipt of registration information at the International Registry.

3. Compensation under paragraph 1 may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.

4. The Registrar shall procure insurance or a financial guarantee covering the liability referred to in this Article to the extent determined by the Supervisory Authority, in accordance with the Protocol.

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

Article 29 – 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.

4. The conditional buyer or lessee acquires its interest in or right over that object:
 - (a) subject to an interest registered prior to the registration of the international interest held by its conditional seller or lessor; and
 - (b) free from an interest not so registered at that time even if it has actual knowledge of that interest.
5. The priority of competing interests or rights 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.
6. Any priority given by this Article to an interest in an object extends to proceeds.
7. This Convention:
 - (a) does not affect the rights of a person in an item, other than an object, held prior to its installation on an object if under the applicable law those rights continue to exist after the installation; and
 - (b) does not prevent the creation of rights in an item, other than an object, which has previously been installed on an object where under the applicable law those rights are created.

Article 30 – 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:
 - (a) any rules of law applicable in insolvency proceedings relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors; or
 - (b) any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

CHAPTER IX – ASSIGNMENTS OF ASSOCIATED RIGHTS AND INTERNATIONAL INTERESTS; RIGHTS OF SUBROGATION

Article 31 – Effects of assignment

1. Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with Article 32 also transfers to the assignee:
 - (a) the related international interest; and
 - (b) all the interests and priorities of the assignor under this Convention.
2. Nothing in this Convention prevents a partial assignment of the assignor's associated rights. In the case of such a partial assignment the assignor and assignee may agree as to their respective rights concerning the related international interest assigned under the preceding paragraph but not so as adversely to affect the debtor without its consent.
3. Subject to paragraph 4, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.
4. 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 other than defences arising from fraudulent acts on the part of the assignee.

5. In the case of an assignment by way of security, the assigned associated 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 – Formal requirements of assignment

1. An assignment of associated rights transfers the related international interest only if it:
 - (a) is in writing;
 - (b) enables the associated rights to be identified under the contract from which they arise; 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.
2. An assignment of an international interest created or provided for by a security agreement is not valid unless some or all related associated rights also are assigned.
3. This Convention does not apply to an assignment of associated rights which is not effective to transfer the related international interest.

Article 33 – Debtor's duty to assignee

1. To the extent that associated rights and the related international interest have been transferred in accordance with Articles 31 and 32, 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; and
 - (b) the notice identifies the associated rights.
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 this Article shall affect the priority of competing assignments.

Article 34 – 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 8, 9 and 11 to 14 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 associated rights and the related international interest and the security interest created by that assignment;
- (b) to the chargee or creditor and chargor or debtor were references to the assignee and assignor;
- (c) to the holder of the international interest were references to the assignee; and
- (d) to the object were references to the assigned associated rights and the related international interest.

Article 35 – Priority of competing assignments

1. Where there are competing assignments of associated rights and at least one of the assignments includes the related international interest and is registered, the provisions of Article 29 apply as if the references to a registered interest were references to an assignment of the associated rights and the related registered interest and as if references to a registered or unregistered interest were references to a registered or unregistered assignment.

2. Article 30 applies to an assignment of associated rights as if the references to an international interest were references to an assignment of the associated rights and the related international interest.

Article 36 – Assignee's priority with respect to associated rights

1. The assignee of associated rights and the related international interest whose assignment has been registered only has priority under Article 35(1) over another assignee of the associated rights:

- (a) if the contract under which the associated rights arise states that they are secured by or associated with the object; and
- (b) to the extent that the associated rights are related to an object.

2. For the purposes of sub-paragraph (b) of the preceding paragraph, associated rights are related to an object only to the extent that they consist of rights to payment or performance that relate to:

- (a) a sum advanced and utilised for the purchase of the object;
- (b) a sum advanced and utilised for the purchase of another object in which the assignor held another international interest if the assignor transferred that interest to the assignee and the assignment has been registered;
- (c) the price payable for the object;
- (d) the rentals payable in respect of the object; or
- (e) other obligations arising from a transaction referred to in any of the preceding sub-paragraphs.

3. In all other cases, the priority of the competing assignments of the associated rights shall be determined by the applicable law.

Article 37 – Effects of assignor's insolvency

The provisions of Article 30 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Article 38 – 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 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.

CHAPTER X – RIGHTS OR INTERESTS SUBJECT TO DECLARATIONS BY CONTRACTING STATES

Article 39 – Rights having priority without registration

1. A Contracting State may at any time, in a declaration deposited with the Depositary of the Protocol declare, generally or specifically:

(a) those categories of non-consensual right or interest (other than a right or interest to which Article 40 applies) which under that State's law have priority over an interest in an object equivalent to that of the holder of a registered international interest and which shall have priority over a registered international interest, whether in or outside insolvency proceedings; and

(b) that nothing in this Convention shall affect the right of a State or State entity, intergovernmental organisation or other private provider of public services to arrest or detain an object under the laws of that State for payment of amounts owed to such entity, organisation or provider directly relating to those services in respect of that object or another object.

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

3. A non-consensual right or interest has priority over an international interest if and only if the former is of a category covered by a declaration deposited prior to the registration of the international interest.

4. Notwithstanding the preceding paragraph, a Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that a right or interest of a category covered by a declaration made under sub-paragraph (a) of paragraph 1 shall have priority over an international interest registered prior to the date of such ratification, acceptance, approval or accession.

Article 40 – 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 shall be regulated accordingly. Such a declaration may be modified from time to time.

CHAPTER XI – APPLICATION OF THE CONVENTION TO SALES

Article 41 – Sale and prospective sale

This Convention shall apply to the sale or prospective sale of an object as provided for in the Protocol with any modifications therein.

CHAPTER XII – JURISDICTION

Article 42 – Choice of forum

1. Subject to Articles 43 and 44, the courts of a Contracting State chosen by the parties to a transaction have jurisdiction in respect of any claim brought under this Convention, whether or not the chosen forum has a connection with the parties or the transaction. Such jurisdiction shall be exclusive unless otherwise agreed between the parties.

2. Any such agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of the chosen forum.

Article 43 – Jurisdiction under Article 13

1. The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is situated have jurisdiction to grant relief under Article 13(1)(a), (b), (c) and Article 13(4) in respect of that object.
2. Jurisdiction to grant relief under Article 13(1)(d) or other interim relief by virtue of Article 13(4) may be exercised either:
 - (a) by the courts chosen by the parties; or
 - (b) by the courts of a Contracting State on the territory of which the debtor is situated, being relief which, by the terms of the order granting it, is enforceable only in the territory of that Contracting State.
3. A court has jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 13(1) will or may take place in a court of another Contracting State or by arbitration.

Article 44 – 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 or make orders against the Registrar.
2. Where a person fails to respond to a demand made under Article 25 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 the preceding paragraph 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 45 – Jurisdiction in respect of insolvency proceedings

The provisions of this Chapter are not applicable to insolvency proceedings.

CHAPTER XIII – RELATIONSHIP WITH OTHER CONVENTIONS**Article 45 bis – Relationship with the United Nations Convention on the Assignment of Receivables in International Trade**

This Convention shall prevail over the *United Nations Convention on the Assignment of Receivables in International Trade*, opened for signature in New York on 12 December 2001, as it relates to the assignment of receivables which are associated rights related to international interests in aircraft objects, railway rolling stock and space assets.

Article 46 – 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*, signed at Ottawa on 28 May 1988.

CHAPTER XIV – FINAL PROVISIONS

Article 47 – Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Convention shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article 49.

2. This Convention shall be subject to ratification, acceptance or approval by States which have signed it.

3. Any State which does not sign this Convention may accede to it at any time.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

Article 48 – Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Convention applies equally to a Regional Economic Integration Organisation where the context so requires.

Article 49 – Entry into force

1. This Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of the third instrument of ratification, acceptance, approval or accession 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 States Parties to this Convention and that Protocol.

2. For other States this Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies and subject, in relation to such Protocol, to the requirements of sub-paragraphs (a), (b) and (c) of the preceding paragraph.

Article 50 – Internal transactions

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

2. Notwithstanding the preceding paragraph, the provisions of Articles 8(4), 9(1), 16, Chapter V, Article 29, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

3. Where notice of a national interest has been registered in the International Registry, the priority of the holder of that interest under Article 29 shall not be affected by the fact that such interest has become vested in another person by assignment or subrogation under the applicable law.

Article 51 – Future Protocols

1. The Depositary may create working groups, in co-operation with such relevant non-governmental organisations as the Depositary considers appropriate, 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 Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all States Parties to this Convention, all member States of the Depositary, member States of the United Nations which are not members of the Depositary and the relevant intergovernmental organisations, and shall invite such States and organisations to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

3. The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental organisations as the Depositary considers appropriate. Such non-governmental organisations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.

4. When the competent bodies of the Depositary adjudge such a draft Protocol ripe for adoption, the Depositary shall convene a diplomatic conference for its adoption.

5. Once such a Protocol has been adopted, subject to paragraph 6, this Convention shall apply to the category of objects covered thereby.

6. Article 45 *bis* of this Convention applies to such a Protocol only if specifically provided for in that Protocol.

Article 52 – Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. Any such declaration shall state expressly the territorial units to which this Convention applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.

4. Where a Contracting State extends this Convention to one or more of its territorial units, declarations permitted under this Convention may be made in respect of each such territorial unit, and

the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. If by virtue of a declaration under paragraph 1, this Convention extends to one or more territorial units of a Contracting State:

(a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which this Convention applies or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which this Convention applies;

(b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which this Convention applies; and

(c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which this Convention applies.

Article 53 – Determination of courts

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

Article 54 – Declarations regarding remedies

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare 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 shall, at the time of ratification, acceptance, approval of, or accession to the Protocol, 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 55 – Declarations regarding relief pending final determination

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will not apply the provisions of Article 13 or Article 43, or both, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

Article 56 – Reservations and declarations

1. No reservations may be made to this Convention but declarations authorised by Articles 39, 40, 50, 52, 53, 54, 55, 57, 58 and 60 may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

Article 57 – Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration authorised under Article 60, at any time after the date on which this Convention has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a

longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article 58 – Withdrawal of declarations

1. Any State Party having made a declaration under this Convention, other than a declaration authorised under Article 60, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. Notwithstanding the previous paragraph, this Convention shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

Article 59 – Denunciations

1. Any State Party may denounce this Convention by notification in writing to the Depositary.

2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which notification is received by the Depositary.

3. Notwithstanding the previous paragraphs, this Convention 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 any such denunciation.

Article 60 – Transitional provisions

1. Unless otherwise declared by a Contracting State at any time, the Convention does not apply to a pre-existing right or interest, which retains the priority it enjoyed under the applicable law before the effective date of this Convention.

2. For the purposes of Article 1(v) and of determining priority under this Convention:

(a) “effective date of this Convention” means in relation to a debtor the time when this Convention enters into force or the time when the State in which the debtor is situated becomes a Contracting State, whichever is the later; and

(b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if it has no place of business, its habitual residence.

3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when this Convention and the Protocol will become applicable, for the purpose of determining priority, including the protection of any existing priority, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in a State referred to in sub-paragraph (b) of the preceding paragraph but only to the extent and in the manner specified in its declaration.

Article 61 – Review Conferences, amendments and related matters

1. The Depositary shall prepare reports yearly or at such other time as the circumstances may require for the States Parties as to the manner in which the international regimen established in this Convention has operated in practice. In preparing such reports, the Depositary shall take into

account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

(a) the practical operation of this Convention and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;

(b) the judicial interpretation given to, and the application made of the terms of this Convention and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and

(d) whether any modifications to this Convention or the arrangements relating to the International Registry are desirable.

3. Subject to paragraph 4, any amendment to this Convention shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when ratified, accepted, or approved by three States in accordance with the provisions of Article 49 relating to its entry into force.

4. Where the proposed amendment to this Convention is intended to apply to more than one category of equipment, such amendment shall also be approved by at least a two-thirds majority of States Parties to each Protocol that are participating in the Conference referred to in paragraph 2.

Article 62 – Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

(a) inform all Contracting States of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Convention;

(iii) each declaration made in accordance with this Convention, together with the date thereof;

(iv) the withdrawal or amendment of any declaration, together with the date thereof; and

(v) the notification of any denunciation of this Convention together with the date thereof and the date on which it takes effect;

(b) transmit certified true copies of this Convention to all Contracting States;

(c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and

(d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

PROTOCOL
TO THE CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

Signed at Cape Town on 16 November 2001



CAPE TOWN

16 NOVEMBER 2001

**PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN
MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT**
(Cape Town, 16 November 2001)

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the *Convention on International Interests in Mobile Equipment* (hereinafter referred to as “the Convention”) as it relates to aircraft equipment, 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,

MINDFUL of the principles and objectives of the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944,

HAVE AGREED upon the following provisions relating to aircraft equipment:

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;

(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 lb 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;

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

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

(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;

(f) “authorised party” means the party referred to in Article XIII(3);

(g) “Chicago Convention” means the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944, as amended, and its Annexes;

(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;

(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;

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

(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;

(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;

(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;

(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) “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; 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.

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 Convention on International Interests in Mobile Equipment as applied to aircraft objects.

Article III – Application of Convention to sales

The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

- Articles 3 and 4;
- Article 16(1)(a);
- Article 19(4);

- Article 20(1) (as regards registration of a contract of sale or a prospective sale);
- Article 25(2) (as regards a prospective sale); and
- Article 30.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XIV(1) and (2)), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) shall apply to contracts of sale and prospective sales.

Article IV – Sphere of application

1. Without prejudice to Article 3(1) of the Convention, the Convention shall also apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State which is the State of registry, and where such registration is made pursuant to an agreement for registration of the aircraft it is deemed to have been effected at the time of the agreement.

2. 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.

3. 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 Article IX (2)-(4).

Article V – Formalities, effects and registration of contracts 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. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

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 7(c) of the Convention and Article V(1)(c) of this Protocol.

Article VIII – Choice of law

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).
2. 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, wholly or in part.
3. 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. Article 8(3) of the Convention shall not apply to aircraft objects. Any remedy given by the Convention in relation to an aircraft object 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 agreement except where such a provision is manifestly unreasonable.
4. A chargee giving ten or more working 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 8(4) 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.
5. The registry authority in a Contracting State shall, subject to any applicable safety laws and regulations, honour a request for de-registration and export if:
 - (a) the request is properly submitted by the authorised party under a recorded irrevocable de-registration and export request authorisation; and
 - (b) the authorised party certifies to the registry authority, if required by that authority, that all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.
6. A chargee proposing to procure the de-registration and export of an aircraft under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed de-registration and export to:
 - (a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and
 - (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

***Article X – Modification of provisions regarding relief
pending final determination***

1. This Article applies only where a Contracting State has made a declaration under Article XXX(2) and to the extent stated in such declaration.
2. For the purposes of Article 13(1) of the Convention, “speedy” in the context of obtaining relief means within such number of working 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 13(1) of the Convention applies with the following being added immediately after sub-paragraph (d):

“(e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom”,

and Article 43(2) applies with the insertion after the words “Article 13(1)(d)” of the words “and (e)”.- 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 29 of the Convention.
- 5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.
- 6. With regard to the remedies in Article IX(1):
 - (a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than five working days after the creditor notifies such authorities that the relief specified in Article IX(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with the Convention; and
 - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.
- 7. Paragraphs 2 and 6 shall not affect any 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 XXX(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 other than a default constituted by the opening of insolvency proceedings 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. With regard to the remedies in Article IX(1):

(a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

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 non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1), shall have priority in insolvency proceedings 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 XXX(3) whether it will:

(a) cure all defaults other than a default constituted by the opening of insolvency proceedings 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 the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take 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

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).

2. 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 request authorisation

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).

2. 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.

3. 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.

4. 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 of an aircraft object under a registered sale acquires its interest in that object free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.

2. A buyer of an aircraft object acquires its interest in that object subject to an interest registered at the time of its acquisition.

3. Ownership of or another right or interest in an aircraft engine shall not be affected by its installation on or removal from an aircraft.

4. Article 29(7) of the Convention applies to an item, other than an object, installed on an airframe, aircraft engine or helicopter.

Article XV – Modification of assignment provisions

Article 33(1) of the Convention applies as if the following were added immediately after sub-paragraph (b):

“and (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.”

Article XVI – Debtor provisions

1. In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the object in accordance with the agreement as against:

(a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4) of the Convention or, in the capacity of buyer, Article XIV(1) of this Protocol, unless and to the extent that the debtor has otherwise agreed; and

(b) the holder of any interest to which the debtor's right or interest is subject pursuant to Article 29(4) of the Convention or, in the capacity of buyer, Article XIV(2) of this Protocol, but only to the extent, if any, that such holder has agreed.

2. Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to an aircraft object.

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

Article XVII – The Supervisory Authority and the Registrar

1. The Supervisory Authority shall be the international entity designated by a Resolution adopted by the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol.

2. Where the international entity referred to in the preceding paragraph is not able and willing to act as Supervisory Authority, a Conference of Signatory and Contracting States shall be convened to designate another Supervisory Authority.

3. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.

4. The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.

5. 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 reappointed at regular five-yearly intervals by the Supervisory Authority.

Article XVIII – First regulations

The first regulations shall be made by the Supervisory Authority so as to take effect upon the entry into force of this Protocol.

Article XIX – Designated entry points

1. Subject to paragraph 2, a Contracting State may at any time designate an entity or entities in its territory as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or a right or interest under Article 40 in either case arising under the laws of another State.

2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of aircraft engines.

Article XX – Additional modifications to Registry provisions

1. For the purposes of Article 19(6) of the Convention, the search criteria for an aircraft object shall be the name of its manufacturer, its manufacturer's serial number and its model designation, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

2. For the purposes of Article 25(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 or the person in whose favour a prospective sale has been registered shall take such steps as are within its power to procure the discharge of the registration no later than five working days after the receipt of the demand described in such paragraph.

3. The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 17(2) of the Convention.

4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated at least during working hours in their respective territories.

5. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall, in respect of each event, not be less than the maximum value of an aircraft object as determined by the Supervisory Authority.

6. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

CHAPTER IV – JURISDICTION

Article XXI – Modification of jurisdiction provisions

For the purposes of Article 43 of the Convention and subject to Article 42 of the Convention, a court of a Contracting State also has jurisdiction where the object is a helicopter, or an airframe pertaining to an aircraft, for which that State is the State of registry.

Article XXII – Waivers of sovereign immunity

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 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 writing and contain a description of the aircraft object.

CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS***Article XXIII – 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*, signed at Geneva on 19 June 1948, supersede that Convention as it relates to aircraft, as defined in this Protocol, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

Article XXIV – 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*, signed at 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.

Article XXV – Relationship with the UNIDROIT Convention on International Financial Leasing

The Convention shall supersede the *UNIDROIT Convention on International Financial Leasing*, signed at Ottawa on 28 May 1988, as it relates to aircraft objects.

CHAPTER VI – FINAL PROVISIONS***Article XXVI – Signature, ratification, acceptance, approval or accession***

1. This Protocol shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, this Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article XXVIII.

2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.

3. Any State which does not sign this Protocol may accede to it at any time.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

Article XXVII – Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol,

the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

Article XXVIII – 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 the deposit of the eighth instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.

2. For other States this Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article XXIX – Territorial units

1. If a Contracting State has 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 modify its declaration by submitting another declaration at any time.

2. Any such declaration shall state expressly the territorial units to which this Protocol applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.

4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:

(a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;

(b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and this Protocol apply; and

(c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply and any reference to the national register or to the registry authority in that Contracting State shall be construed as referring to the aircraft register in force or to the registry authority having jurisdiction in the territorial unit or units to which the Convention and this Protocol apply.

Article XXX – Declarations relating to certain provisions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply any one or more of Articles VIII, XII and XIII of this Protocol.

2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare 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, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare 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.

5. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will not apply the provisions of Article XXI, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

Article XXXI – Declarations under the Convention

Declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

Article XXXII – Reservations and declarations

1. No reservations may be made to this Protocol but declarations authorised by Articles XXIV, XXIX, XXX, XXXI, XXXIII and XXXIV may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

Article XXXIII – Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article XXXIV – Withdrawal of declarations

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

Article XXXV – Denunciations

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.

2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by 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 any such denunciation.

Article XXXVI – Review Conferences, amendments and related matters

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by this Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

(a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;

(b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3. Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by eight States in accordance with the provisions of Article XXVIII relating to its entry into force.

Article XXXVII – Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

- (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Protocol;
 - (iii) each declaration made in accordance with this Protocol, together with the date thereof;
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Protocol to all Contracting States;
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
- (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

Annex referred to in Article XIII

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 manufacturers 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 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

* Select the term that reflects the relevant nationality registration criterion.

of the *Convention on International Civil Aviation*, signed at Chicago, on 7 December 1944, 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]

By: [insert name of signatory]
Its: [insert title of signatory]

[insert relevant notational details]

PART THREE

PARTICIPANTS IN THE CONFERENCE

LIST OF STATES AND OBSERVER DELEGATIONS REPRESENTED AT THE DIPLOMATIC
CONFERENCE TO ADOPT A MOBILE EQUIPMENT CONVENTION AND AN AIRCRAFT
PROTOCOL HELD UNDER THE JOINT AUSPICES OF THE INTERNATIONAL INSTITUTE
FOR THE UNIFICATION OF PRIVATE LAW AND THE INTERNATIONAL CIVIL AVIATION
ORGANIZATION

(CAPE TOWN, 29 OCTOBER – 16 NOVEMBER 2001)

PART A : STATES

ALBANIA

Representative

Mr Luan Jaupaj, Chief Operational Department (Inspector), Directorate General of Civil
Aviation, Ministry of Transport (Tirana)

ANGOLA

Representative

Mr Gaspar Francisco dos Santos, Chief of Air Transport Department, National Directorate for
Civil Aviation (Luanda)

Alternate Representative

Mr Domingos de Almeida da Silva Coelho, Diplomat and Jurist (Luanda)

Delegates

Mr Lino Diamvutu, Legal Adviser, National Directorate for Civil Aviation (Luanda)

Mr Mascarenhas Gonçalves, Legal Adviser, TAAG Angola Airlines (Luanda)

ARGENTINA

Representative

Ms Inés M. Weinberg De Roca, Representative of the Ministry of Foreign Affairs, Judge of
the Court of Appeal for Administrative and Tax Matters (Buenos Aires)

AUSTRALIA

Representative

Mr John Atwood, Principal Legal Officer, Office of International Law, Attorney-General's
Department (Canberra)

AUSTRIA

Representative

Mrs Ursula BAUER-KRIEGLEDER, Vice-Consul, Austrian Consulate General (Cape Town)

BAHRAIN*Representative*

Mr Ahmed Abdulrahim, Director of Air Transport, Civil Aviation Affairs (Manama)

Alternate Representatives

Mr Jassim Al-Jowder, Director of Administration and Finance, Civil Aviation Affairs (Manama)

Mr Ala'a El Din Saleh, Legal Advisor, Civil Aviation Authority of Bahrain (Manama)

BELGIUM*Representative*

M. Lucien de Leebeeck, Adviser, Ministère de la Justice (Bruxelles)

Delegate

Mlle Meryem Demir, Conseiller adjoint, Ministère de la Justice (Bruxelles)

Observer

M. Pierre-Yves Dumont, Consul de Belgique à Cape Town, Consulat général de Belgique (Cape Town)

BENIN*Representative*

Mr Martial A. Dehoue, Directeur de Cabinet Adjoint, Ministère des Travaux Publics et Transports (Cotonou)

Delegate

Mr Aristide De Souza, Directeur Aviation Civile (Cotonou)

BOTSWANA*Representative*

Dr Ravindran Puliyan, Principal Air Transport Officer, Department of Civil Aviation (Gaborone)

BRAZIL*Representative*

Mr Jorio Gama, Ambassador of Brazil in South Africa, Embassy of Brazil in South Africa (Pretoria)

Alternate Representative

Mr Bruno Ferraz-Coutinho, Co-ordinator of International Law, Legal Adviser, Ministry of Foreign Affairs (Brasilia)

Delegates

Mrs Tehil Campelo Gaspar De Oliveira, Civil Aviation Adviser (Rio de Janeiro)

Mr Guttemberg R. Pereira, Advisor to Study Commission on International Air Navigation, Rio de Janeiro)

BURUNDI*Representative*

M. Pierre Claver Nduwimana, Directeur-Adjoint de la Régie des Services Aéronautiques (Bujumbura)

CAMEROON*Representative*

Mr Christopher K.F. Nsahlai, Minister of Transport, Ministry of Transport (Yaoundé)

Alternate Representative

M. Paul Alain Mendouga, Conseiller technique, Ministère des Transport (Yaoundé)

Delegates

Mr Gaston Meka, Chef de la Cellule de la Communication, Cameroon Civil Aviation Authority (Yaoundé)

Mr Pierre Tankam, Deputy Director-General, Cameroon Civil Aviation Authority (Yaoundé)

M. Paulin Yanga, Chef de la Division des Affaires Juridiques et des Traités, Ministère des Relations Extérieures (Yaoundé)

CANADA*Representative*

M. Gilles Lauzon, Avocat Général, Ministère de la Justice (Ottawa)

Alternate Representatives

Mme Mounia Allouch, Avocate, Equipe de droit international privé, Ministère de la Justice (Ottawa)

Mrs Elizabeth MacNab, Counsel, Legal Services, Transport Canada (Ottawa)

Advisers

Mr Michel Deschamps, Lawyer, McCarthy Tetrault (Montreal)

Mr Donald G. Gray, Partner, Aerospace Group, Cassels Brock & Blackwell LLP (Toronto)

Mme Suzanne Potvin Plamondon, Directrice Générale, Enregistrement – Certification, Direction du registre des droits personnels et réels mobiliers, Direction générale des services de Justice, Ministère de la Justice du Québec (Boucherville)

CHILE

Representative

Mr David Duenas, Conservador, Registro de Aeronaves, Direccion General de Aeronautica Civil (Santiago de Chile)

CHINA

Representative

Mr Gao Hongfeng, Vice Minister, General Administration of Civil Aviation of China (Beijing)

Alternate Representative

Mr Zhang Yafeng, Representative of China on the Council of ICAO (Montreal)

Delegates

Mr Chan Weng Hong, Vice-President, Civil Aviation Authority of Macao (Macao)

Mr Cheung Sau Tak, Chief Operations Officer, Civil Aviation Department of Hong Kong S.A.R. (Hong Kong)

Miss Guo Zhonghong, Supreme Court of China (Beijing)

Mr Hu Bin, Legal Adviser, Department of Treaty and Law, Ministry of Foreign Affairs (Beijing)

Mr Li Keli, Deputy Director General, Department of International Affairs & Co-operation, General Administration of Civil Aviation of China (Beijing)

Mr Ren Chaoying, Deputy Director-General, Center of Aviation Safety Technology, General Administration of Civil Aviation of China (Beijing)

Mr Wang Xi Lu, Director, Legal Affairs Division, General Administration of Civil Aviation of China (Beijing)

Mr Yang Guohua, Deputy Director, Department of Treaty and Law, Ministry of Foreign Trade and Economic Co-operation (Beijing)

Mr Yuan Yaohui, Director-General of Policy and Regulation, General Administration of Civil Aviation of China (Beijing)

Mr Zhao Hongyu, Director of Section, General Administration of Civil Aviation of China (Beijing)

Alternate Delegates

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Mr Wang Yong, Official, General Administration of Civil Aviation of China (Beijing)

Miss Zhao Heli, Legal Adviser, General Administration of Civil Aviation of China (Beijing)

CONGO (REPUBLIC OF)*Representative*

M. Georges N'Zaou, Inspecteur de l'Aviation Civile du Congo, Ministère des Transports (Brazzaville)

Delegate

M. Montole Symphorien, Chef de Service Technique de la Navigation Aérienne, Agence Nationale de l'Aviation Civile (Brazzaville)

COSTA RICA*Representative*

Mr Luis Gonzalo Sierra Ramirez, Jefe de Area Técnica, Directorate General for Civil Aviation, Ministry of Public Works and Transport (San José)

Alternate Representative

Mrs Mildred Bogantes Pereira, Head of Legal Department, Directorate General for Civil Aviation, Ministry of Public Works and Transport (San José)

CÔTE D'IVOIRE*Representative*

Mr Jean Kouassi Abonouan, Director General of Civil Aviation (Abidjan)

Delegate

Mr Brissot Gnakaré, Chef de Département Relations Internationales, Agence Nationale de l'Aviation Civile (Abidjan)

Observer

Mr Abdoulaye Niang, Journaliste (Abidjan)

CUBA*Representative*

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Delegate

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CZECH REPUBLIC*Representative*

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Alternate Representative

Mr Jaroslav Horák, Legal Director, Ministry of Foreign Affairs (Prague)

Delegates

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Mr Jan Raym, Ministerial Counsellor, Civil Aviation Department, Ministry of Transport & Communications (Prague)

DEMOCRATIC REPUBLIC OF THE CONGO*Representative*

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Alternate Representative

Mr Pascal Izai Kepina, Airport Authority of Congo (Kinshasa)

Delegate

Mr Kis Kabala Kangamina, Directeur de l'Audit Interne / RVA (Kinshasa)

EGYPT*Representative*

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Alternate Representative

Mr Khairy El Hussainy (Cairo)

Delegates

Mr Wafaei Mohamed Mounir, Director General of Legal Affairs, Egyptian Civil Aviation Authority (Cairo)

Mr Samir Desoki, Director, International Agreements, Egyptian Civil Aviation Authority (Cairo)

Advisers

Mr Ayman El Mahmoudy, Adviser, Egyptair (Cairo)

Mr Tarek Rashad Amin, Adviser, Financial Sector, Egyptair (Cairo)

ETHIOPIA

Representative

Mr Atakhelti Alemseged, Head, Legal & Public Relations Service, Ethiopian Civil Aviation Authority (Addis Ababa)

FINLAND

Representative

Mr Antti T. Leinonen, Counsellor of Legislation, Ministry of Justice, Law Drafting Department (Helsinki)

Delegates

Ms Rita T.U. Linna, Senior Officer, Ministry of Transport and Communications (Helsinki)

Mr Mika Juhani Mäkilä, Senior Officer, Finnish Rail Administration (Helsinki)

Ms Maarit Nador, Consul of Finland and Second Secretary, Consulate of Finland in Cape Town (Cape Town)

FRANCE

Representative

M. Jean-François Dobelle, Ambassadeur, Représentant Permanent de la France à l'OACI (Montreal)

Alternate Representatives

M. Georges Grall, Sous-directeur des entreprises de transport aérien, Direction générale de l'Aviation civile, Ministère de l'Équipement, des Transports et du Logement (Paris)

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Delegates

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Mme Emanuela Lacaze, Chargé des affaires multilatérales, Direction générale de l'Aviation civile, Ministère de l'Équipement, des Transports et du Logement (Paris)

Observer

M. Alain Borestel, Vice-Président, Managing Director, Aeronautic & Space Division, Bureau Veritas (Courbevoie)

GERMANY

Representative

Ms Anna-Margareta Peters, Ambassador of Germany in South Africa (Pretoria)

Alternate Representatives

Dr. Hans-Georg Bollweg, Head of Division, Law of Compensation, Law of Environmental Liability, Law of Civil Aviation, Bundesministerium der Justiz (Berlin)

Mr Karl Kreuzer, Professor of Law, University of Würzburg (Würzburg)

Delegates

Mr Christoph Henrichs, Assistant Ministerial Counsellor, Federal Ministry of Justice (Berlin)

Mr Jens Schnoor, Legal Adviser, Hermes (Hamburg)

GHANA

Representative

Capt. Joseph Afriyie Boachie, Director-General, Ghana Civil Aviation Authority (Accra)

Delegates

Mr Henry J. N. Tackey, State Attorney, Attorney-General's Office (Acca)

Mrs Joyce Thompson, Director of Legal Services, Ghana Civil Aviation Authority (Acca)

GREECE

Representative

Mr John Economides, Ambassador of Greece in South Africa, Consulate of Greece in Cape Town (Cape Town)

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Adviser

Mr Alireza Mehdizadeh, Legal Adviser, Civil Aviation Organization of the Islamic Republic of Iran (Tehran)

IRELAND*Representative*

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Alternate Representative

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ITALY*Representative*

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Delegates

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Mr Giuseppe Tucci, Professor of Private Law, University of Bari (Bari)

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Mr Shoji Watanabe, Director, Japan Airlines (Tokyo)

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Mrs Mercy B. Awori, Assistant Secretary, Ministry of Transport and Communications (Nairobi)

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Alternate Representative

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Delegates

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Mr Samuel M. Gaiya, Company Secretary / Legal Advisor, Nigerian Civil Aviation Authority (Lagos)

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Mrs Bola Lashman, Legal Adviser, Federal Ministry of Aviation (Abuja)

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Mr Sylvester Oputa, General Manager (Public Affairs), Federal Airports Authority of Nigeria (Lagos)

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Representative

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Delegate

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Representative

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Delegates

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Mr Eun-Yung Jung, Aircraft Registry, Korean Civil Aviation Bureau (Kwacheon)

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Mr Vladimir A. Podberczny, Vice Chairman, Institute of International Law (Moscow)

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Mr M.B. Agafonov, Attaché, Consulate-General of the Russian Federation in South Africa (Cape Town)

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Ms Lerato Makwetla, Executive Manager, Legal Services, South African Airways (Johannesburg)

Mr M. Simon Mphahlele, Manager, Legal Services, Department of Transport (Pretoria)

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Mr Medard R. Rwelamira, Special Adviser to the Minister of Transport, Ministry of Transport (Pretoria)

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Advisers

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Mr Israel Skosana, Chairman, Civil Aviation Authority (Sloan Park)

Mr Glenn van Heerden, Chairman, Air Traffic & Navigation Services Company (Isando)

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Mr Joaquin Rodriguez, Ministry of Justice (Pamplona)

Mrs Francisca Patilla, Technical Expert, Iberia Airlines (Madrid)

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Alternate Representative

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Delegates

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Mr Ahmed M.A. Osman, Legal Adviser, Ministry of Civil Aviation (Khartoum)

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Delegate

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TONGA*Representative*

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Delegate

Mr Tevita K. Havea, Assistant Secretary & Legal Adviser, Ministry of Civil Aviation (Nuku'alofa)

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Mr Hédi Mougāida, Directeur des Affaires Juridiques, Ministère du Transport (Tunis)

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Alternate Representative

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Miss Gül Sarigül, Legal Adviser, Ministry of Foreign Affairs (Ankara)

Mr Arzu Sadikoglu, Legal Adviser, Turkish Airlines (Istanbul)

UGANDA

Representative

Mr Andrew P. Opolot, Corporation Secretary, Civil Aviation Authority of Uganda (Kampala)

Delegate

Mr Richard Mugenyi, Corporation Secretary, Uganda Railways Corporation (Kampala)

UNITED ARAB EMIRATES

Representative

Mr Mohamed Yahya Al Suweidi, Assistant Undersecretary for Civil Aviation, Ministry of Communications (Abu Dhabi)

Alternate Representative

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Delegates

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Mr Senarath Devapriya Liyanage, Aviation Adviser, Ministry of Communications (Abu Dhabi)

UNITED KINGDOM

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Alternate Representative

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Delegate

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Advisers

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Delegates

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Representative

Mr Harold S. Burman, Executive Director, Office of the Legal Adviser, Department of State (Washington)

Delegates

Mr Peter Bloch, Chief Negotiator, Office of the General Counsel, Department of Transportation (Washington)

Mr Jeffrey Klang, Senior International Attorney, Federal Aviation Administration (Washington)

Mr Joseph R. Standell, Aeronautical Center Counsel, Federal Aviation Administration (Oklahoma City)

Mr Robert Morin, Vice-President, Transportation Division, Export-Import Bank of the United States (Washington)

Mr Louis E. Emery, Deputy General Counsel, Export-Import Bank of the United States (Washington)

Mr Charles W. Mooney, Jr., Professor of Law, University of Pennsylvania Law School (Philadelphia)

URUGUAY

Representative

Ms Marines Benavides, Consul General of Uruguay in South Africa (Cape Town)

VENEZUELA*Representative*

Ms Scherezada Diamond B., Funcionario del Ministerio de Infraestructura, Direccion General Transporte Aéreo (Caracas)

Ms Ana Tortolero Zurita, Funcionarios, Jefe Registro Aéreo, Dirección General Transporte Aéreo (Caracas)

ZIMBABWE*Representative*

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Alternate Representative

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PART B: OBSERVER DELEGATIONS**AFRICAN CIVIL AVIATION COMMISSION (AFCAC)**

Mr Charles M. DIOP, Secretary (Dakar)

Mr Tewodros TAMRAT, Director of Corporate Affairs, African Airlines Association (Nairobi)

AIRLINES ASSOCIATION OF SOUTHERN AFRICA

Mr John T. MORRISON, Chief Executive (Johannesburg)

AVIATION WORKING GROUP (AWG)

Mr Jeffrey Wool, Group Secretary (Washington)

Mr Mark ARUNDELL, General Counsel, Rolls Royce Capital Limited (London)

Mr Walt W. BRAITHWAITE, President Boeing Africa, Boeing International Corporation (Sandton)

M. Claude BRANDES, Customer Finance Director, Airbus Industrie (Blagnac)

Mr Thomas F. CAHILL, c/o Morgan Stanley & Co. (New York)

Ms Marilyn GAN, Singapore Leasing Aircraft Enterprise (Singapore)

Mr Klaus HEINEMANN, Managing Director, Deutsche Verkehrs Bank (Frankfurt/Main)

Mr Robert MARTIN, Managing Director, Singapore Leasing Aircraft Enterprise (Singapore)

Mr Scott SCHERER, Vice President / General Manager, Aircraft Financial Services, Boeing Capital Corporation (Seattle)

Mr Richard SLOAN, Vice-President & General Manager, Bombardier Inc. (Montreal)

Mr F. Scott WILSON, Pratt & Whitney, (East Hartford)

EUROCONTROL

Mr Declan CORRY, Principal Expert (Brussels)

Mrs Patricia Lambe-O'Neill, Senior Legal Expert (Brussels)

EUROPEAN AERONAUTIC DEFENCE & SPACE COMPANY (EADS)

Mr Vladimir KOPAL, Professor of Law, Chairman, UN/COPUOS Legal Subcommittee (Prague)

EUROPEAN BANKING FEDERATION (EBF)

Mrs Trees PAELINCK, Legal Counsel (Brussels)

EUROPEAN COMMISSION

Mr Michael LAKE, Ambassador of the European Commission in South Africa (Cape Town)

M. Olivier TELL, Expert national détaché, Direction Générale Justice et Affaires Intérieures (Bruxelles)

INTERGOVERNMENTAL ORGANIZATION FOR INTERNATIONAL CARRIAGE BY RAIL (OTIF)

Mr Gerfried E. MUTZ, First Legal Adviser (Berne)

INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA)

Mr Lorne S. CLARK, Vice-President & General Secretary, International Air Transport Association (Geneva)

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Mr Jerzy VONAU, Director (London)

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Ms Louise M. ODDY, Legal Director, Angel Trains Limited (London)

Mr B. Patrick HONNEBIER, Professor of Law (Amsterdam)

SPACE WORKING GROUP

Mr Peter D. NESGOS, Co-ordinator (New York)

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Mr Arwed W. HESSE, Senior Counsel, Contracts, Business Unit Space Services, EADS Deutschland GmbH (München)

THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

Mr Philippe LORTIE, Premier Secrétaire (The Hague)

UNITED NATIONS OFFICE FOR OUTER SPACE AFFAIRS

Mr Vladimir KOPAL, Professor of Law, Chairman, UN/COPUOS Legal Subcommittee (Prague)

PART FOUR

**SUMMARY RECORD OF THE MEETINGS
OF THE PLENUM AND THE COMMISSION
OF THE WHOLE**

**SUMMARY RECORD OF THE
MEETINGS OF THE CONFERENCE**

PLENUM – FIRST MEETING

Monday, 29 October 2001, at 10:30

Temporary President: Dr Assad Kotaite, President of the
International Civil Aviation Organization Council

Secretary General (ICAO): Mr Ludwig Weber, Director of the
ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 1 – OPENING OF THE CONFERENCE

The TEMPORARY PRESIDENT welcomed delegates to the Conference, and invited the Minister of Transport of South Africa, the Honourable Abdulah Mohamed Omar MP, to address the Conference.

The MINISTER OF TRANSPORT OF SOUTH AFRICA, THE HONOURABLE ABDULAH MOHAMED OMAR MP, made the following statement: “Honourable Assad Kotaite, President of the International Civil Aviation Organization, Honourable Madame Anna-Marie Trahan, Vice-President of the International Institute for the Unification of Private Law, distinguished leaders of delegations of States, members of all delegations, participants, ladies and gentlemen. It is a great pleasure for me on behalf of the Government of the Republic of South Africa to welcome you all to South Africa, to Cape Town, and to this historic Diplomatic Conference. I want to particularly welcome Dr Kotaite, President of ICAO. Your presence in South Africa, Sir, is a great blessing for South Africa and indeed for Southern Africa. I have found your interest in the greater Southern Africa region and in Africa as a whole very gratifying. You will recall that it was a result of our discussions in Montreal that two seminars were arranged – in Nairobi and Dakar – to give African States an opportunity to be better informed on the Diplomatic Conference and the instruments we will be discussing. There are great challenges facing Africa in the Aviation Sector and your support for Africa’s progress is much appreciated. I had the opportunity of meeting you in Montreal recently and of exchanging views on aviation challenges in Southern Africa. Now I have the pleasure to welcome you to this country. I also express a special word of welcome to Madame Trahan, Vice-President of UNIDROIT. The role of UNIDROIT in the past in the promotion of the unification of private law has been beneficial to the world as a whole. I believe that UNIDROIT will play an increasingly important role to promote uniform law and standards, more particularly in an environment of globalism and the need for harmonisation. The fact that this Diplomatic Conference takes place at all is in large measure due to your work. Welcome to South Africa. Permit me also to express a special word of welcome to the delegations from fellow African States. In the context of the newly created African Union and developments in the Aviation sector on our continent, your presence is precious to South Africa as we seek together to promote the interests of our continent. Welcome to you. To all delegations from different parts of the world, I want to say that we are very excited about the opportunity granted to South Africa to host this Conference and to have you with us. Welcome to you also. I want to wish you all a pleasant stay in Cape Town and also a very successful Conference.

This Conference is the culmination of a long process which has led to the drafting of a Convention on International Interests in Mobile Equipment and a Draft Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment. The Convention is general in nature, covering as it does mobile equipment in airplanes, aircraft engines and helicopters, railway rolling stock and space property. The Draft Protocol focuses on one specific area, namely aircraft equipment, which would include aircraft objects, including airframes and aircraft engines. This Conference is important in that it is the hope of all delegations, I believe, that during the Conference a Convention on Mobile Equipment and Protocol on Aircraft Equipment will

be approved. The ultimate coming into force of the Convention and Protocol will fill a great void in relation to asset-based financing and leasing and putting into place a legal framework for the protection of recognised international interests in mobile equipment. The setting up of an international registration system and establishing the legal framework for the protection of registered international interests will undoubtedly be a big step forward worldwide. Both ICAO and UNIDROIT have done a great deal of work to bring us to where we are today. I express appreciation to them. Present at this Conference are experts and interested parties from all over the world. You have helped to place before this Conference the draft Convention and Protocol. I should indicate that I have been sensitised to the need to approve the Convention and the Protocol, because putting into place the legal framework for the protection of international interests in mobile equipment is an urgent matter. So it is important that we deal successfully with both the Convention and the Protocol. These are two separate instruments. Other protocols will hopefully follow in relation to non-aviation related mobile equipment.

I note that in your documentation you also have a consolidated text of the Mobile Equipment Convention and the Aircraft Protocol. If my understanding is correct, this is for information purposes designed to facilitate both the approval of the Convention and the approval of the Protocol. From our side in South Africa our delegation has a mandate to cooperate with delegates from across the world to ensure that at the end of the Conference we do in fact emerge with an approved mobile equipment convention and an aircraft protocol. At the same time the South African delegation will be keen to ensure that as the African hosts of the Conference, we move in tandem with our sister African countries. It is clear that the previous preparatory meetings and consultations have produced a considerable degree of consensus on the broad outlines of the Convention and the Protocol. The key issues are clear to all delegations. I have no desire to deal with them in detail at this stage and there is certainly no need to dwell on them in a welcome address. Suffice it to say that asset-based financing and securitisation are well known throughout the world in respect of immovable property. South Africa also has a very highly developed and sophisticated system of registration of immovable properties and the protection of financial interests and other interests in relation to immovable property. Because of the adequacy of security in relation to immovable property in the event of default of payment or insolvency, the security provided by law on registration of the interests of the seller or financier presents no difficulty. As a result, financiers are prepared and able to extend more liberal financial facilities at less cost to the buyer/lessee. Millions of people and entities all over the world have been able to acquire immovable property as a result of the existence of an adequate legal framework to secure finance and provide asset-based security. The rule seems to be clear: the greater the risk, the more you pay. The lesser the risk, the less you pay. I hope it will work out this way in respect of mobile equipment. But as you are all aware, adequate securitisation in respect of moveable property, including mobile equipment dealt with in the Draft Convention, is currently wholly inadequate in most if not all jurisdictions in the world. Legislation is needed to provide a legal basis and framework for an adequate security arrangement, especially when there are competing creditors or in the event of insolvency. During this Conference we will be focusing not just on movables or mobile equipment in domestic jurisdictions, but on international interests in mobile equipment. This requires a multilateral approach such as the one initiated by ICAO and UNIDROIT.

Another matter which has focused the minds of experts and interested parties has been the existence of adequate remedies and speedy procedures. What sellers, lessors and financiers of very expensive mobile equipment would like to see is the putting into place as soon as possible of a legal framework for the protection of international interests in such equipment, that is, adequate securitisation and speedy remedies. The aviation industry generally agrees that the putting into place of such a legal framework will be beneficial to the industry and the public in that the cost of financing will thereby be reduced. But as was discussed in meetings leading to this Conference, there is also a need both in domestic jurisdictions and international institutions to ensure that we do not encourage anyone to take the law into his or her own hands. The rule of law must prevail at international and national levels. Indeed many of our domestic jurisdictions do not permit a violation of the principles

making up the rule of law. In the case of South Africa, as in a number of jurisdictions, the right to due process and the right of recourse to courts in all disputes are regarded as a fundamental right. In jurisdictions which respect due process and the rule of law, any purported abrogation of the right to due process, fair procedure and access to courts would be unconstitutional. There is a need for you in your deliberations therefore to ensure that a proper balance is struck between adequate securitisation and respecting due process, fair procedures and the right of access to courts on the other. There is the danger of course that court processes, the right of due process and fair procedure can be abused and result in lengthy delays which will defeat the object of the protection of international interests in mobile equipment. This concern can be overcome by introducing speedy remedies and procedures. In respect of immovable property and protected interests there are speedy and effective remedies in many domestic jurisdictions. In the case of mobile equipment there is the additional risk, precisely that of mobility, which needs to be factored into our thinking. Agreement to grant certain rights to financiers and other interest holders cannot exclude interventions by courts. It is therefore absolutely imperative that during the course of the Conference deliberations, a proper balance is struck between the need to provide maximum securitisation and the need to respect due process.

I should not be tempted to stray into commenting further on issues which you, the experts from across the globe, will be discussing at this Conference. I have no doubt that all delegations will rise up to the challenge, so as to ensure that we emerge from the Conference with a Convention and Protocol ready to be signed and ready to be ratified. There has been some consultation in Africa and I am anxious to ensure that Africa's concerns and interests are not neglected. Africa is a continent consisting of countries which have recently emerged from the ravages of colonialism and apartheid. Many challenges face us on this continent, such as ending conflict, making sure peace, democracy and good governance prevail, building our economies and addressing the needs of Africa's peoples. Many challenges face the continent in the aviation sector and other transport sectors. In many initiatives across the continent, information and communication technology is seen as destined to play a pivotal role in the development of our countries and continent. The ability to acquire mobile equipment to enable Africa to rise to greater heights and compete internationally depends in some measure on securing financing for purchase or lease at attractive rates. So it is in the interests of the continent also that we emerge from the deliberations of this Conference with positive results.

President of ICAO, Dr Kotaite, Vice-President of UNIDROIT, Madame Trahan, distinguished delegates and friends, your deliberations are being held in a country which only recently emerged from international isolation and sanctions which were imposed as a result of the existence of a system in our country which was rightly branded by the international community as a crime against humanity. Our country has turned over a new leaf and our people – of different colours, practising different religions, speaking different languages and enjoying different cultures – know that we belong together and are forging a new nation in a new democratic South Africa. I hope that you will not only have a successful Conference but be able to feel the pulse of the many struggles which make up the current exciting phase of our development and reconstruction. May you enjoy the Conference, but may you also find time to enjoy the beauty of Cape Town and the hospitality of our people. I wish you a successful Conference and a happy stay in South Africa. Thank you."

The TEMPORARY PRESIDENT made the following statement: "Honourable Minister, I listened, and I am sure that all participants listened, to you very carefully. Your remarkable analysis of the text concerning the Mobile Equipment Convention and the Aircraft Protocol will be a source of inspiration to all of us during the coming few weeks. I am confident with the state of cooperation, regardless of the complexity of the problem, that this Conference will be successful and on the last day of the Conference, the Convention will be open for signature and, as I said, it will be known as the Cape Town Convention. I would like to express to you, Mr Minister, my most sincere thanks and gratitude for hosting this meeting in Cape Town. And through you I would be very grateful if you would convey to the Government of the Republic of South Africa our thanks and appreciation for the hospitality and for the facilities and services that you are offering to this Conference, which there is no doubt in my mind will contribute to its success. Many thanks again, Minister.

At the same time, I would like to speak briefly about air transport as it is at the present time. The tragic events which took place in the United States on 11 September had an exceptionally hard impact on the international civil aviation industry – this industry which is a motor for economic development and a catalyst for business and tourism, a vehicle for social and cultural development world-wide, should be protected. We must work together to restore public confidence. The *Convention on the International Recognition of Rights in Aircraft*, signed at Geneva on 19 June 1948, was an important step on the way to facilitate aircraft financing by providing that an interest in an aircraft duly registered in the State of registration of the aircraft would be recognized in other Contracting States. Although this Convention has so far been ratified by 85 States, which represents a considerable degree of acceptance for a private international law instrument, and has served its purpose, it is recognized that its ability to protect a creditor's security interest in an aircraft is limited, mainly due to difficulties encountered in enforcing nationally-registered security rights in foreign jurisdictions, and may no longer be fully satisfactory in a market where new trends and commercial practices have developed. Asset-based financing and leasing of aircraft appear to have now emerged as efficient forms of credit extension in which reliance on prompt recourse to the value of the underlying aircraft assets is an essential feature in the analysis of overall risk in transactions. The adoption of an international legal regime providing for an asset-based financing and leasing system has therefore been advocated as appropriate to better meet the needs of the industry and other parties in view of the ability of such systems to enhance the availability of credit in the capital market to air carriers at lower cost. The adoption of the envisaged regime is considered particularly opportune at a time when airlines are struggling to reduce operating costs and are increasingly being criticised, thereby becoming more dependent on the availability and cost of external finance for their development and growth. In this regard, it should be noted that aircraft financing and leasing costs for international scheduled airlines represents, on average, some eight percent of the total operating expenses of these airlines. With this in mind, ICAO joined UNIDROIT in 1997 in a project to develop new treaty law creating the concept of an international interest in mobile equipment. It is the objective of this concept to create an interest which is easily and expeditiously enforced in the jurisdiction of each Contracting State, to be applied to high-value mobile equipment, including aircraft equipment, namely airframes, aircraft engines and helicopters. In fact, the high mobility of aircraft across borders in their normal operation makes this category of equipment particularly eligible to be covered by this new legal concept. I wish to underline the economic significance of this project for the international air transport industry which has generated support among governments, aircraft manufacturers, airline leasing companies and lending institutions.

I also wish to underline that ICAO has been breaking new ground in working with UNIDROIT in this complex and innovative subject. Four years of intense work between the two organizations have led to the Diplomatic Conference, in a record time by public international law standards. During this period, an intergovernmental consultation process went forward through a sub-committee of the Legal Committee of ICAO jointly with a Committee of Governmental Experts of UNIDROIT, which held three joint sessions under the chairmanship of Dr Emilia Chiavarelli of Italy, to study and prepare the draft texts of the new treaty law, with the assistance of various working groups. A draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters Specific to Aircraft Equipment were developed by the joint sessions and were reviewed by the 31st session of the Legal Committee of ICAO in August/September 2000, together with the report of Mr Giles Lauzon of Canada who had been appointed as the Rapporteur on the subject "International Interests in Mobile Equipment (Aircraft Equipment)" by the Chairman of the ICAO Legal Committee. Once approved by the competent bodies of ICAO and UNIDROIT, the draft instruments were circulated to Contracting States and non-Contracting States and are now before the Conference for adoption. Before the Conference is also a Consolidated Text of the draft Convention and the draft Protocol, namely the "Draft Convention on International Interests in Aircraft Equipment", which was approved by the 31st session of the ICAO Legal Committee on the basis of a Consolidated Text appended to the Report of the Rapporteur. It was decided by the ICAO Legal Committee and endorsed by the ICAO Council

that this Consolidated Text be submitted to the Diplomatic Conference for decision as to what status should be given thereto, in particular whether it should be a mere text of convenience or whether it should be given some more formal status by the Conference. States may wish to give particular attention to this matter, since it has been realised that the current two-tier architecture of the draft instruments (a base Convention and an equipment-specific Protocol which have to be read together as a single instrument) introduces an element of complexity which makes the legal mechanism established therein perhaps more difficult to understand and apply than would be necessary. In fact, this dual structure results basically from the applicability of the international interest in mobile equipment concept to different categories of high-value mobile equipment and from the history of this project, rather than from considerations of good legal drafting. These and other issues which are reflected in provisions still appearing within square brackets in both the draft Convention and the draft Protocol are policy matters left for the Diplomatic Conference to decide.

It should be noted that the current draft instruments embody rules which have been considered as fundamental to render an asset-based financing and leasing system of aircraft equipment effective. These rules are designed to give the private parties to a transaction broad contractual freedom on a *quid pro quo* basis. On the one hand, the creditor is provided with rules giving him more certainty regarding the availability of the underlying asset in case of default of the debtor, on the understanding that, on the other hand, the operators gain enhanced access to credit at a lower cost. This is the logic of the system, and the draft instruments are designed to make this system work, taking this balance of interests into account. Since some of the rules in the instruments relating to asset-based financing and leasing may raise problems for certain jurisdictions or may conflict with policies of certain States, they have been made optional to give such States the possibility of filing reservations in relation thereto, in order to facilitate the acceptance of the instruments. Another central feature of the proposed treaty law, essential for the new concept of an international interest in mobile equipment, is the creation of a worldwide international registry. Any international security interest shall be registered in the international registry in order to establish its absolute priority over subsequently registered interests or unregistered interests in a given asset. Since it is expected that this registry enter into operation by the time the new treaty law enters into force, a great deal of advance planning is required. To this end, preparatory work has been carried out by an *ad hoc* task force under the auspices of ICAO and UNIDROIT to assist the entity to be entrusted by this Diplomatic Conference with the responsibility of establishing the International Registry. The results of this preparatory work have been distributed to States for information with a view to enabling them to make the appropriate decisions at this Conference and after the adoption of the instruments.

Dear Minister, colleagues and friends, in concluding I wish to express my confidence that in your discussions, an excellent spirit of cooperation will prevail. The outstanding issues can be solved with such excellent cooperation in mind. I sincerely believe that, based on such global cooperation by States, we can move forward to a new uniform international regime which will serve all parties in an era of globalisation. The entire international aviation community is looking to this Diplomatic Conference with high expectations and I am confident that this Conference will fully reach its objectives. I wholeheartedly wish you every success in your endeavours. Thank you very much. *Merci beaucoup*. Then may I invite the Vice-President of the UNIDROIT Governing Council to address the Conference.”

The VICE-PRESIDENT OF UNIDROIT made the following statement: “Minister of Transport, President of the ICAO Council, Co-Secretary General, Ambassadors, Distinguished Delegates and Members of the Secretariat, Members of the South African host community. I am replacing Professor Bernardino Libonati, the President of UNIDROIT, who was not able to be here this morning. He had eye surgery which made it impossible for him to take the aeroplane. I bring his greetings and his best wishes for a successful meeting. On behalf of UNIDROIT, Mr Minister, I would like to thank you and your Government and your country for hosting this historic Diplomatic Conference. It is the first time that UNIDROIT has held a Diplomatic Conference in Africa and we all hope that, at the end of this Conference, we will see the Cape Town Convention and Protocol signed. The first UNIDROIT

Diplomatic Conference that I attended was in 1988 in Ottawa and in that Conference something happened which in a way makes me very happy to be here today and makes me also happy that this Conference takes place in South Africa – and, in a way, if that event had not taken place at that time I am not sure that we would be here today. Let us remember in 1988, South Africa was living under the regime of apartheid. The United Nations had adopted resolutions according to which South Africa could not participate in international meetings. And since South Africa was at the 1988 Conference, other African countries submitted a resolution requesting that the South African delegation leave the meeting. The resolution was adopted – the South African delegates went to get their flag at the front of the room and left. You could have heard a fly in that room. They had been banned because of the apartheid policy of their country. Some of the other delegates and of the members of the UNIDROIT Secretariat who, like me, were present at that event are here today and those to whom I have spoken keep it, as I do, in a place in our memories. Events like that you do not forget. So when I was asked by the Secretary-General to replace the President at this Conference because of his health, I was happy because I felt it was what we call in French, the fact that this Conference was taking place here, was what I call in French “*un juste retour des choses*” – a just return of things. Now South Africa is back amongst the diplomatic countries of the world and we are here, so everything that has taken place “*c’est un juste retour des choses*”. All of us here are aware of the long walk to freedom, to paraphrase the title of Nelson Mandela’s autobiography, which South Africa has undertaken in the last decade. You are building the foundation of a democratic country where you take into account the cultural differences, you negotiate hopefully so that every man and every woman of this country, whatever colour, race, speaking whatever language, may benefit from the new social and political organization you are putting in place. Like many, I have been particularly impressed by the idea you had to institute a Truth and Reconciliation Commission, chaired by Monsignor Tutu. As you may know, other countries have since used such a process. And sometimes I tell myself that, in the troubled times we live in since September 11, I wonder if this process could not be used, could not be an inspiration to facilitate dialogue, exchange and cooperation in another context and on a greater scale. I remember also with emotion seeing on television the long waiting lines in front of the voting booths in 1994 at the time of your first multi-cultural elections. I remember the very moving testimonies of those persons, especially the elderly, who had never voted before and who by the very simple gesture of marking an “X” on a voting bulletin acquired civic and political identity. Whether we be legally trained or not, the concepts of justice and peace often go together. In fact, they are intimately linked. They are some of the ideals human beings are striving for. Mr Minister and my dear South African friends, what you have done and achieved is an eloquent example that there cannot be peace without justice. You have given three Nobel Prizes to the world. Monsignor Tutu, the Anglican Bishop of this beautiful city where you have chosen to host this Diplomatic Conference, and Monsieur de Klerk and Monsieur Mandela, your founding President. Monsieur Mandela is one of the persons who has left his mark on the 20th century. He is what we call in French a “*phare*”, not “*phare*” in the sense of a lighthouse, but “*phare*” in the sense of one who shows the way and prevents others from going ashore or hitting rocks. Mr Mandela therefore is a “*phare*” not only for South Africa but for all of mankind. In the guidebook I was reading on coming here I learned that Ghandi lived in South Africa from 1893 to 1915. And this is where he developed his philosophy of “*Santi Agrar*” which means, literally, “Do not go away from the truth”, and this philosophy played a role later on in his life when he was back in India. Mr Minister and my dear South African friends, I am sure I speak for everyone in this room when I say that you have gained our admiration and our respect. The long walk is far from over but you have our support, our encouragement and our friendship. The discussions that begin today are the end of many years of hard work.

The other reason for which I am happy to be participating in the opening session of this Conference is that it was I who proposed in 1989 to the UNIDROIT board of directors to study the possibility of modernising and standardising the field of secure transactions on the international level. It was an idea that Professor Cuming had conceived and it sounded like a very interesting idea. Mr Minister, you explained very clearly a moment ago all of the issues that are involved and if I did

not know that you were already Minister of Justice of your country, your grasp of these legal concepts, which are quite complicated, would have impressed me a great deal. But since you have been Minister of Justice, I understand very well why you have such a grasp of the subject. As with all such suggestions, the work and the following discussions limited the scope of the field somewhat. The Draft Convention now deals only with high-value equipment or equipment that is of particular economic importance. Thanks to the Protocol developed, or being developed, the whole Convention and set of protocols will respond to the needs of financing in three areas: aviation, rail and space. Economic studies have shown that the existence of international guarantees such as these will make it possible to reduce the cost of financing by 5% to 40%, depending on the particular situation. I would add, since I love to travel and I am a frequent flyer, that I would be very happy, I hope to see an impact of this achievement on the cost of my tickets and those of other consumers. I am sure that you are not the only ones who love to travel. When I heard what happened in the Gothard tunnel last week, I could not but think about – and this is another area of course: – the road system – I could not help thinking about how much more valuable that makes rail transport, especially in that part of the world. On the other hand, in many countries, and especially developing countries or countries in transition, one needs rolling stock in greater quantity and quality to provide for the transport of many agricultural products to the industries and big consumers. And, of course, this affects us all individually as consumers. When it comes to the area of space, I cannot but think of the comments made by Mrs Lindle Shope-Mafole who is the Plenipotentiary Minister of the South African Embassy in Paris, working in an *ad hoc* working group meeting on the mechanisms under the United Nations Committee for the Peaceful Uses of Outer Space last week, when she emphasised the importance of making the benefits of this Convention available to everyone around the world as soon as possible because, in this area as well, one sees the impact on ordinary people, and Mrs Shope-Mafole explained to me that facilitating financing of space objects through a secured system would be of tremendous importance to developing and emerging countries, by strengthening access to satellite services in vital and essential areas as the forecasting of natural catastrophes, whether they be droughts, floods, hurricanes and so on, and secondly, by further diversifying satellite operators. Finally, she emphasised all of the disadvantages or the problems that had been felt in the telecommunications field recently because of, *inter alia*, the absence of an international legal structure that was well adapted to the financing of this sector. When we look at the success of this kind of instrument, we can see how useful it would be in other types of agricultural equipment. Not all countries make large threshers and combines and other types of agricultural equipment. And in construction equipment, we see more and more of these huge cranes and these are not always easy to find everywhere. There is also the off-shore drilling rig. This instrument we have developed has such an impact on the daily activities of many economic sectors, it is natural that those sectors should be involved in the work. And here I would like to highlight the active and sometimes energetic participation of IATA, which represents the carriers, and the Aviation Working Group, which represents the financial institutions and manufacturers. These two groups together represent the industries to which the Convention and Aircraft Protocol will apply. I know that they have sometimes, in fact often, been troubled by the slowness of the process. Long before 1997, IATA and the Aviation Working Group had started to work with us on this exercise and it is thanks to their efforts that many countries have understood that this instrument could meet the needs of industry. And those of us who work or who have worked in public administrations know how important it is to have legislation that is well adapted to the needs of users. Another Organisation has worked together with UNIDROIT on this project and that is ICAO – and I know that we have done a great deal together on this. I have worked together with the President of the ICAO Council and I am very proud to be sitting beside him today. I recall my first meeting with representatives of ICAO in Montreal in 1997, and because of the nature of this subject, which was private and commercial law, compared to the issues that ICAO usually dealt with which relate to air law, which is a branch of public law, I understood that they were a bit reluctant to embark on such an arduous task. But they did become involved and I think that we have worked very well together and have accomplished a great deal.

Because of the nature of the Convention and the Protocol, ICAO became an indispensable, essential partner in the process. Here I must today thank ICAO for all the cooperation that has made it possible for us to be here today. I would also like to highlight the work done by OTIF, the Intergovernmental Rail Transport Organisation and COPUOS, the United Nations Commission for the Peaceful Uses of Outer Space, as well as the work done by the rail and space working groups which are present here at the Diplomatic Conference. Without them, the work would not have moved forward in that area.

In conclusion, I must emphasise the tremendous work which has been done in transporting the concepts of common law and civil law into the Convention and Protocol and particularly the concern to adapt legalese and find words that reflect this transposition, particularly with a great deal of work done in French and English that I think really reflects the concepts in this area, another concept that I am particularly interested in. I would like to remind you, distinguished delegates, that within the framework of a Diplomatic Conference like this, we are legislating at the international level, and those who are part of the British parliamentary tradition cannot but be conscious of being in a parliament-like room where we have the room divided into two parts with a central aisle down the middle. So we must legislate at an international level. That means that we have to adopt an international legislative text that meets the needs of as many parties as possible. I think that I have already explained the interests that will be served by the Convention and Aircraft Protocol and the rail and space protocols, and if we want to carry out the great and noble mission that we have been given we must not be turned aside by or hindered by what I would call legislative nationalism. And I use this expression as a paraphrase of a French judge who spoke of judicial nationalism. I was at the Conference at which he made this comment. He warned us against the danger of legislative nationalism within the framework of a situation in which we are acting as judges under the terms of the Hague *Convention on the Civil Aspects of International Child Abduction*. So in the increasingly independent world, interdependent world, in which we live – I prefer that term to the word “globalise” – I think we must be very conscious of the scope and the mission of legislation. I know that you are up to this task and that you will meet the many challenges that await you in the coming weeks. Good luck and thank you.”

The TEMPORARY PRESIDENT thanked the Vice-President of UNIDROIT for her comments, and requested that the Secretary General (ICAO) introduce the ICAO Secretariat.

The SECRETARY GENERAL (ICAO) stated that he joined the Honourable Minister of Transport of South Africa, the President of the ICAO Council and the Vice-President of the Governing Council of UNIDROIT in welcoming all delegations to the Conference, and that the ICAO Secretariat members who would be officers of the Conference would be: Mr Silvério Espinola, Principal Legal Officer, who would be co-Executive Secretary of the Conference; Mr Jiefang Huang, Legal Officer, who would be co-Deputy Secretary of the Conference; Mr Arie Jacob, Legal Officer, who would be co-Assistant Secretary of the Conference; Mr Yuri Belisev, Chief, Languages and Publications Branch; Mr Michael J. Blanch, Chief Conference and Offices Services Sections; Mrs R. Ezratti, Chief Interpretation Section; Mr Jacques Daoust, Chief of Printing and Deputy Conference Officer; and Ms A. Craig, Supervisor for Documentation Control and Remote Translation.

The TEMPORARY PRESIDENT requested that the SECRETARY GENERAL (UNIDROIT) introduce the UNIDROIT Secretariat.

The SECRETARY GENERAL (UNIDROIT) stated that he joined the previous speakers in welcoming participants to the Conference, and that the UNIDROIT Secretariat members who would be officers of the Conference would be: Mr Martin Stanford, Principal Research Officer, who would be co-Executive Secretary of the Conference; Ms Frédérique Mestre, Research Officer, who would be co-Deputy Secretary of the Conference; Ms Lena Peters, Research Officer, who would be co-Assistant Secretary of the Conference; and Ms Marina Schneider, Research Officer, who would be co-Conference Officer of the Conference.

The TEMPORARY PRESIDENT stated that 52 States and three international Organisations had registered for the Conference and that the total number of participants was 139, with the expectation that further States and participants would join the Conference subsequently.

**AGENDA ITEM 2 – ADOPTION OF THE AGENDA
(DCME DOC NO. 1)**

The provisional agenda (DCME Doc No. 1) was adopted unanimously.

**AGENDA ITEM 3 – ADOPTION OF THE RULES OF PROCEDURE
(DCME DOC NO. 2)**

Rule 30(2) of the provisional rules of procedure was amended to include the Chinese language, and the provisional rules of procedure (DCME Doc No. 2), as amended, were adopted unanimously.

**AGENDA ITEM 5 – ESTABLISHMENT OF THE CREDENTIALS COMMITTEE, THE
COMMISSION OF THE WHOLE AND OTHER COMMITTEES AS NECESSARY**

The TEMPORARY PRESIDENT proposed that the following States serve on the Credentials Committee of the Conference: Costa Rica, Ghana, Oman, Singapore and Spain.

It was so agreed.

The TEMPORARY PRESIDENT proposed that the Conference establish the Commission of the Whole, comprising all States and international Organisations participating in the Conference, a Drafting Committee, the composition of which would be determined by the President, and a Final Clauses Committee, the composition of which would be determined by the President.

It was so agreed.

The meeting rose at 12:30

PLENUM – SECOND MEETING

Monday, 29 October 2001, at 14:00

Temporary President: Dr Assad Kotaite, President of the
International Civil Aviation Organization Council

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION

The TEMPORARY PRESIDENT invited general comments on DCME Doc No. 3.

The DELEGATION OF BELGIUM noted that it would be necessary for the Conference to allocate time to discuss the European Commission's mandate to negotiate on behalf of the European Commission.

The TEMPORARY PRESIDENT stated that the Conference was aware that the European Community had competence for certain matters dealt with in the Convention and that its Member States had competence for certain other matters, and also stated that precedents such as the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air might be helpful.

AGENDA ITEM 9 – CONSIDERATION OF THE DRAFT PROTOCOL

The TEMPORARY PRESIDENT invited general comments on DCME Doc No. 4.

The DELEGATION OF OMAN stated that the Draft Protocol should include a definition of “auxiliary power unit”.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that both the Draft Convention and the Draft Protocol were at a mature stage of development, and that their finalisation would create greater opportunities for financing critically-needed equipment.

The DELEGATION OF FRANCE stated that the texts of the Draft Convention and of the Draft Protocol were in good shape, and that it hoped that both instruments would enter into force as quickly as possible.

The DELEGATION OF SAUDI ARABIA stated that the Arabic texts would require some linguistic modifications to the legal definitions.

The DELEGATION OF EGYPT stated that the texts of the Draft Convention and of the Draft Protocol had reached a mature stage, and that it hoped both texts would be completed and opened for signature by the conclusion of the Conference. It also stated that it required information regarding the proposed International Registry.

The DELEGATION OF THE INTERNATIONAL AIR TRANSPORT ASSOCIATION stated that the air transport sector of the travel and tourism industry was valued at over one thousand billion dollars each year, and that the finalisation of the Draft Convention and the Draft Protocol would be a major development.

The DELEGATION OF GERMANY stated that the Draft Convention and the Draft Protocol were at very advanced stages of development, and that they had the potential to be of equal benefit to manufacturers, financiers and users.

The DELEGATION OF SUDAN stated that the Arabic texts would need to be reviewed, particularly in relation to the definitions, and that a consolidated text of the Draft Convention and the Draft Protocol would assist national ratification processes.

The DELEGATION OF KENYA stated that the ICAO Legal Seminar held in Nairobi, Kenya from 29 to 31 August 2001 had greatly assisted consideration of the texts of the Draft Convention and the Draft Protocol.

The DELEGATION OF NIGERIA stated that Nigeria and many other African countries were experiencing difficulties in financing aircraft, and that the Draft Convention and the Draft Protocol would facilitate access by African carriers to financing and leasing opportunities.

The DELEGATION OF THE DEMOCRATIC REPUBLIC OF CONGO stated that the scope of the instruments should also extend to the financing of airports.

The SECRETARY GENERAL (ICAO) stated that the third meeting of the International Registry Task Force had been held in Geneva, Switzerland from 10 to 12 September 2001, that it had produced draft regulations for the International Registry, and that the report of that meeting would be distributed as DCME-IP/4.

The SECRETARY GENERAL (UNIDROIT) stated that the Sub-committee of the Legal Committee and the Committee of Governmental Experts had recommended that the scope of the Draft Convention and of the Draft Protocol be limited to airframes, aircraft engines and helicopters, but that Article 50 of the Draft Convention envisaged the development of future protocols applying to other types of equipment.

The DELEGATION OF CANADA stated that the development of the Draft Convention had been a Canadian initiative, that Canada had actively participated throughout all stages of the development of the Draft Convention and Draft Protocol, and that the texts of both instruments were at a mature stage of development.

The DELEGATION OF JAMAICA stated that it would be important to ensure that the draft texts achieved an appropriate balance between promoting financing and protecting debtors and creditors, that the matters in respect of which declarations could be made should be listed in a single provision as well as in the relevant Articles, and that it would be important to understand the trade-related aspects of intellectual property in relation to the Draft Convention.

The DELEGATION OF CHINA stated that it might be necessary to add additional provisions to the Draft Convention to protect the interests of lessors and creditors.

The DELEGATION OF TONGA stated, on behalf of Pacific Island States, that it supported the Draft Convention and the Draft Protocol.

The DELEGATION OF BAHRAIN stated that the Draft Convention and the Draft Protocol should be consolidated into a single text.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it would not support the consolidation of the texts of the Draft Convention and the Draft Protocol into a single instrument because that could impede the application of the Draft Convention to other categories of equipment.

The DELEGATION OF JORDAN stated that in many developing countries, airports were operated according to commercial criteria, and that this should be taken into consideration.

AGENDA ITEM 10 – CONSOLIDATED TEXT

The TEMPORARY PRESIDENT invited general comments on DCME Doc No. 5.

The DELEGATION OF ARGENTINA stated that it required clarification regarding the differences between DCME Doc No. 5 and DCME Doc No. 6.

The SECRETARY GENERAL (ICAO) stated that there were some minor differences between the two documents, and that, as DCME Doc No. 6 had been issued by the UNIDROIT Secretariat after DCME Doc No. 5 had been issued, it would be preferable for the UNIDROIT Secretariat to explain the differences between the two documents.

The SECRETARY GENERAL (UNIDROIT) stated that there were minor differences between the two texts but that, as the texts of both the Draft Convention and the Draft Protocol were likely to be amended during the Conference, it would be preferable to examine those differences towards the end of the Conference.

The TEMPORARY PRESIDENT stated that it would be helpful to receive additional comments on the question of whether the Conference should adopt a Draft Convention and a Draft Protocol, or whether it should adopt a single consolidated text.

The DELEGATION OF PAKISTAN stated that it would be preferable for a single consolidated text, rather than two consolidated texts, to be used during the Conference.

The SECRETARY GENERAL (UNIDROIT) stated that DCME Doc No. 6 had been prepared because the UNIDROIT Governing Council had approved only the texts of the Draft Convention and of the Draft Protocol, and that it was necessary to produce a service equal to that of ICAO's for UNIDROIT's governing bodies.

The DELEGATION OF KENYA stated that it agreed with Pakistan that it would be preferable for a single consolidated text to be used during the Conference.

The DELEGATION OF CANADA stated that it was concerned that a two-instrument approach could impede domestic ratification of the instruments, particularly in States with a federal system of government, that its consultations with provincial governments and with industry had revealed that there were difficulties with the complexity of the structure, and that it was prepared to work cooperatively to achieve a resolution of this issue.

The DELEGATION OF AUSTRALIA stated that the Conference should adopt a Convention and a Protocol as separate documents, and that they should not be merged into a single instrument.

The DELEGATION OF CUBA stated that it could be useful to use a single consolidated text as a working document during the Conference.

The DELEGATION OF FINLAND stated that it strongly supported the Conference adopting a Convention and a Protocol as separate documents, but that it would also be useful for a consolidated text to be produced as an aid to understanding the texts.

The DELEGATION OF ARGENTINA stated that it supported the Conference adopting a Convention and a Protocol as separate documents, that a consolidated text should not be developed until the texts of the Draft Convention and the Draft Protocol were finalised, and that the Conference should work from a single consolidated text rather than two consolidated texts.

The DELEGATION OF ITALY stated that it strongly supported the Conference adopting a Convention and a Protocol as separate documents, and that the Conference was not in a position to amend the texts of DCME Doc No. 5 or DCME Doc No. 6.

The DELEGATION OF THE UNITED KINGDOM stated that it supported the adoption of the two-instrument approach that had been approved by the Third Joint Session of the Legal Sub-Committee of ICAO, the Committee of Government Experts of UNIDROIT, the ICAO Legal Sub-Committee, the Council of ICAO and the Governing Council of UNIDROIT, and that the question of a consolidated text could be revisited when the texts of the Draft Convention and the Draft Protocol had been finalised.

The DELEGATION OF CHINA stated that it supported the adoption of a consolidated text, that this would make it easier for creditors, debtors, lessors, lessees, lawyers and those interpreting the texts to understand their meaning, and that it would facilitate ratification by governments.

The DELEGATION OF BRAZIL stated that it supported the Conference adopting a Convention and a Protocol as separate documents, and that a consolidated text could facilitate the work of the Conference.

The DELEGATION OF SWEDEN stated that it supported the Conference adopting a Convention and a Protocol as separate documents, and that it would also be useful for a single consolidated text to be produced as an aid to understanding the texts.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it supported a two-instrument approach, that the work of the Conference should concentrate in the first instance on finalising the Draft Convention and the Draft Protocol, and that the Conference should then consider development of a consolidation of the two instruments as an official, working consolidation but one that would not be subject to national ratification.

The DELEGATION OF MEXICO stated that it supported the Conference adopting a Convention and a Protocol as separate documents.

The DELEGATION OF SAUDI ARABIA stated that it would be preferable for the Conference to work with a single consolidated text, and that the existence of a single consolidated text would facilitate dealings with lessors, lessees, airlines, manufacturers and others involved in the financing of aircraft.

The DELEGATION OF THE NETHERLANDS stated that it supported the Conference adopting a Convention and a Protocol as separate documents.

The DELEGATION OF FRANCE stated that it supported the Conference adopting a Convention and a Protocol as separate documents, and that, if a consolidated text were produced to assist the work of the Conference or to aid comprehension of the Draft Convention and Draft Protocol, there should only be one version of the consolidated text and not two.

The DELEGATION OF CANADA stated that it was flexible on the question of whether the Draft Convention and Draft Protocol should be consolidated into a single instrument for adoption by the Conference.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported a two-instrument approach, and that it agreed with the suggestion of the Aviation Working Group that the Conference sanction the preparation by the ICAO and UNIDROIT Secretariats of a consolidated text which would not need to be finalised before the conclusion of the Conference.

The DELEGATION OF THE INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL referred to DCME Doc No. 12 and stated that it supported a two-instrument approach, and that a great deal of work had been undertaken by the Rail Working Group and by governments on the basis that a two-instrument approach would be adopted.

The DELEGATION OF CUBA stated that it would be preferable for the Conference to use a single consolidated text rather than two consolidated texts, and that, as DCME Doc No. 5 had been approved by sovereign States through the ICAO Council and had been circulated sufficiently prior to the Conference to enable its consideration by governments, it would be preferable to use that text during the Conference.

The DELEGATION OF GERMANY stated that it strongly supported the Conference adopting a Convention and a Protocol as separate documents, but that there should be a consolidated text for working purposes.

The DELEGATION OF LEBANON stated that it supported the adoption of a single instrument, and that, if a two-instrument approach were adopted with a consolidated text to be used as a working tool, it would be necessary to clarify the legal status of that consolidated text.

The TEMPORARY PRESIDENT stated that there had been general support for a two-instrument approach, and that the ICAO and UNIDROIT Secretariats would work together to produce a single consolidated text under the authority of the President.

The meeting rose at 17:34

PLENUM – THIRD MEETING

Tuesday, 30 October 2001, at 10:10

President: Professor Medard Rutoijo Rwelamira (South Africa)

Temporary President: Dr Assad Kotaite, President of the
International Civil Aviation Organization Council

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

**AGENDA ITEM 4 – ELECTION OF THE PRESIDENT AND THE
VICE-PRESIDENTS OF THE CONFERENCE**

The TEMPORARY PRESIDENT stated that Rule 5(1) of the Rules of Procedure provided for the Conference to elect a President, and called for nominations.

The DELEGATION OF CANADA proposed Professor Medard Rutoijo Rwelamira (South Africa) as candidate for the position of President of Conference, and stated that Professor Rwelamira held a Bachelor of Laws from the University of Dar Es Salaam, a Doctorate of Laws from the Yale Law School, and that he currently held the positions of Special Advisor to the Minister of Transport of South Africa, Vice-Chairman of the United Nations Preparatory Commission for the International Criminal Court, Coordinator of Rules relating to Part 4 of the Rome *Statute on the International Criminal Court*, member of the Permanent Court of Arbitration, Chairman of the Regulating Committee Airports Company of South Africa, and Chairperson of the Steering Committee on Human Rights.

The DELEGATION OF TANZANIA seconded the proposal.

Professor Rwelamira was unanimously elected President of the Conference.

The PRESIDENT expressed his gratitude to the Conference for his election as President, and called for nominations for the five positions of Vice-Presidents of the Conference.

The DELEGATION OF NIGERIA, seconded by the DELEGATION OF MEXICO, proposed Mr Harold Burman (United States of America) as candidate for the position of First Vice-President, the DELEGATION OF FRANCE, seconded by the DELEGATION OF ARGENTINA, proposed Mr Gao Hongfeng (China) as candidate for the position of Second Vice-President, the DELEGATION OF BELGIUM, seconded by the DELEGATION OF JORDAN, proposed Mr Souleiman Eid (Lebanon) as candidate for the position of Third Vice-President, the DELEGATION OF JAPAN, seconded by the DELEGATION OF GERMANY, proposed His Excellency Ambassador Jório Salgado Gama Filho (Brazil) as candidate for the position of Fourth Vice-President, and the DELEGATION OF THE UNITED ARAB EMIRATES, seconded by the DELEGATION OF KENYA, proposed Mr John Atwood (Australia) as candidate for the position of Fifth Vice-President.

The candidates in question were elected unanimously.

**AGENDA ITEM 6 – ELECTION OF THE CHAIRMAN OF THE
COMMISSION OF THE WHOLE**

The PRESIDENT called for nominations for the position of Chairman of the Commission of the Whole.

The DELEGATION OF EGYPT, seconded by the DELEGATION OF THE NETHERLANDS, proposed Mr Antti T. Leinonen (Finland) as candidate for the position of Chairman of the Commission of the Whole.

Mr Leinonen was unanimously elected Chairman of the Commission of the Whole.

**AGENDA ITEM 7 – EXAMINATION OF THE REPORT OF
THE CREDENTIALS COMMITTEE**

The PRESIDENT requested that the Credentials Committee provide its report to the Conference.

The DELEGATION OF GHANA stated that the Credentials Committee had held its first meeting on Monday, 29 October 2001, that as at 17:00 on that date 56 States and six international Organisations had registered for the Conference, that credentials had been submitted by 31 States and two international Organisations, and that full powers to sign the international legal instrument or instruments to be adopted by the Conference had been presented by 12 States. It stated that pursuant to Rule 4 of the Rules of Procedure, the Credentials Committee recommended to the Conference that all registered delegations be permitted to participate in the work of the Conference pending receipt of their credentials in due and proper form.

The PRESIDENT thanked the Delegation of Ghana for the report, and adjourned the meeting.

The meeting rose at 10:56

COMMISSION OF THE WHOLE – FIRST MEETING

Tuesday, 30 October 2001, at 11:38

President: Professor Medard Rutoijo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION

The CHAIRMAN stated that the Plenary had previously undertaken a preliminary reading of the Draft Convention and the Draft Protocol, and that the Commission would commence a detailed consideration of the Draft Convention and would start with Chapter I.

The DELEGATION OF JAPAN stated that the definition of “security agreement” in Article 1(ii) of the Draft Convention should be clarified to exclude possessory pledge agreements.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it would be appropriate for the Drafting Committee to consider the issue raised by Japan.

The DELEGATION OF THE UNITED KINGDOM stated that it supported the intervention of the United States of America.

The DELEGATION OF AUSTRALIA stated that the definition of “internal transaction” in Article 1(n) of the Draft Convention should clarify what test would be used to determine where relevant parties were situated.

The CHAIRMAN stated that this issue would be considered during the consideration of Article 4 of the Draft Convention.

The DELEGATION OF THE AVIATION WORKING GROUP stated that there were types of insolvency proceedings, such as reorganisations authorised by legislators and regulatory acts, which were not covered by the definition of “insolvency proceedings”, and that the Drafting Committee should consider the question of debtor and creditor location for the purposes of the definition of “internal transaction” in Article 1(n) of the Draft Convention.

The DELEGATION OF PAKISTAN stated that the Drafting Committee should consider inserting a comprehensive definition of “international interest” in Article 1 of the Draft Convention which set out both the formal and substantive requirements of an international interest.

The DELEGATION OF THE UNITED KINGDOM stated that a single definition of “international interest” which combined the formal and substantive requirements of an international interest might be unwieldy, and that the issue could be considered by the Drafting Committee.

The CHAIRMAN stated that the Drafting Committee would consider the appropriateness of combining into a single provision Articles 1(o), 2 and 6 of the Draft Convention.

The DELEGATION OF SUDAN stated that the definition of “debtor” in Article 1(j) of the Arabic version of the Draft Convention referred to a “conditional buyer” but should instead refer to a “conditional seller”.

The CHAIRMAN stated that all language inconsistencies would be checked.

The DELEGATION OF BAHRAIN stated that a distinction between insolvency proceedings and receivership proceedings should be reflected in the definition of “commencement of the insolvency proceedings” in Article 1(d) of the Draft Convention.

The DELEGATION OF SWEDEN stated that the European Community had exclusive competence in relation to insolvency proceedings, and that any discussion of proposals to extend the definition of “insolvency proceedings” in Article 1(d) of the Draft Convention should be deferred until the question of the European Community’s mandate at the Conference had been discussed.

The CHAIRMAN stated that further consideration of the definition of “insolvency proceedings” in Article 1(d) of the Draft Convention would be deferred until the following week.

The DELEGATION OF SENEGAL stated that the definitions in the Draft Convention, such as the Article 1(g) definition of “contract of sale”, should be reviewed to avoid circularity and to avoid defined terms themselves being used in definitions.

The CHAIRMAN requested Senegal to provide written comments on specific Articles for consideration by the Drafting Committee.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that in DCME Doc No. 28 it had proposed a revision of the definition of “associated rights” in Article 1(c) of the Draft Convention, and that it would be preferable to consider that proposal during the Commission’s consideration of Chapter IX of the Draft Convention.

The DELEGATION OF THE UNITED KINGDOM stated that the definition of “contract of sale” in Article 1(g) of the Draft Convention was not intended to list the elements of a contract of sale exhaustively but to clarify that the definition did not include conditional sale agreements, and that it would be difficult to achieve this result without referring to the concept of “contract of sale”.

The DELEGATION OF PAKISTAN stated that two definitions in the Draft Protocol, being the definition of “guarantee contract” in Article 1(2)(j) of the Draft Protocol and the definition of “guarantor” in Article 1(2)(k) of the Draft Protocol, were potentially applicable to the protocols dealing with railway rolling stock and space objects and should therefore be relocated to the Draft Convention.

The DELEGATION OF THE UNITED KINGDOM stated that the terms “guarantee contract” and “guarantor” were used in the Draft Protocol but were not used in the Draft Convention, and that it would therefore not be appropriate to relocate those definitions to the Draft Convention.

The DELEGATION OF PAKISTAN stated that if the concepts of “guarantee contract” and “guarantor” might be relevant to future protocols it would be more efficient and convenient for those terms to be defined in the Draft Convention.

The CHAIRMAN stated that it might not be appropriate for the Draft Convention to define terms that were not themselves used in the Draft Convention, and that there was a danger of burdening the Draft Convention with too many definitions.

The DELEGATION OF THE AVIATION WORKING GROUP stated that the definition of “interested person” in Article 1(m) of the Draft Convention alluded to questions of guarantees, and that it would therefore be appropriate for the Drafting Committee to consider relocating the definitions of “guarantee contract” and “guarantor” from the Draft Protocol to the Draft Convention.

The DELEGATION OF THE ARAB LIBYAN JAMAHIRIYA stated that it would be difficult for the Conference to develop definitions relating to space objects, agricultural equipment and railway equipment without the necessary specialists, and that the definitions relating to aircraft objects should mirror those in the *Chicago Convention on International Civil Aviation*.

The CHAIRMAN stated that any delegation with proposals regarding definitions should present those proposals in writing to facilitate consideration by the Drafting Committee.

The VICE-PRESIDENT OF UNIDROIT stated that it was necessary for her to leave the Conference to attend other business, and that she hoped that the deliberations would be successful.

The meeting rose at 12:43

COMMISSION OF THE WHOLE – SECOND MEETING

Tuesday, 30 October 2001, at 14:08

President: Professor Medard Rutojo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.)

The CHAIRMAN stated that three issues arising out of the discussion of Article 1 of the Draft Convention would be referred to the Drafting Committee: first, whether the definition of “security agreement” in Article 1(ii) of the Draft Convention should be clarified to exclude possessory pledge agreements; second, whether the Draft Convention should include a single comprehensive definition of “international interest” setting out both the formal and substantive requirements of an international interest, and third, whether the definitions of “guarantee contract” and “guarantor” in Article 1 of the Draft Protocol should be relocated to the Draft Convention. The Chairman stated that it had been agreed that discussion of the issues that fell within the competence of the European Community would be deferred until the arrival of the delegation of the European Community. The Chairman stated that a number of issues relating to translation had been raised, and that Mr Abdul Aziz (Saudi Arabia) would be coordinating Arabic translation issues with Arabic-speaking delegations, and that as a general practice delegations should raise translation issues with the Secretariats. The Chairman noted that no delegations had commented on the definition of “writing” in Article 1(nn) of the Draft Convention, and that the footnote to that definition, which stated that the definition should be further reviewed, would be deleted.

The DELEGATION OF JAMAICA stated that the scope of the definition of “non-consensual right or interest” in Article 1(s) of the Draft Convention should be clarified to address the situation that arose

in some jurisdictions where the right of an airport authority or of an air navigation authority to detain an aircraft for non-payment of charges arose from the right of the authority to withhold clearances rather than being conferred directly by law.

The DELEGATION OF CANADA stated that the issue raised by Jamaica warranted further consideration, that it was unclear how a right to seek and detain an asset which might not include a right to realise the asset would be treated in terms of priority, and that this issue should be discussed in relation to Articles 38 and 39 of the Draft Convention.

The DELEGATION OF THE AVIATION WORKING GROUP stated that the term “non-consensual right or interest” was used only for the purposes of Articles 38 and 39 and was relevant only to the question of priority over proceeds in the case of the sale of a security, that the Draft Convention would therefore not affect a State’s right to detain an aircraft, that Article 5(2) of the Draft Convention would preserve a State’s right to detain an aircraft, and that the relevant question in relation to the issue that had been raised by Jamaica would be whether the lien or the property right against the asset arose by virtue of law.

The DELEGATION OF THE UNITED KINGDOM stated that the issue raised by Jamaica concerned the question of whether there would be a risk that a right to detention conferred by contract could be overridden by the Draft Convention’s priority rules, that the priority rules in Article 28 of the Draft Convention would not apply where the competing claim was a right to detention conferred by agreement, and that in such cases the matter would be governed by the applicable law.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it would be preferable to discuss the definition of “non-consensual right or interest” when Articles 38 and 39 of the Draft Convention were being discussed.

The CHAIRMAN stated that the definition of “non-consensual right or interest” would be considered during the discussion of Articles 38 and 39 of the Draft Convention.

The DELEGATION OF THE UNITED KINGDOM stated that the type of interest referred to by Jamaica was not a non-consensual right or interest but was a consensual right or interest, that such interests were not addressed by Articles 38 and 39 of the Draft Convention, and that the position throughout the development of the Draft Convention had always been that contractual rights of detention should remain outside the scope of the Draft Convention.

The CHAIRMAN stated that the discussion had illuminated the policy question of whether detention rights and similar rights which were founded in contract would be outside the scope of the Draft Convention, that several delegations had questioned whether they should be, and that this issue would be considered during the discussion of Chapter X of the Draft Convention. The Chairman invited comments on Article 2 of the Draft Convention.

The DELEGATION OF GHANA stated that, if the categories of object listed in Article 2(3) of the Draft Convention were not intended to be exhaustive, the Article should be amended expressly to foreshadow the possibility of future protocols that related to other categories of object.

The CHAIRMAN stated that the definition of “Protocol” in Article 1(aa) of the Draft Convention was not limited to protocols on the three categories of instrument listed in Article 2(3) of the Draft Convention.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that representatives of the Rail Working Group and of the Space Working Group were present, and that it would be useful to obtain from them a progress report on the development of the draft protocols dealing with railway rolling stock and space objects.

The DELEGATION OF THE SPACE WORKING GROUP stated that, in order to avoid confusion with the United Nations Space Law Treaties, it had decided that it would be appropriate to replace the term “space property” wherever it was used in the preliminary draft Protocol on Matters Specific to Space Assets with the term “space asset”, and that a corresponding amendment should be made to Article 2(3)(c) of the Draft Convention. It stated that it had made significant progress since the President of UNIDROIT’s August 1997 invitation to its members to organise the working group, that in June 2001 it had produced the preliminary draft Protocol on Matters Specific to Space Assets, that in September 2001 the UNIDROIT Governing Council had authorised the transmission of the preliminary draft Protocol to governments, including the member governments of the United Nations Committee on the Peaceful Uses of Outer Space, and that it expected that a first session of a UNIDROIT Committee of Governmental Experts to prepare a draft Protocol on Matters Specific to Space Assets would be convened in 2002. It stated that it had been engaging with the United Nations Committee on the Peaceful Uses of Outer Space to consider its possible role as Supervisory Authority and to ensure the compatibility of the preliminary draft Protocol on Matters Specific to Space Assets with international space law, and that it had been consulting with the international banking community, major space manufacturers and satellite operators to ensure the responsiveness of the preliminary draft Protocol on Matters Specific to Space Assets to the continued growth of asset-based space financing. It stated that there was an urgent need to create a common set of legal standards within which space assets could be financed in light of the growth of satellite communications and the shift away from exclusively government-owned space assets, and that these standards could be expected to be of particular benefit to developing economies.

The CHAIRMAN noted that the proposal of the Space Working Group to replace the term “space property” with the term “space asset” in Article 2(3)(c) of the Draft Convention was set out in DCME Doc No. 14, and that, as there had been no objection to that proposal, it would be accepted.

The DELEGATION OF THE INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL stated that a preliminary draft Protocol on Matters Specific to Railway Rolling Stock had been submitted to a first governmental experts meeting in March 2001, and that a second meeting was scheduled for May 2003. It also stated that the problems relevant to the rail industry were different to those relevant to the aircraft industry but that there was a clear need for the preliminary draft Protocol on Matters Specific to Railway Rolling Stock, not only in Europe but throughout the world and, in particular, in developing countries. It also stated that the first governmental experts meeting had created a Registration Task Force, which would convene in the future.

The DELEGATION OF THE RAIL WORKING GROUP stated that the first governmental experts meeting held in March 2001 had been attended by 20 government delegations and a number of international Organisations and that it had made significant progress on many issues. It also stated that with the Registration Task Force scheduled to meet over the coming months and during the second governmental experts meeting scheduled for May 2002, it was hoped that the preliminary draft Protocol on Matters Specific to Railway Rolling Stock could be finalised during 2002. It stated that, although some issues were particular to the railway industry, there was also much symmetry between the various protocols being developed. It stated that it hoped that African delegations would be able to be more involved in its work in the future.

The DELEGATION OF ITALY stated that it supported the proposal to replace the term “space property” with the term “space asset” in Article 2(3)(c) of the Draft Convention.

The DELEGATION OF THE UNITED KINGDOM stated that the definition of “Protocol” in Article 1(aa) of the Draft Convention was not limited to protocols on the three categories of objects listed in Article 2(3)(c) of the Draft Convention, and that Article 50 of the Draft Convention expressly foreshadowed the future development of protocols dealing with other categories of object.

The CHAIRMAN stated that previous versions of Article 2(3) of the Draft Convention had specifically identified the list of categories of object as being non-exhaustive, that this had presented difficulties, and that the solution had been to provide in Article 50 of the Draft Convention for the possibility of future protocols dealing with other categories of object.

The DELEGATION OF GHANA stated that the categories of mobile equipment in Article 2(3) of the Draft Convention were defined in an exhaustive way, and that this suggested that future protocols would need to fall within the three categories listed in that Article.

The CHAIRMAN invited comments on the reasons why a non-exhaustive list of categories of object had been considered inappropriate for Article 2(3).

The DELEGATION OF THE AVIATION WORKING GROUP stated that the approach adopted in Article 2(3) of the Draft Convention reflected the concerns of some delegations that an open-ended list of categories of object might raise concerns in some jurisdictions that the scope of the Draft Convention was very broad and would require fundamental changes in the law, and that some delegations had considered that a closed list of categories of object would facilitate adoption of the Draft Convention notwithstanding that the Draft Convention would signal the possibility of future protocols being developed.

The CHAIRMAN stated that Ghana had accepted this explanation.

The DELEGATION OF AUSTRALIA stated that Article 50 only dealt with the process by which future protocols would be developed, and that it supported the proposal to replace the term “space property” with the term “space asset” in Article 2(3)(c) of the Draft Convention.

The DELEGATION OF MEXICO stated that it supported the work of the Space Working Group and of the Rail Working Group, and that it supported the proposal to replace the term “space property” with the term “space asset” in Article 2(3)(c) of the Draft Convention.

The DELEGATION OF EGYPT stated that it supported the proposal to replace the term “space property” with the term “space asset” in Article 2(3)(c) of the Draft Convention.

The DELEGATION OF ARGENTINA stated that it would be possible to delete Article 50 of the Draft Convention and to amend Article 2(3) of the Draft Convention to clarify that the list of categories of object was not exhaustive.

The CHAIRMAN stated that the co-existence of Articles 2(3) and 50 of the Draft Convention reflected a compromise.

The SECRETARY GENERAL (UNIDROIT) stated that Article 2(3) of the Draft Convention had previously included a paragraph (d) which referred to “other categories of uniquely identifiable objects”, that there had been concerns that such a provision would create too great an overlap between the Draft Convention and the draft Convention on the Assignment of Receivables in International Trade which was currently being drafted by the United Nations Commission on International Trade Law, and that for this reason paragraph (d) had been deleted.

The CHAIRMAN stated that all delegations appeared to be satisfied with the explanations that had been provided.

The DELEGATION OF THE RAIL WORKING GROUP stated that during the development of the Draft Convention it had always been understood that the Draft Convention’s application would be limited to assets of high value that were mobile, and that Article 49 of the Draft Convention provided a procedure for the adoption of future protocols.

The DELEGATION OF JAPAN stated that Article 2(4) of the Draft Convention was unclear and required some clarification, and that the commentary on Article 2 of the Draft Convention in

DCME-IP/2 should be amended to reflect the fact that the question of whether an agreement is a security agreement may be determined not only by the *lex causae* but also by the law of the place where the object is situated.

The CHAIRMAN requested Japan to provide its suggestions for clarification in written form.

The DELEGATION OF KENYA stated that it agreed with the comments of Ghana and Argentina that Article 50 of the Draft Convention should be deleted, and that Article 2(3) of the Draft Convention could be deleted.

The DELEGATION OF THE UNITED ARAB EMIRATES stated that it agreed with the comments of Ghana and Argentina, and that the definition of “Protocol” in Article 1(aa) of the Draft Convention should be amended by adding the phrase: “or a protocol adopted pursuant to Article 50”.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that, although the suggestions that had been expressed in relation to Articles 2(3) and 50 had a common objective, there were two factors that suggested that those Articles should not be amended, that the first factor was that the United Nations Commission on International Trade Law had recently completed its work on a related convention on financing of receivables on the assumption that the scope of the Draft Convention would not be materially altered, and that the second factor was that some States had asserted that it would be easier to achieve ratification if the scope of Draft Convention was clearly specified.

The DELEGATION OF THE UNITED KINGDOM stated that it would be possible to resolve this issue by amending the definition of “Protocol” in Article 1 of the Draft Convention or by adding a new sub-paragraph to Article 2(3) to refer to such other category of equipment as might be provided for by a protocol under Article 50, and that, in light of the factors mentioned by the United States of America, it would prefer that Article 50 be amended to provide that any protocol referred to in the preceding paragraph should be prepared and adopted in accordance with the procedures provided for under Article 49 and that thereupon the Convention would apply to equipment covered by such a protocol.

The CHAIRMAN stated that there were currently four proposals under consideration. The first proposal was to amend the definition of “Protocol” in Article 1 of the Draft Convention. The second proposal was to add a new sub-paragraph to Article 2(3) of the Draft Convention, containing a non-exhaustive list of possible future protocol subjects. The third proposal was to delete Article 2(3) of the Draft Convention. The fourth proposal was to amend Article 50 of the Draft Convention to refer to the procedure in Article 49.

The DELEGATION OF SENEGAL stated that it would prefer that Article 2(3) of the Draft Convention be amended to clarify that the list of categories in that Article was non-exhaustive.

The DELEGATION OF FRANCE stated that it agreed with the position that had been taken by Senegal, and that it could also agree with the solution proposed by the United Kingdom.

The DELEGATION OF THE RAIL WORKING GROUP stated that it could support any of the options that had been discussed with the exception of the proposal to delete Article 2(3) of the Draft Convention, that the deletion of Article 2(3) of the Draft Convention would send a signal to the space and rail industries that the work that had already been undertaken on the draft protocols dealing with space objects and railway rolling stock had been de-emphasised, and that this could prejudice the timely finalisation and adoption of those protocols.

The DELEGATION OF CANADA stated that, in considering the options, delegations should remain mindful that Article 49 had not been agreed and was in square brackets, and that it supported the proposal made by Senegal.

The DELEGATION OF JAPAN stated that it supported the proposal made by the United Kingdom because that proposal would involve minimal change to the text of the Draft Convention.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it supported the proposal made by the United Kingdom in preference to the proposal to amend Article 2(3) of the Draft Convention, and noted that, because Article 46 of the Draft Convention provided that protocols referred to in Article 2(3) of the Draft Convention would override the draft UNCITRAL Convention on the Assignment of Receivables in International Trade, the two proposals had different legal implications.

The DELEGATION OF GERMANY stated that Article 2(3) of the Draft Convention could be amended by adding, at the beginning of that Article, the phrase: “without prejudice to Article 50”.

The CHAIRMAN stated, by way of summary of the discussion, that the discussion had proceeded because some delegations had felt that Article 2(3) of the Draft Convention did not sufficiently recognise the possibility of protocols on different topics being developed in the future, and that the issue was linked to Articles 46 and 49 of the Draft Convention, both of which Articles were in square brackets, and to Article 50 of the Draft Convention. The Chairman stated that a compromise solution would be to add the phrase: “Notwithstanding Article 50” to the beginning of Article 2(3) of the Draft Convention, subject to that wording being examined by the Drafting Committee and subject also to the fact that Article 50 of the Draft Convention had not yet been considered by the Commission.

The DELEGATION OF GREECE stated that it preferred the German proposal to add the phrase: “Without prejudice to Article 50” to the beginning of Article 2(3) of the Draft Convention.

The CHAIRMAN stated that he had intended that his proposed compromise solution reflect the wording of the German proposal, which had used the phrase: “Without prejudice to Article 50”.

The DELEGATION OF THE UNITED KINGDOM stated that it was a drafting issue whether the additional phrase proposed for Article 2(3) of the Draft Convention would be required, and that the problem was to reconcile the open-endedness of Article 50 of the Draft Convention with the finite categories of future protocols mentioned in Article 2(3) of the Draft Convention. It stated that it would be preferable to defer any final conclusion until after Article 50 of the Draft Convention had been debated, and that following that debate it would be preferable for the Drafting Committee to decide how best to deal with this issue.

The DELEGATION OF JAPAN stated that, having regard to Article 46 of the Draft Convention which dealt with the relationship with the draft UNCITRAL Convention on the Assignment of Receivables in International Trade, it would prefer that the phrase added to Article 2(3) of the Draft Convention be: “Notwithstanding Article 50”.

The DELEGATION OF AUSTRALIA stated that the addition to Article 2(3) of the Draft Convention of the phrase: “Notwithstanding Article 50” might not be adequate because it would be necessary to ensure that any future protocols that were developed pursuant to Article 50 of the Draft Convention were within the regime established by the Convention, and that the proposal of the United Kingdom would achieve this.

The DELEGATION OF THE AVIATION WORKING GROUP stated that an amendment to Article 50 of the Draft Convention such as that suggested by the United Kingdom would be required even if Article 2(3) of the Draft Convention were amended as had been proposed.

The CHAIRMAN stated that Article 2(3) of the Draft Convention would be amended by adding at the start of the chapeau the phrase: “Without prejudice to Article 50,”, subject to drafting revisions following the review of Article 50 of the Draft Convention, and that Article 2(3)(c) of the Draft Convention would be amended by replacing the phrase: “space property” with the phrase: “space assets”. The Chairman invited comments on Article 3 of the Draft Convention.

The DELEGATION OF THE ARAB LIBYAN JAMAHIRIYA stated that Article 3(1) of the Draft Convention was inconsistent with Articles 3(2) and 4 of the Draft Convention, that Article 3(1) of the Draft Convention required the debtor to be situated in a Contracting State but Article 3(2) of the Draft Convention permitted the creditor to be situated in a non-Contracting State, and that Article 4 of the Draft Convention permitted the debtor to be situated in any Contracting State.

The DELEGATION OF THE UNITED KINGDOM stated that there was no inconsistency between Articles 3 and 4 of the Draft Convention, and that, in order to give the Draft Convention its widest possible scope, Article 4(1) of the Draft Convention provided that a debtor would be situated in a Contracting State for the purpose of Article 3(1) of the Draft Convention, if the debtor was situated in any Contracting State listed in Article 4(1)(a), (b) or (c) of the Draft Convention.

The CHAIRMAN stated that the intervention of the United Kingdom had clarified the issue raised by The Arab Libyan Jamahiriya, and reminded delegates that the delegation of Saudi Arabia had kindly agreed to coordinate Arabic-speaking delegations in order to clarify translation issues. The Chairman invited discussion of the question that had been raised by Australia regarding the definition of “internal transaction” in Article 1(n) of the Draft Convention as well as the question of how to determine whether entities other than the debtor were situated in a Contracting State, and noted that this issue could be dealt with in either Article 4 or Article 48 of the Draft Convention.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that the definition of “internal transaction” in Article 1(n) of the Draft Convention was intended to provide an additional formula for determining where a debtor, as well as other parties to the transaction, was situated, and that it might be necessary to examine the drafting of Article 4 of the Draft Convention to ensure that the phrase: “For the purposes of this Convention” as it was used in that Article did not contradict the definition of “internal transaction” in Article 1(n) of the Draft Convention.

The DELEGATION OF THE AVIATION WORKING GROUP stated that the definition of “internal transaction” in Article 1(n) of the Draft Convention was intended to apply particularly to questions relating to internal transactions and was not intended to qualify Article 4 of the Draft Convention, that this issue was also relevant to Article 42(2) of the Draft Convention which referred to “the courts on the territory of which the debtor is situated”, and that the Drafting Committee should be requested to consider an amendment to Article 4 of the Draft Convention to replace the phrase: “For the purposes of this Convention” with the phrase: “For the purposes of Article 3”.

The CHAIRMAN stated that the Drafting Committee would be invited to ensure that all of the Draft Convention’s definitions relating to the situation of the debtor were consistent, and invited comments on the proposal of the Aviation Working Group to amend Article 4 of the Draft Convention to replace the phrase: “For the purposes of this Convention” with the phrase: “For the purposes of Article 3”.

The DELEGATION OF THE UNITED KINGDOM stated that it supported the proposal of the Aviation Working Group.

The CHAIRMAN stated that the proposal to amend Article 4 of the Draft Convention to replace the phrase: “For the purposes of this Convention” with the phrase: “For the purposes of Article 3” had been agreed.

The DELEGATION OF NIGERIA stated that it required clarification regarding how Article 4(1) of the Draft Convention would apply in the case of a debtor that was a natural person.

The CHAIRMAN stated that the situation of a debtor who was a natural person would, according to Article 4(1) of the Draft Convention, be its place of business, and that, if the debtor had no place of business, Article 4(2) of the Draft Convention provided that its place of business would be deemed to be its place of habitual residence.

The DELEGATION OF FRANCE stated that it required confirmation that the Draft Convention would continue to apply in circumstances where the debtor had been situated in a Contracting State at the time the contract was concluded but there had been a subsequent succession of the debtor's interests to another debtor that was not located in a Contracting State.

The DELEGATION OF THE UNITED KINGDOM stated that the Draft Convention would continue to apply in the circumstances referred to by France because the test for the application of the Draft Convention would apply at the time of the conclusion of the agreement creating or providing for the international interest, and that the fact that the debtor was not subsequently situated in a Contracting State would not alter the application of the Draft Convention to that agreement.

The meeting rose at 17:01

COMMISSION OF THE WHOLE – THIRD MEETING

Wednesday, 31 October 2001, at 9:37

President: Professor Medard Rutoijo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.)

The CHAIRMAN summarised the discussion of Article 4 of the Draft Convention and stated that it had been agreed that Article 4(1) of the Draft Convention would be amended by replacing the phrase: "For the purposes of this Convention" with the phrase: "For the purposes of Article 3". The Chairman invited discussion on Article 5 of the Draft Convention. There being no comments on Article 5 of the Draft Convention, the Chairman invited comments on Article 6 of the Draft Convention.

The DELEGATION OF SPAIN stated that the lack of a requirement in Article 6(d) of the Draft Convention to state a sum or maximum sum secured by a security agreement might create difficulties for users of the International Registry and, in particular, for holders of subsequently-registered interests, and that Article 6(d) of the Draft Convention should be amended to require that the maximum security amount, if stated in the contract, should be specified.

The CHAIRMAN stated that Article 6(d) of the Draft Convention had been the subject of extensive discussion during the earlier stages of the Draft Convention's development, that the intention had been to make the provision as flexible as possible, and that there was nothing in Article 6(d) of the Draft Convention that would prevent the parties to a transaction from stating the maximum amount secured.

The DELEGATION OF SPAIN stated that it agreed with the Chairman's explanation, and that the intention of its proposal was simply to ensure that greater clarity about the sum secured was provided if that was possible.

The DELEGATION OF CANADA stated that its comments on Article 5 of the Draft Convention were presented in DCME Doc No. 17.

The CHAIRMAN stated that Article 5 of the Draft Convention would be considered after the discussion of Article 6 of the Draft Convention had been completed.

The DELEGATION OF MEXICO stated that it supported the proposal of Spain, and that it did not agree with the explanation of Article 6(d) of the Draft Convention that was contained in Part IV of

DCME-IP/2 because it would be important that users of the International Registry have certainty about the amount secured by a security agreement.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported the existing drafting of Article 6(d) of the Draft Convention, that, as the Draft Convention would provide a notice system, the fact that there was a registration in the International Registry would not prove that any indebtedness existed, that the Draft Convention was intended to include security agreements that secured all indebtedness of the debtor to the creditor, that a requirement to specify a maximum amount secured would result in very large and unrealistic figures being specified that would not provide any helpful information, that a requirement to specify a maximum amount secured could raise difficulties if that amount were subsequently amended and the parties were required to amend the registration of the interest or lodge a new registration, and that registration systems that did not require a registration to specify the maximum amount secured worked well in several large economies.

The DELEGATION OF ARGENTINA stated that it supported the proposal of Spain, and that, having regard to Articles 38 and 39 of the Draft Convention, it was difficult to envisage how the Draft Convention would operate if those registering subsequent interests did not know the maximum amount secured by a registered security transaction.

The DELEGATION OF GHANA stated that it agreed with the position of the United States of America, and that Article 6(d) of the Draft Convention did require that a formula for determining the maximum amount secured be specified but did not preclude the maximum amount secured from being specified.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it agreed with the positions of the United States of America and Ghana, that the International Registry would be a notice-based system and it would not be feasible to require the Registrar to verify the maximum amount secured by registered interests, and that a requirement to specify a maximum amount insured would lead to largely inflated amounts being specified which would potentially harm a debtor's interests by discouraging potential subsequent creditors from providing additional credit.

The DELEGATION OF THE UNITED KINGDOM stated that it supported the existing drafting of Article 6(d) of the Draft Convention.

The DELEGATION OF SOUTH AFRICA stated that it required clarification about the effect of Article 6(d) of the Draft Convention, and that it would have concerns about Article 6(d) of the Draft Convention if it was intended to enable a single registered international interest to apply in relation to all advances made by a creditor to a debtor throughout the life of the security interest.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that the purpose of Article 6 of the Draft Convention was to specify the requirements of a valid international interest and not to specify what information would be entered on the International Registry, and that it would be left to the parties and the applicable general contract law to determine what would need to be set out in the agreement as a formal requirement to create a valid interest between the parties.

The DELEGATION OF CUBA stated that it supported the existing drafting of Article 6(d) of the Draft Convention.

The DELEGATION OF JAMAICA stated that the comment in Part IV of DCME-IP/2 that a third party requiring additional information about the maximum amount secured would be able to seek that information from the chargee might not be a satisfactory answer in all cases, and that it would be preferable for there to be a requirement that the creditor make available the security instrument itself if requested to do so.

The DELEGATION OF SINGAPORE stated that it supported the existing drafting of Article 6(d) of the Draft Convention.

The DELEGATION OF KENYA stated that it supported the existing drafting of Article 6(d) of the Draft Convention, and that it agreed that a requirement to state a maximum amount secured would merely lead to the creditor stating a sum wildly in excess of the amount likely to be required.

The DELEGATION OF AUSTRALIA stated that it supported the existing drafting of Article 6(d) of the Draft Convention, and that it had the same understanding about the operation of the Article as the delegation of South Africa but did not share the concerns of that delegation.

The DELEGATION OF CANADA stated that it supported the existing drafting of Article 6(d) of the Draft Convention, that both civil law and common law jurisdictions existed in Canada and neither required the maximum amount secured to be specified for registration of security interests, that a requirement to specify a maximum amount secured would operate to preclude a large number of transactions from coming within the definition of “international interest”, that the parties to a transaction would be in the best position to obtain access to documents that they required, and that there were provisions in the Draft Convention which would enable registrations to be discharged if they no longer had a sufficient basis.

The CHAIRMAN stated that, although some delegations had expressed concern that there should be an obligation to state the maximum amount secured by a security transaction, there had been general support for the existing drafting of Article 6(d) of the Draft Convention, and that there had been discussion about the issue of accessibility to documents by future creditors.

The DELEGATION OF SAUDI ARABIA stated that it required clarification regarding whether the text of Article 6(d) of the Draft Convention would require that the sum secured by a security agreement be specified.

The CHAIRMAN stated that the English text of Article 6(d) of the Draft Convention was very clear, that there would be no need to state the maximum sum secured by a security agreement, and that this issue should be considered during consultations regarding the Arabic translation of the text.

The DELEGATION OF MEXICO stated that its proposal did not relate to a requirement for the maximum amount secured by a security agreement to be stated but to a requirement that the criteria for determining the amount secured by the agreement be specified, and that the International Registry would need to be sufficiently clear to enable any person searching the registry to know the maximum amount secured.

The CHAIRMAN stated that it had been noted during the discussions that it would be more important for a notice-based registry such as the International Registry that potential creditors were advised of other creditors and security interests that might have higher priority, and that such potential creditors would then be able to seek details about those other creditors and interests.

The DELEGATION OF SOUTH AFRICA stated that it was concerned that advances pursuant to a registered security agreement that were made after the registration of subsequent security interests could be given priority, pursuant to Article 28 of the Draft Convention, over those subsequently-registered security interests, and that the Drafting Committee should be asked to examine the wording of Article 6(d) of the Draft Convention.

The CHAIRMAN stated that the concerns of South Africa were met by the fact that Article 6(d) of the Draft Convention required that a security agreement enable the secured obligations to be determined. The Chairman stated that the discussion of Article 5 and of DCME Doc No. 17 would be held during the discussion of Chapter XIII of the Draft Convention. The Chairman invited discussion of the default remedy provisions in Chapter III of the Draft Convention, and noted that these

provisions were central to the operation of the Draft Convention and had been extensively discussed during its development.

The DELEGATION OF THE UNITED ARAB EMIRATES stated that it required clarification regarding the meaning of the phrase: “commercially reasonable manner” in Article 7(2) of the Draft Convention and as to whether that phrase should also include reference to matters such as public safety concerns.

The DELEGATION OF THE UNITED KINGDOM stated that the Draft Convention would be a private law instrument and therefore would not affect public law rules governing safety or public order.

The DELEGATION OF SWEDEN stated that, in order to accommodate situations where public authorities had authority to make speedy administrative orders, the ultimate phrase in Article 7(1) of the Draft Convention should be amended to read: “or apply for an order by a court or a public authority authorising or directing any of the above acts”.

The CHAIRMAN stated that the definition of “court” in Article 1(h) of the Draft Convention extended to administrative and arbitral tribunals established by a Contracting State.

The DELEGATION OF SWEDEN stated that the Swedish public authorities would not come within the definition of “court” in Article 1(h) of the Draft Convention.

The CHAIRMAN stated that the issue raised by Sweden would be referred to the Drafting Committee for its consideration.

The DELEGATION OF AUSTRALIA stated that its consultations on Article 7(1) of the Draft Convention had indicated that its drafting created confusion about whether a chargee’s capacity to approach a court for a remedy would be dependent upon the consent of the chargor, that its consultations on Article 7(2) of the Draft Convention had indicated that the drafting of that Article also created some confusion, and that it would offer to the Drafting Committee some drafting proposals that would address these concerns.

The CHAIRMAN stated that the issues raised by Australia could be examined by the Drafting Committee on the basis that there would be no changes to the substance of Articles 7(1) and 7(2) of the Draft Convention.

The DELEGATION OF LEBANON stated that it required clarification regarding the application of Article 7(5) of the Draft Convention to cases where remedies had been exercised without the leave of a court.

The DELEGATION OF JAMAICA stated that it required clarification regarding whether Article 8 of the Draft Convention was intended to apply only in cases where the ownership of an object was vested in a chargee in full satisfaction of indebtedness, and not in partial satisfaction of indebtedness.

The DELEGATION OF THE UNITED KINGDOM stated that the duty of a chargee, pursuant to Article 7(5) of the Draft Convention, to pay excess sums to the subsequent interest holder or to the chargor would apply regardless of whether the remedy was ordered by a court, that the Drafting Committee should consider an amendment to Article 7(5) of the Draft Convention to take account of the possibility that there might be multiple subsequent interest holders, and that it would be a matter for a court to determine in each particular case whether the vesting of an object in a creditor should be in full satisfaction of the indebtedness as there might be cases, such as if the object given in security was only a small proportion of the total indebtedness, where such an outcome would be unfair to the creditor.

The DELEGATION OF JAMAICA stated that, in light of the intervention by the United Kingdom, it would be necessary to amend the commentary which assumed that the vesting of ownership of an object in a creditor would be in full satisfaction of the indebtedness.

The DELEGATION OF THE UNITED KINGDOM stated that the commentary relating to Article 8 of the Draft Convention should be examined to ensure that it accurately described the meaning of that Article.

The DELEGATION OF CANADA stated that the Drafting Committee should consider how to clarify Article 7 of the Draft Convention to ensure that it did not inadvertently prejudice the rights of airport authorities and operators of air navigation services to seize and detain aircraft for non-payment of fees.

The DELEGATION OF AUSTRALIA stated that the Drafting Committee should consider whether it would be necessary to define the term “the parties” in Article 14 of the Draft Convention as it was possible that persons other than the parties to a security agreement could be affected by the provisions of Chapter III of the Draft Convention.

The CHAIRMAN stated that the issue raised by Australia in relation to Article 14 of the Draft Convention would be considered by the Drafting Committee, and that the Drafting Committee would also consider the position of holders of certain types of non-consensual interest in relation to Article 7 of the Draft Convention, the concept of “court” in Article 7(1) of the Draft Convention, the extent to which a chargor’s consent would be needed in relation to court actions, and drafting suggestions for Article 7(2) of the Draft Convention to be provided by Australia.

The DELEGATION OF CHINA stated that the Draft Convention should provide a better balance between the rights of debtors and of creditors, that it should therefore include a new Article 15 dealing with protection of debtors’ interests, that the first paragraph of the new Article should state: “Where a debtor has performed its obligations, the creditor shall not infringe upon the debtor’s lawful rights and interests in an object”, and that the second paragraph of the new Article should state: “Where a creditor’s abuse of remedies has caused harm to a debtor, the creditor shall pay damages for the harm so caused”.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that the Draft Convention did not state all the respective rights and duties of the creditor and debtor which would be determined by the applicable law unless modified by the Draft Convention, that it would be very difficult for the Draft Convention to describe the entire legal relationship between the debtor and creditor, and that the objective of the Draft Convention was to facilitate asset-based financing particularly in jurisdictions where the applicable law did not provide sufficient rights for potential creditors.

The DELEGATION OF KENYA stated that it required clarification regarding the phrase: “may at any time agree” in Article 10 of the Draft Convention and whether it would be possible for such an agreement to prejudice subsequent creditors.

The DELEGATION OF JAPAN stated that the Drafting Committee should consider Article 8(2) of the Draft Convention because the use of the phrase: “in or towards satisfaction of the secured obligations” could create uncertainty in jurisdictions where an anti-deficiency rule did not exist, and that the creditor and debtor should be free to agree how any deficiency was to be applied.

The DELEGATION OF THE UNITED KINGDOM stated, in relation to the intervention of Kenya, that Article 10 of the Draft Convention was concerned only with rights and duties as between the parties, and that the question of whether a creditor’s exercise of default remedies had effect would depend on whether that creditor had priority.

The CHAIRMAN stated that Japan should be invited to present its drafting proposals to the Drafting Committee.

The DELEGATION OF SOUTH AFRICA stated that it was speaking on behalf of the African States, that paragraph 3.1 of DCME Doc No. 25, which had been submitted by the African States, expressed the position of the African States that the Draft Convention should provide a better balance between the interests of creditors and debtors and should refer to default on the part of a creditor, that the African States agreed with the position of China, and that there should be a definition of the term: “substantial default” in Article 10(2) of the Draft Convention which should provide that substantial default would be a default which materially deprived the non-defaulting party of the expected economic benefits it would have obtained if performance had been carried out by the defaulting party.

The DELEGATION OF SAUDI ARABIA stated that Article 7(5) of the Draft Convention should be amended to clarify how the reasonableness of costs would be determined, and that it considered that this determination should be made by a court rather than the chargee so as to ensure that those costs were not exaggerated.

The DELEGATION OF GERMANY stated that it required clarification regarding the operation of Articles 7 and 8 of the Draft Convention in relation to the rights of a lessee of an aircraft in circumstances where the creditor of the lessor was in default and the creditor exercised default remedies, that Article 12 of the Draft Convention should be examined by the Drafting Committee to ensure that the rights of the creditor were consistent with Articles 7 and 8 of the Draft Convention, and that Article 12 of the Draft Convention did not confer additional rights that the creditor would not have under the security agreement.

The DELEGATION OF CANADA stated that the comments of China and the African States should be examined by the Drafting Committee in light of the comments of the Aviation Working Group contained in DCME Doc No. 7.

The DELEGATION OF THE AVIATION WORKING GROUP stated that the default and remedy provisions of the Draft Convention were central to its potential to deliver economic benefits, that Appendix 1-B of DCME Doc No. 7 included a draft Article 14*bis* which addressed the issue raised by China and the African States by entitling a non-defaulting debtor to acquire possession and use of an aircraft object in accordance with the terms of the security agreement whilst permitting the parties to make alternative arrangements (draft Article 14*bis*(1)) and by stating that nothing in the Convention would affect the liability of a creditor under applicable law for damages caused by breach of the agreement (draft Article 14*bis*(2)), and that this draft provision did not attempt to specify or codify the totality of the rights of a debtor but represented a compromise solution based on wide consultations with a range of participants, including the African States, China and India.

The DELEGATION OF GREECE stated that it supported Germany’s request for clarification about the operation of Articles 7 and 8 of the Draft Convention in relation to the rights of a lessee of an aircraft in circumstances where the creditor of the lessor was in default and the creditor exercised default remedies.

The DELEGATION OF SENEGAL stated that it supported Germany’s request for clarification about Article 12 of the Draft Convention, and that it would have concerns if a creditor were able to obtain simultaneously all the orders listed in Article 12(1) of the Draft Convention.

The DELEGATION OF THE UNITED STATES OF AMERICA referred to DCME Doc No. 28 and stated that it expected that the concerns raised by China and the African States could be addressed through further discussion and explanation in the Drafting Committee, and that it did not object to the Aviation Working Group proposal regarding creditor liability under applicable law, although it did not consider it necessary to make that amendment to the Draft Convention.

The DELEGATION OF THE INTERNATIONAL AIR TRANSPORT ASSOCIATION stated that the objective of the Draft Convention was the efficient financing of transportation equipment, that the principle underlying the Draft Convention was party autonomy, that these points had been made in

the opening remarks of the President of the ICAO Council, and that it supported the text of draft Article 14*bis* contained in DCME Doc No. 7.

The DELEGATION OF THE RAIL WORKING GROUP stated that it supported the text of draft Article 14*bis* contained in DCME Doc No. 7 but that that text should refer to “objects” rather than “aircraft objects” because the same issue would apply in relation to railway rolling stock and space assets.

The DELEGATION OF GERMANY stated that the proposed draft Article 14*bis* in DCME Doc No. 7 might not adequately address its concerns because it would not deal with the relationship between a lessee and the creditor of a lessor.

The DELEGATION OF ETHIOPIA stated that it agreed with the concerns that had been raised by Saudi Arabia in relation to Article 7 of the Draft Convention, and in particular about how it would be determined whether costs were “reasonable” and whether a remedy had been exercised in a “commercially reasonable manner”, and that it supported the intervention by South Africa on behalf of the African States for there to be greater balance in the Draft Convention between the rights of debtors and of creditors.

The CHAIRMAN stated that if the parties were in dispute about whether costs were reasonable this would ultimately be decided by a court, and that Saudi Arabia had stated that it accepted this explanation.

The DELEGATION OF BAHRAIN stated that it required clarification regarding what safeguards would be provided in Article 12 of the Draft Convention to prevent a creditor abusing the exercise of interim remedies pending final relief.

The DELEGATION OF THE UNITED KINGDOM stated that Article 12 of the Draft Convention would require the creditor to present evidence of default acceptable to the court, and that it would permit a court to impose such terms as it considered necessary to protect the debtor in the event that the creditor failed to establish its claim.

The CHAIRMAN summarised the discussion by indicating that the Japanese delegation would provide drafting remarks on Article 8 of the Draft Convention to the Drafting Committee, that the Drafting Committee would examine whether it would be feasible to include a provision on debtor protection that did not interfere with the basic principles underlying the Draft Convention, that the Drafting Committee would examine whether the procedural remedies provided in Article 12 of the Draft Convention were too overreaching, and that the Drafting Committee would examine the need to provide clarification of the term “substantial default” in Article 10(2) of the Draft Convention. The Chairman stated that the Commission would next discuss Chapter IV of the Draft Convention dealing with the international registration system, and invited the co-chair of the International Registry Task Force to provide an overview of DCME-IP/4.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that the International Registry Task Force had been working on registry matters since March 2000, that it had involved the participation of many delegations and the Secretariats of ICAO and UNIDROIT, that at its most recent meeting in Geneva in September 2001 the Task Force had commenced examination of draft regulations for the International Registry, and that the delegation of Switzerland would provide an overview of work that had been undertaken on those draft regulations.

The CHAIRMAN stated that the meeting of the Commission would be adjourned and that a meeting of the Plenum would be convened.

The meeting rose at 12:27

PLENUM – FOURTH MEETING

Wednesday, 31 October 2001, at 12:28

President: Professor Medard Rutoijo Rwelamira (South Africa)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 5 – ESTABLISHMENT OF THE CREDENTIALS COMMITTEE, THE COMMISSION OF THE WHOLE AND OTHER COMMITTEES AS NECESSARY

The PRESIDENT stated that the Drafting Committee would consist of the delegations of Argentina, Canada, China, France, Germany, Jamaica, Japan, Lebanon, Mexico, Nigeria, the Russian Federation, South Africa, the United Arab Emirates, the United Kingdom and the United States of America, that the first meeting of the Drafting Committee would be held on Thursday, 1 November at 14:00, and that at that meeting the Drafting Committee would elect its chairman and decide on the organisation of its work. The President also stated that the Final Clauses Committee would consist of the delegations of Canada, China, Cuba, Egypt, France, Jamaica, Kenya, Pakistan, Saudi Arabia, Senegal, Singapore, Sweden, Switzerland and the United States of America, that the Secretariats would announce the time and place of the first meeting of the Committee, and that at the first meeting the Committee would elect its chairman.

The SECRETARY GENERAL (ICAO) stated that the meetings of the Commission of the Whole and of the Drafting Committee would not be held simultaneously so as to enable small delegations to participate in meetings of both bodies and so as to enable simultaneous interpretation of the proceedings of both bodies.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it required clarification of the role of observer delegations in the meetings of the Drafting Committee and of the Final Clauses Committee.

The PRESIDENT stated that the Rules of Procedure did not provide a right for observer delegations to participate in the meetings of the Drafting Committee and of the Final Clauses Committee, but that the committees were entitled to decide to invite such participation.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that participation of observer delegations in the work of the committees would be very useful, and that it anticipated that the committees would invite observer delegations to participate in their proceedings.

The PRESIDENT stated that the participation of observer delegations would be a question to be decided by each committee.

The meeting rose at 12:38

COMMISSION OF THE WHOLE – FOURTH MEETING

Wednesday, 31 October 2001, at 14:15

President: Professor Medard Rutoijo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.)

The CHAIRMAN invited the co-chair of the International Registry Task Force to continue with the overview of DCME-IP/4.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that DCME-IP/1 and DCME-IP/4 were relevant to the discussion of the International Registry, that the attachments to DCME-IP/4 included a paper on the private law aspects of the relationship between the Supervisory Authority and the International Registry which had been prepared by France and UNIDROIT, a paper about proprietary rights and computer hardware and software which had been prepared by Ireland and Singapore, a paper about the liability of the International Registry which had been prepared by Canada and Sweden, and a paper about the costing and funding of the International Registry which had been prepared by Finland and the Aviation Working Group and which stated that the costs of the registry should be manageable as it was to be a largely electronic system. It stated that it would be necessary for the work undertaken by the International Registry Task Force to be continued after the Diplomatic Conference to enable the International Registry to be operational by the time the Draft Convention entered into force, and that many issues remained to be determined.

The CHAIRMAN invited the delegation of Switzerland to provide an overview of the draft regulations for the International Registry.

The DELEGATION OF SWITZERLAND stated that the draft regulations took into account the fact that the International Registry would be an electronic registry and that the role of the Registrar would be limited, that Chapter 1 of the draft regulations had been drafted on the basis that the International Registry would provide a notice-based electronic registration system that would be accessible 24 hours a day and seven days a week and that it would contain personal data of those accessing the International Registry as well as data relating to aircraft object files, that Chapter 3 of the draft regulations dealt with personal data records and facilities for electronic signature, that Chapter 4 of the draft regulations dealt with aircraft object file requirements, that Chapter 5 of the draft regulations dealt with the requirements of an application for registration, that Chapter 6 of the draft regulations dealt with registration in the International Registry, that Chapter 7 of the draft regulations dealt with other registration requests for changes and other types of amendments, that Chapter 8 of the draft regulations dealt with the duration of registrations and was intended to reflect Article 20 of the Draft Convention, that Chapter 9 of the draft regulations dealt with searches of the International Registry, that Chapter 10 of the draft regulations dealt with complaints about the International Registry, that Chapter 11 of the draft regulations dealt with the confidentiality of data held in the International Registry, that Chapter 12 of the draft regulations dealt with the storage of data, that Chapter 13 of the draft regulations dealt with registration statistics, that Chapter 14 of the draft regulations dealt with relations between the Registrar and the Supervisory Authority, that Chapter 15 dealt with relations with entry points and would require the Registrar to keep an updated list of Contracting States that had designated an entry point, and that Chapter 16 dealt with fees and specified which operations would attract a fee.

The SECRETARY GENERAL (UNIDROIT) stated that ICAO and UNIDROIT had agreed to encourage delegates to consider whether the International Registry Task Force should be transformed by the

Conference into a Committee of the Conference, and that if it were so constituted it would need to work without interpretation because of limited interpretation resources.

The CHAIRMAN stated that the issue raised by the Secretary General (UNIDROIT) might be best considered after the Commission had examined the provisions of the draft regulations. The Chairman invited discussion of Chapter IV of the Draft Convention.

The DELEGATION OF AUSTRALIA stated that Article 16(2)(h) of the Draft Convention should be amended to provide that the basis upon which the Supervisory Authority should set its fees should be the principle of full cost recovery, and that it was the users of the international registration system who should pay for the structures to be established by the Draft Convention.

The DELEGATION OF GERMANY stated that the phrase: “legal or contractual subrogation” which was found in Articles 15(1)(c), 19(4) and 37(1) of the Draft Convention was unclear and should be defined.

The DELEGATION OF SPAIN stated that the Draft Convention should provide greater clarification about the relationship between the International Registry and the various national entry points.

The CHAIRMAN stated that the issue raised by Spain would be dealt with in the discussion on final clauses.

The DELEGATION OF THE RUSSIAN FEDERATION stated that Article 16(1) of the Draft Convention should be amended to provide that the administration of the Supervisory Authority should be open only to Contracting States.

The CHAIRMAN stated that the issue raised by the Russian Federation might be more appropriately discussed in relation to Article 16 of the Draft Protocol.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it agreed with the comment of Australia that the costs of the system established by the Draft Convention should in general be borne by the users of that system, that it would be important to ensure that any drafting changes did not create inflexibility and did not exclude the possibility that start-up costs in the early phases of the operation of the International Registry might need to be borne by other funding sources, and that for this reason it would not support the proposed amendment to Article 16(1) of the Draft Convention.

The DELEGATION OF SOUTH AFRICA stated that it required clarification regarding whether it would be necessary for the Draft Convention to include the concept of “prospective international interest” which was referred to in Article 15(1)(a) of the Draft Convention, and about the effect of the registration of a prospective international interest pursuant to Article 28 of the Draft Convention.

The DELEGATION OF JAMAICA stated that it required clarification about Article 16(4) of the Draft Convention, and that it was not clear why it would be necessary to provide that proprietary rights in information provided to the International Registry should vest in the Supervisory Authority.

The CHAIRMAN stated that the Registrar for the International Registry would be appointed for periods of five years, and that in order to ensure continuity of management and ownership of the information on the International Registry it had been considered necessary to vest ownership of that information in the Supervisory Authority rather than the Registrar.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it agreed with the Chairman’s comment that detailed aspects of the Aircraft Registry, including the matters raised by the Russian Federation, should be considered during discussions of the Draft Protocol, that Article XIX(3) of the Draft Protocol established a principle that International Registry fees be set at a level that would enable the recovery of the reasonable costs of operating the International Registry and that this addressed the concern of Australia, that it agreed with Spain that the Draft Convention

should provide greater clarity about the operation of designated entry points and should permit the alignment of national registration requirements with requirements under the International Registry, that the Aviation Working Group and IATA comments contained in DCME Doc No. 7 included a proposal to achieve this, that, in relation to the issue raised by South Africa about the concept of “prospective international interest”, the concept was necessary to accommodate the fact that complex financing arrangements might involve multiple transactions which closed simultaneously and that Article 18(5) of the Draft Convention would apply the priority rules from the time of filing of the prospective international interest, and that Article 17(2) of the Draft Convention should be amended to permit the lodgement of electronic consent in line with the fact that the International Registry would be an electronic registry.

The DELEGATION OF THE UNITED KINGDOM stated that one reason for including the concept of “prospective international interest” in the Draft Convention was to enable a creditor who was negotiating with a debtor in relation to an interest in an asset that the debtor had not yet acquired to register their prospective interest in order to preserve their priority during the negotiations, and that paragraph 4 of the commentary on Article 18 of the Draft Convention that was contained in DCME-IP/2 provided additional explanation of the concept of “prospective international interest”.

The DELEGATION OF FRANCE stated that it shared the concerns that had been raised by Jamaica in relation to Article 16(4) of the Draft Convention, and that the fact that it was not appropriate for the Registrar to have a proprietary interest in the data held in the International Registry did not mean that it would be appropriate for the Supervisory Authority to have such an interest.

The CHAIRMAN stated that the issue raised by Jamaica and France had been considered in detail during the deliberations of the International Registry Task Force and invited delegations to comment on those deliberations.

The DELEGATION OF SUDAN stated that the Draft Convention should have priority over the Draft Protocol and that Article 16(1) of the Draft Convention should be amended so that the Supervisory Authority was identified in the Draft Convention.

The CHAIRMAN stated that it was possible that there would be a different Supervisory Authority in relation to the different protocols developed under the Draft Convention, and that it would not be possible to identify the bodies that would act as Supervisory Authority in relation to future protocols until the time that those future protocols had been concluded.

The SECRETARY GENERAL (UNIDROIT) stated that it was expected that intergovernmental Organisations would require some time to consider whether to accept the role of Supervisory Authority under a protocol, and that for this reason it would not be possible to identify the bodies that would act as Supervisory Authority under the future protocols dealing with railway rolling stock and space assets prior to the conclusion of the Diplomatic Conference.

The DELEGATION OF GHANA stated that it required clarification as to whether it was anticipated that there would be a number of Supervisory Authorities and registries in relation to the various protocols to the Draft Convention.

The CHAIRMAN stated that it was intended that there would be a separate Supervisory Authority for each protocol, and that there would probably also be separate registries.

The DELEGATION OF CANADA stated that it would be necessary for the Draft Convention to provide for the Supervisory Authority to have proprietary rights in the data in the International Registry because Article 26(4)(b) of the Draft Convention provided that the assets, documents, databases and archives of the International Registry would be inviolable and immune from seizure or other legal process, because the Supervisory Authority would be required to establish rules relating to

the destruction of information or data, and because the Supervisory Authority would be required to ensure that the data was not used for any other purpose.

The DELEGATION OF JAMAICA stated that the definition of “International Registry” in Article 1(p) of the Draft Convention and the references to the International Registry in Articles 15(1) and 16 of the Draft Convention assumed that there would be several Supervisory Authorities but only one International Registry.

The CHAIRMAN stated that Article 15(2) of the Draft Convention provided that different International Registries could be established for different categories of objects, and that the only issue requiring further clarification was the clarification sought by Germany regarding the phrase: “legal or contractual subrogation”.

The DELEGATION OF THE UNITED KINGDOM stated that the concept of subrogation existed in many legal systems and applied where, for example, one party performed the obligation of another party and then stood in the shoes of that party, that in some legal systems the concept of subrogation was used in place of assignment, and that for these reasons the Draft Convention allowed for the registration of rights of subrogation.

The CHAIRMAN stated that the issue of subrogation should be further examined by the Drafting Committee to determine if the intention could be further clarified, that the issue of full cost recovery from users of the International Registry would be discussed in relation to the costs of the Draft Protocol, that the issue of the Supervisory Authority having a proprietary interest in data in the International Registry should be further examined by the Drafting Committee, and that the issue of the relationship between designated entry points and the International Registry would be further discussed in relation to Article XVIII of the Draft Protocol.

The DELEGATION OF JAMAICA stated that the examination of the Supervisory Authority’s proprietary interest in data in the International Registry should take account of the fact that Article 26(4)(b) of the Draft Convention did not address questions of proprietary interests.

The CHAIRMAN stated that the point raised by Jamaica would be considered by the Drafting Committee. The Chairman invited comments on Chapter V of the Draft Convention, dealing with modalities of registration.

The DELEGATION OF THE AVIATION WORKING GROUP stated that DCME Doc No. 7 included a proposed draft Article 17(5) which would permit Contracting States to specify the requirements to be satisfied prior to the transmission of information through a designated entry point, that Article 17(2) of the Draft Convention should contain an exception to enable electronic consents to be provided to the International Registry, that minor drafting amendments should be made to Article 18(3) of the Draft Convention to clarify that priority related to the time that a prospective international interest was filed, and that the Drafting Committee should examine whether it would be possible to simplify Article 19 of the Draft Convention in line with the Draft Protocol.

The DELEGATION OF JAPAN stated that some of the matters that Article 17 of the Draft Convention indicated would be contained in the Draft Protocol or in regulations, such as the names of the creditor and debtor, the type of transaction, the identification of the object and the content of any associated rights, should be specified in the Draft Convention.

The DELEGATION OF GERMANY stated that it was not clear why the consent of both parties was required by Article 19(1) of the Draft Convention when Articles 19(2)-(6) of the Draft Convention did not require the consent of another party, that it was not clear how the International Registry would ascertain for the purpose of Article 18(1) of the Draft Convention that the consent required by Article 19(1) of the Draft Convention had been obtained, and that Article 24 of the Draft Convention should provide for the discharge of a registered obligation that had not been validly created.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported the proposals of the Aviation Working Group regarding Article 17(2) of the Draft Convention and the proposed draft Article 17(5) of the Draft Convention because it was very important that any designated entry point would enjoy the protections referred to by the Aviation Working Group, that, in relation to Germany's comment on Article 19(1) of the Draft Convention, the issue of whether consent had been given and the issue of whether the consent had been registered were separate issues and that a creditor who proceeded on the basis of a registration that did not comply with Article 19 of the Draft Convention would do so at its own risk, that it agreed with Germany's comment regarding Article 24 of the Draft Convention, and that the Draft Convention should therefore be amended to clarify that a debtor would have a right to effect the release of a registered interest that had not been validly created or registered.

The DELEGATION OF SPAIN stated that the draft Article 17(5) which had been proposed by the Aviation Working Group would not resolve all the problems that had been raised by Spain because it could give rise to different registration regimes.

The DELEGATION OF JAPAN stated that it supported the Aviation Working Group proposal to amend Article 17(2) of the Draft Convention to refer to electronic consent but that the Registrar should not be required to obtain evidence of the authenticity of the consent, that the Drafting Committee should examine whether Article 17(2) of the Draft Convention was required, and that there was an inconsistency between Articles 17(3) and 18(1) of the Draft Convention which the Drafting Committee should consider rectifying by amending Article 17(3) to read: "Registration shall be effected in chronological order of receipt at the International Registry data base in accordance with Article 18(1), and the file shall record the date and time of receipt."

The DELEGATION OF AUSTRALIA stated that it supported the Aviation Working Group proposal to amend Article 17(2) of the Draft Convention to refer to electronic consent, that it agreed with the comments of Germany and Japan in relation to Article 18(1) of the Draft Convention, that the Drafting Committee should consider amending Article 18(1) of the Draft Convention to make it very clear whether a registration that was not valid would be able to take effect, that the Drafting Committee should examine Article 18(3) of the Draft Convention to clarify that a continuum of registration would be required, and that the Drafting Committee should consider amending Article 24 of the Draft Convention to replace the word "upon" with the phrase: "as soon as practicable" to avoid an interpretation that immediate action would be required.

The DELEGATION OF BAHRAIN stated that Article 19(3) of the Draft Convention related to subrogation and should therefore be relocated to Article 24 of the Draft Convention.

The DELEGATION OF THE UNITED KINGDOM stated that Article 22 of the Draft Convention should be amended to include references to reservations made by Contracting States and to declarations in respect of registrable non-consensual rights.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that page 5 of DCME Doc No. 28 contained a proposal to amend Article 18(3) of the Draft Convention to clarify that a prospective international interest would be able to become a registered interest without any further action and that a prospective international interest would be able to be registered whether or not it indicated that the interest was prospective.

The DELEGATION OF GHANA stated that it agreed with the comment of Germany regarding the need to clarify why Article 19(1) of the Draft Convention required the consent of both parties and how the International Registry would ascertain, for the purposes of Article 18(1) of the Draft Convention, that the consent required by Article 19(1) of the Draft Convention had been obtained, that the requirement of Article 19(3) of the Draft Convention that a registration could only be discharged by the person in whose favour it was made would mean that a person adversely affected

by the registration of an interest without their consent could not discharge that registration, and that the concept of subrogation was a technical legal concept which should be defined in the Draft Convention.

The DELEGATION OF JORDAN stated that there was an inconsistency between Article 17(1)(c) of the Draft Convention, which provided for confidentiality of information, and Article 25 of the Draft Convention, which provided for access to registration facilities, that paragraph 10 of DCME Doc No. 18 set out Jordan's position that no person should have access to the International Registry unless they had a direct relation to the registration operation, and that Article 25 of the Draft Convention should be amended to reflect that position.

The DELEGATION OF SWITZERLAND stated that it supported the proposals of the Aviation Working Group to amend the Draft Convention to add the proposed draft Article 17(5), which would permit designated entry points to declare conditions for registering international interests, and to amend Article 17(2) of the Draft Convention to provide for the possibility of electronic consent.

The DELEGATION OF SOUTH AFRICA stated that it agreed with the views of Germany and Ghana regarding Articles 18 and 19 of the Draft Convention because it was concerned about the integrity of the information in the International Registry being compromised, and that it agreed with the views of Australia regarding Articles 18(1) and (3) and 24 of the Draft Convention. It stated that the concept of "prospective international interest" required further consideration and drafting because the Draft Convention provided that a prospective international interest could be open-ended and this would be likely to prejudice the rights of other registered interest holders and the integrity of the system, and because people searching the International Registry would need to be very certain whether they were dealing with an international interest or with a prospective international interest.

The DELEGATION OF SUDAN stated that, in relation to Article 19 of the Draft Convention, the link between registration of an international interest and the requirement that the other party consent to the registration could undermine the registration process, and that the Registrar should be authorised to determine whether an interest should be registered.

The DELEGATION OF BAHRAIN stated that it required clarification regarding the status of its suggestion that Article 19(3) of the Draft Convention be relocated to Article 24 of the Draft Convention.

The CHAIRMAN stated that he would summarise the discussion once it had been concluded.

The DELEGATION OF MEXICO stated that it agreed with Ghana that Article 19(3) of the Draft Convention did not reflect an appropriate balance between the rights of creditors and the rights of debtors.

The DELEGATION OF JAMAICA stated that Article 24 of the Draft Convention should be amended so that its references to the written demand of a debtor also extended to guarantors and subsequent chargees.

The DELEGATION OF CANADA stated that it agreed with the proposal of the Aviation Working Group regarding electronic consent but that, as the need to use electronic consent appeared to arise primarily in the aviation sector, it might be more practical and appropriate for any amendment to be made to the Draft Protocol rather than to the Draft Convention.

The DELEGATION OF THE UNITED KINGDOM stated, in relation to the comment of Germany regarding verification of consent, that the Registrar would not be required to satisfy itself whether consent had actually been given but that the absence of consent would nullify the efficacy of the registration and that this would provide protection for the debtor. It stated that the concern raised by Australia regarding the need to clarify whether a registration that was valid could take effect was addressed by Article 18(1) of the Draft Convention which provided that a registration would only be

valid if it were made in conformity with Article 19(1) of the Draft Convention. It stated, in relation to the issue raised by Australia about the continuity of registrations of prospective international interests, that, if a prospective international interest had been discharged, a subsequent international interest would take effect only from the time that that subsequent international interest was registered. It stated that it agreed with the comment of Australia regarding Article 24 of the Draft Convention. It stated that if a registration had been improperly effected and the party who had registered it would not consent to its deregistration, then the party seeking deregistration would be able to apply to a court of competent jurisdiction for an order directing the party who effected the registration to remove it, that such an order could be the basis of an order made pursuant to Article 43 of the Draft Convention directing removal of the registration, and that the Drafting Committee should examine whether this process could be clarified. It stated that the Drafting Committee could examine whether it would be possible to define “subrogation”, but that this would probably be difficult because the concept of subrogation covered many things. It stated, in relation to the question that had been raised by South Africa, that the concept of “prospective international interest” was compatible with Article 6 of the Draft Convention because the formal requirements prescribed by Article 6 of the Draft Convention would apply only to international interests and not to prospective international interests. It stated that the Drafting Committee should examine the proposal of Jamaica to replace “debtor” with “interested persons” in Article 24(1) of the Draft Convention.

The DELEGATION OF THE RAIL WORKING GROUP stated that it would follow the development of the Draft Protocol very closely and that, where appropriate, it would look to incorporate developments in the Draft Protocol into the preliminary draft Rail Protocol, that it had no objection to the Aviation Working Group proposal to amend Article 17(2) of the Draft Convention, that the railway sector differed from the aviation sector in that there were very few domestic or local registration systems specifically applicable to rail, and that it had no objection to the proposed draft Article 17(5).

The DELEGATION OF THE SPACE WORKING GROUP stated that there existed no registration system for the registration of security interests in space objects, and that it would be closely following the development of other protocols under the Draft Convention.

The DELEGATION OF ARGENTINA stated that it required clarification about the relationship between Article 19(1) of the Draft Convention, which required that consent be given, and Article 17(2) of the Draft Convention, which precluded any requirement that there be evidence of consent.

The DELEGATION OF THE UNITED KINGDOM stated that a debtor’s consent to registration would be necessary and a registration would be ineffective without it, and that, as the International Registry would be automated, it would not be possible to verify whether there was sufficient evidence of consent, subject to the proposal to permit electronic consent to be filed.

The DELEGATION OF SOUTH AFRICA stated that it was not satisfied with the explanation that had been provided by the United Kingdom regarding Article 6 of the Draft Convention and prospective international interests because it would not be possible for a prospective international interest to satisfy the requirements of Article 6 of the Draft Convention and it therefore would not be possible for a prospective international interest to be registered.

The DELEGATION OF SAUDI ARABIA stated that it required clarification in relation to Article 19(3) of the Draft Convention and, in particular, as to whether it was anticipated that consent could be in a form other than in writing.

The CHAIRMAN stated that Article 19(3) of the Draft Convention seemed to require that the discharge be effected by the party in whose favour the registration was made or with its consent, and that, if this was not clear in the Arabic text of the Draft Convention, that text should be clarified.

The DELEGATION OF AUSTRALIA stated that Article 18(1) of the Draft Convention raised two concepts, that the first was the concept of validity and the second was the concept of the taking effect of registration, that it took the view that a registration could take effect even if it were not valid, that the fact that different delegations had taken different views demonstrated that there was uncertainty about a link between validity and the effect of registration, and that this issue would require examination by the Drafting Committee because it was too important to be left unclear.

The AVIATION WORKING GROUP stated that several delegations had directly or indirectly supported its proposal to amend Article 17(2) of the Draft Convention to provide for electronic consent, that this proposal would address some of the concerns that had been raised about invalid registration and removal of prospective registrations, that the proposed draft Article 17(5) had been supported by several delegations, that the drafting of Article 18(1) of the Draft Convention could be tightened as had been suggested by Australia, and that it would be necessary to ensure the mechanical functionality of Article 18(3) in light of comments made by the United States of America and South Africa.

The CHAIRMAN stated that some proposals had not been supported during the debate and would not be considered further, that the issues and proposals that warranted further consideration by the Drafting Committee were: (i) the issue of requiring two electronic consents, which the Drafting Committee should consider incorporating into the text; (ii) the addition of the proposed draft Article 17(5) of the Draft Convention to enable national authorities to set extra requirements for any registration to be transmitted through a national entry point; (iii) the actual meaning of Article 18(1) of the Draft Convention, in particular the relationship between Article 18(1) of the Draft Convention and Article 19 of the Draft Convention; (iv) a review of the drafting of Article 18(3) of the Draft Convention; (v) minor drafting additions to Article 22 of the Draft Convention; (vi) the examination, in Article 24 of the Draft Convention, of the drafting of “upon written demand” and whether to replace “debtor” with “interested person”.

The DELEGATION OF GERMANY stated that it had raised a question in relation to Article 24(1) of the Draft Convention about what would happen if there was not a valid international interest because the basic contract was void, and that this had been supported by several other delegations.

The CHAIRMAN stated that he had thought that Germany had been satisfied with the explanation that had been provided, but that the German issue would also be referred to the Drafting Committee, and that the discussion of Chapter V of the Draft Convention was now closed.

The meeting rose at 17:17

COMMISSION OF THE WHOLE – FIFTH MEETING

Thursday, 1 November 2001, at 9:38

President: Professor Medard Rutoijo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.)

The CHAIRMAN stated that there had been an important point raised by Saudi Arabia in relation to Article 19(3) of the Draft Convention which had not been included in his summary of Chapter V of the Draft Convention, and that Saudi Arabia would be invited to reiterate that point.

The DELEGATION OF SAUDI ARABIA stated that it required clarification as to whether the reference in Article 19(3) of the Draft Convention to “consent in writing” meant that this was the only means to discharge a registration, and suggested that Article 19(3) be redrafted to read: “Registration may be discharged by the presence of the party or with the consent in writing of the party in whose favour it was made”.

The CHAIRMAN stated that the issue raised by Saudi Arabia would be examined during the translation process. The Chairman invited comments on Chapter VI, Article 26 of the Draft Convention, dealing with privileges and immunities of the Supervisory Authority and Registrar.

The DELEGATION OF CHINA stated that in Article 26(2) of the Draft Convention the square brackets around the word “functional” should be removed, and that Article 26(4) of the Draft Convention should be deleted.

The DELEGATION OF CANADA stated that it agreed that Article 26(4)(a) of the Draft Convention should be deleted, and that Article 26(4)(b) of the Draft Convention should also be deleted because it provided that assets, documents and databases could be seized in connection with a lawsuit, but that these items were for general use and should not be subject to interference by third parties under any circumstances.

The DELEGATION OF GERMANY stated that it supported the proposal of China.

The DELEGATION OF JAMAICA stated that, as Article 23 of the Draft Convention provided that a certificate was only *prima facie* evidence of the facts recited therein, it might be necessary for the International Registry to be inspected to determine whether it correctly stated the facts, and that although the International Registry should be immune from seizure, Article 26(4) of the Draft Convention should be amended to enable a person to have reference to the true facts as they appeared in the International Registry.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it would have no objection to the removal of functional privileges and immunities of the Registrar, that it agreed with the comments of Jamaica regarding Article 26(4)(b) of the Draft Convention because it would be important to ensure that information or documentation relating to the operations of the International Registry could be made available to assist in resolving any matters or disputes that required resolution, and that the Drafting Committee should examine the phrasing of Article 26(4)(b) of the Draft Convention and in particular whether the word “seizure” should be eliminated.

The CHAIRMAN stated that, as a number of proposals regarding Article 26(4)(b) of the Draft Convention had been made and supported, Article 26(4)(b) would be referred to the Drafting Committee.

The DELEGATION OF FRANCE stated, in relation to Article 26(2) of the Draft Convention, that the question of whether the word “functional” should be deleted would depend on the nature of the Supervisory Authority, that if the International Civil Aviation Organization accepted that function its general immunities would also apply to its Supervisory Authority functions, and that it would be possible for Article 26(2) to be redrafted to say: “The Supervisory Authority shall enjoy immunity from any judicial or legal or administrative process”. It stated that it was possible that the Registrar might need to take action against the Supervisory Authority if the Supervisory Authority violated its authority vis-à-vis the Registrar, and that there should be an exemption to the general immunity of the Supervisory Authority to take account of such a possibility.

The CHAIRMAN stated that Article 26(2) of the Draft Convention would apply to every Supervisory Authority and not only to the Supervisory Authority under the Draft Convention as applied to aircraft objects, that any amendment of Article 26(2) of the Draft Convention would need to take this into account, and that the issue of an exception to the immunities of the Supervisory Authority had been

discussed at previous meetings and Article 26(2) of the Draft Convention represented the outcome of those discussions but that comments on that issue would still be welcome.

The DELEGATION OF BAHRAIN stated that it required clarification about the meaning of Article 26(1) of the Draft Convention, and proposed that Article 26(2) of the Draft Convention be redrafted to read: “The Supervisory Authority and its officers and employees shall enjoy immunity from legal or administrative process in the conduct of their business”.

The DELEGATION OF THE INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL stated that issues relating to immunity of the Supervisory Authority were relevant not only for the International Civil Aviation Organization but also for any other body that might carry out the functions of the Supervisory Authority, that it was normal in public international affairs to confer functional immunity in respect of such functions, and that it supported the proposal to remove the square brackets from Article 26(2) of the Draft Convention.

The CHAIRMAN stated that, in relation to Bahrain’s request for clarification about Article 26(1) of the Draft Convention, the purpose of that Article was to ensure that the Supervisory Authority under the Draft Convention and the Draft Protocol enjoyed international legal personality regardless of whether they enjoyed such personality independently of the Draft Convention and the Draft Protocol.

The DELEGATION OF SINGAPORE stated that it required clarification about the proposal of China to delete Article 26(4)(a) of the Draft Convention.

The DELEGATION OF CHINA stated that it made its proposal because the liabilities referred to in Article 26(4)(a) of the Draft Convention could be insured against and that accordingly the immunity conferred by that Article would be too broad.

The DELEGATION OF CANADA stated that, as Article 26(4)(a) of the Draft Convention was subject to Article 27 of the Draft Convention, the immunity that it conferred on the Registrar would be related to matters such as suits for non-payment of rent or occupier’s liability, and that it was not clear why it would be necessary for the Registrar to enjoy such immunity.

The DELEGATION OF EGYPT stated that the expansion of the Registrar’s immunity provided for in Article 26(4)(a) of the Draft Convention was not necessary, and that it supported the Chinese proposal to delete that Article.

The CHAIRMAN stated that a clear view was emerging in relation to Article 26(4) of the Draft Convention but that the debate should continue.

The DELEGATION OF GERMANY stated that the Registrar would be a private juridical person and that it did not see any necessity for the Registrar to enjoy immunity from suit.

The PRESIDENT OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION COUNCIL stated that he agreed with the statement of France regarding Article 26(2) of the Draft Convention, that the International Civil Aviation Organization enjoyed full immunity pursuant to the *Chicago Convention on International Civil Aviation* and its Headquarters Agreement with Canada, that he supported the proposal of Bahrain to remove the square brackets from Article 26(2) of the Draft Convention, and that he would support the deletion of the word “functional” from that Article.

The DELEGATION OF ARGENTINA stated that it supported the proposal of Germany, and that it supported the deletion of Article 26(4)(a) and (b) of the Draft Convention because the Registrar would be a private person and would therefore not require immunity and because the immunity of the International Civil Aviation Organization, or other similar intergovernmental entity, would be resolved in its headquarters agreement.

The CHAIRMAN summarised the discussion by stating that it had been agreed to delete the word “functional” from Article 26(2) of the Draft Convention, to delete Article 26(4)(a) of the Draft

Convention, to refer to the Drafting Committee the need to clarify whether a person who was seeking evidence about the correctness of a certificate referred to in Article 23 of the Draft Convention should have access to International Registry documents and databases, and to clarify that the records of the International Registry should not be able to be seized for private purposes.

The DELEGATION OF ARGENTINA stated that it required clarification as to whether the word “functional” would be deleted from Article 26(2) of the Draft Convention, or whether only the square brackets around that word would be deleted.

The CHAIRMAN stated that it had been agreed that the word “functional” would be deleted from Article 26(2) of the Draft Convention.

The DELEGATION OF GERMANY stated that several delegations had proposed that only the square brackets be deleted from Article 26(2) of the Draft Convention, that it agreed that the International Civil Aviation Organization did not require functional immunity but that that Organization’s immunity could be dealt with in the Draft Protocol and that deletion of the word “functional” from Article 26(2) would affect other Organisations that acted as Supervisory Authority, and that it supported retention of the word “functional” in Article 26(2).

The CHAIRMAN stated that those delegations that had supported the deletion of the word “functional” from Article 26(2) of the Draft Convention had been primarily concerned with the position of the International Civil Aviation Organization, and that he would propose that the word “functional” be retained in Article 26(2) and that the question of the immunities of the International Civil Aviation Organization would be further considered during the discussion of the Draft Protocol.

The DELEGATION OF SOUTH AFRICA stated that the Chairman’s summary had indicated that the Commission was taking decisions on the text of the Draft Convention, and sought clarification about whether decisions on the text should be made at a later stage.

The CHAIRMAN stated that the Commission would prepare a report to the Plenary containing proposals for amendments to the Draft Convention based on consensus decisions of the Commission, and that the Plenary would make the final decisions.

The DELEGATION OF CANADA stated that the word “functional” should be deleted from Article 26(2) of the Draft Convention, that there was no Article in the Draft Protocol dealing with that subject, that the word “functional” would be interpreted by domestic courts and could lead to arguments that there was in fact no immunity because any wrongdoing would necessarily be outside the Supervisory Authority’s functions, and that for this reason it preferred a very clear formulation of immunity and would support the deletion of the word “functional” from Article 26(2) of the Draft Convention.

The DELEGATION OF GHANA stated that, if only the square brackets were deleted from Article 26(2) of the Draft Convention, it would be necessary to insert an additional phrase to provide that exceptions could be provided in a protocol so as to avoid the result that all Organisations acting as a Supervisory Authority would only have functional immunity.

The CHAIRMAN stated that the basis of the discussion on a consolidated text and the relationship between the Draft Convention and the Draft Protocol was that it should not always be necessary to include provisions in the Draft Convention referring to the Draft Protocol.

The DELEGATION OF ITALY stated that it supported the deletion of the word “functional” from Article 26(2) of the Draft Convention, that it was possible that the United Nations could be the Supervisory Authority for the protocol dealing with space assets and it would be inappropriate for the Draft Convention to limit the immunities of the United Nations to functional immunities when the United Nations was immune from every form of legal process pursuant to the *Convention on*

Privileges and Immunities of the United Nations, and that it was possible that a different level of immunity be enjoyed by the Supervisory Authority and by its officers and employees.

The CHAIRMAN stated that there had been considerable support for both the deletion and retention of the word “functional” in Article 26(2) of the Draft Convention, that the members of the Public International Law Working Group which had met between the second and third joint sessions should convene informal consultations to examine this issue, that the members of that group would be the delegations of Canada (Chair/Coordinator), Egypt, France, Italy, Korea, South Africa, the United Kingdom and the United States of America, and that the meetings and consultations of that group would be open-ended.

The DELEGATION OF BAHRAIN stated that, when it supported the deletion of the word “functional” from Article 26(2) of the Draft Convention, it had also proposed that the Article be redrafted to read: “The Supervisory Authority and its officers and employees shall enjoy immunity from legal or administrative process in the performance of their duties”, and that it supported the comments of Canada regarding possible future problems regarding interpretation by courts of the concept of “functional immunity”.

The DELEGATION OF ARGENTINA stated that the debate should not be concluded and referred to a small group because there was a consensus about the difference between the immunities to be given to an Organisation and those to be given to its officers, that the issue had already been resolved in the *Convention on Privileges and Immunities of the United Nations*, that the appropriate compromise would be to refer to that Convention and to differentiate in the text between the Organisation and its officers, and that it supported the interventions made by Italy and Bahrain.

The CHAIRMAN stated that the intention was not to close the discussion but simply to refer it to the Public International Law Working Group for consideration of the technical issues, and that the matter would then be returned to the Commission for further consideration.

The DELEGATION OF SOUTH AFRICA stated that it would be necessary for the Draft Convention and the Draft Protocol to balance the interests of creditors and debtors, and that it supported the inclusion of the word “functional” in Article 26(2) of the Draft Convention because that would afford a debtor a limited amount of protection in certain circumstances, such as where creditors or financiers had perpetrated a fraud not involving any fault by the Supervisory Authority or Registrar.

The CHAIRMAN stated that, in order not to prolong the debate unnecessarily, it would be best for the issue to be referred to informal consultations.

The DELEGATION OF FRANCE stated that the Chairman’s summary of the debate had not included reference to the issue it had raised about the possibility of the Registrar suing the Supervisory Authority, and that this issue should be addressed in the informal consultations.

The CHAIRMAN stated that the issue raised by France had been discussed on previous occasions and that a consensus had been reached, and that this was why the issue had not been included in his summary of the debate.

The DELEGATION OF JAMAICA stated that the different views on the issue had arisen from differing views as to the character of the body that would exercise Supervisory Authority functions, that even Organisations with international legal personality enjoyed varying levels of immunity, that the group involved in informal consultations should consider amending Article 26(2) of the Draft Convention to state: “The Supervisory Authority and its employees shall enjoy immunity from legal and administrative process as may be provided in the Protocol”, and that this would enable the issue of immunity to be addressed in the context of the particular body exercising Supervisory Authority functions.

The DELEGATION OF THE UNITED KINGDOM stated that Article 26(2) of the Draft Convention could be amended to state: “The Supervisory Authority and its officers and employees, so far as not enjoying immunity, shall enjoy ...”, and that this would preserve the immunity of those Organisations that already enjoyed immunity.

The CHAIRMAN stated that the informal consultation group would report to the Commission on the following day. The Chairman stated that the next matter for discussion was Chapter VII of the Draft Convention concerning liability of the Registrar, that the results of the consideration of the issue of the liability of the Registrar by the International Registry Task Force were contained in Attachment 3 to DCME-IP/4 which had been prepared by Sweden and Canada, and that Sweden would introduce that paper.

The DELEGATION OF SWEDEN stated that the objective of Attachment 3 to DCME-IP/4 was to investigate the rules associated with registries of the kind contemplated by the Draft Convention by examining costs for damages paid by national registries in Canada and Sweden and by consulting with the insurance industry, and that the conclusion reached was that insurance would be available to cover the estimated maximum damage that could occur and at a cost that would not be too high. It stated that Attachment 3 to DCME-IP/4 included a proposal to expand the text of Article 27 of the Draft Convention and concluded that the liability of the Registrar should be strict, with an exception only for force majeure. It stated that the proposal on pages 4 and 5 of Attachment 3 to DCME-IP/4 was detailed because a detailed definition of liability would substantially decrease the cost of insurance, and that the intention had been to define “force majeure” and to define, in proposed Article 27(1*bis*), the actual scope of liability. It stated that two amendments to Article 27(1) of the Draft Convention were proposed, that the first amendment proposed was to add the phrase: “within the operation of the Registry” in order to connect Article 27(1) of the Draft Convention with proposed Article 27(1*bis*)(b), and that the second amendment proposed was to include an exception related to force majeure which drew on definitions of force majeure in other international conventions in the field of liability. It stated that proposed Article 27(1*bis*)(a) dealt with the fact that the Registry would have no control over the accuracy of data transmitted to it and also should not be liable for any inaccuracy in the International Registry that was due to the fact that someone had obtained an electronic signature from a user and used that signature without the user’s consent. It stated that proposed Article 27(1*bis*)(b) was intended to provide that anything that happened before information was received by the International Registry would not be considered as being part of the operations of the Registry, so that, for example, no liability would attach to the International Registry if an email sent to the International Registry did not arrive or was corrupted on its way to the International Registry. It stated that proposed Article 27(1*bis*)(c) dealt with hacking and other unauthorised access to the International Registry and that in such cases the International Registry would only be liable if it had not put in place the best practices and standards in current use in electronic registry operation. It stated that proposed Article 27(1*ter*) was intended to include the principle of contributory fault on behalf of the victim and that this was a usual concept in the field of liability. It stated that it was also proposed to amend Article 27(2) of the Draft Convention, that the proposed amendment proceeded on the basis that, whilst liability would be unlimited, it would not be possible to obtain insurance for an unlimited amount, that it was proposed that the amount of insurance required should be limited to the maximum amount of damage, which would be the maximum value of an aeroplane which at the current time was in the order of US\$ 200 million, and that it was considered that it would be proper to leave the duty of fixing the exact amount of insurance to the Supervisory Authority to avoid the need for either the Draft Convention or the Draft Protocol to be amended when more expensive models of aircraft were introduced into the market.

The CHAIRMAN stated that Article 27 of the Draft Convention was incomplete and inadequate, that the proposal in Attachment 3 to DCME-IP/4 represented the outcome of careful consideration and reflected a balance between the interests of the Registrar and the interests of users of the International

Registry, and that the discussion of Chapter VII of the Draft Convention would be based on the text of the proposal.

The DELEGATION OF SENEGAL stated that the proposed definition of force majeure would cause difficulties when it was interpreted by domestic courts because the words “inevitable” and “unavoidable” were not sufficiently clear, and that further study would be required regarding insurance costs.

The CHAIRMAN stated that he understood that the drafters’ intention in using the words “inevitable” and “unavoidable” was that they were not legal terms with precise meanings and that they left room for interpretation from one jurisdiction to the next.

The DELEGATION OF AUSTRALIA stated that it was happy to proceed on the basis of the proposed text of Article 27 in Attachment 3 to DCME-IP/4, that the definition of force majeure in that proposal was unnecessarily broad and did not take into account the question of reasonable foreseeability, that a definition of force majeure had been considered during the preparation of the *UNIDROIT Principles of Commercial Contracts* and the definition contained in Article 7.17 of those Principles was a synthesis of different approaches in common law, civil law and other legal systems, and that that definition should be considered during the course of the debate.

The SECRETARY GENERAL (UNIDROIT) stated that the *UNIDROIT Principles of Commercial Contracts* had been formulated by a group comprising experts from around the world representing all legal systems, and that they were being used increasingly in international litigation and arbitration.

The DELEGATION OF GERMANY stated that it agreed with the concept in proposed Article 27(1) that there should be strict liability except in cases of force majeure, that it agreed with Australia that the concept of force majeure was too wide and that the definition should reflect the traditional definition of “irresistible nature”, that the limitations in proposed Article 27(1bis) were either unnecessary or too broad, and that the Drafting Committee should consider these matters.

The CHAIRMAN requested that Germany identify the limitations in proposed Article 27(1bis) which in its view were unnecessary or too broad.

The DELEGATION OF GERMANY stated that one example was that proposed Article 27(1bis)(a) defined what would not be considered an error or omission for the purpose of proposed Article 27(1) but needed to be clarified in relation to the situation where an unauthorised use of an electronic signature coincided with negligence by the Registrar in organising the work of the International Registry or in organising the registration system itself.

The CHAIRMAN stated that Germany had clarified that it was seeking drafting clarifications and was not proposing substantive changes, and that it would be useful for the Drafting Committee to examine whether proposed Article 27(1bis)(a) should be clarified to ensure that the Registrar could be liable for errors or omissions.

The DELEGATION OF FRANCE stated that it supported the text of the proposed Article 27 contained in Attachment 3 to DCME-IP/4, that its concerns with Article 27 of the Draft Convention regarding the need for an exception covering force majeure and situations that should not be regarded as an error or omission of the Registrar were adequately addressed in proposed Article 27, and that its concerns about limiting the amount of insurance were addressed in proposed Article 27(2) which would leave it up to the Supervisory Authority to define the amount of insurance or financial security. It stated that, during the Chairman’s summary of the discussions on Chapter VI of the Draft Convention, the Chairman had stated that the consensus did not favour France’s proposal that the possibility of the Registrar suing the Supervisory Authority should be addressed but that on pages 10 and 11 of Attachment 2 to DCME-IP/4, which had been co-authored by France, Ireland, Singapore and the UNIDROIT Secretariat, there was a reference to the possible need for the Supervisory

Authority's immunity to be qualified in order to avoid the possibility of the Registrar being denied natural justice, and that France would have difficulty signing a convention that involved a possible denial of natural justice which would refer to Article 3 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* and the *Charter of Fundamental Rights* of the *European Union*.

The CHAIRMAN stated that he was confident that the informal consultation group would consider the issues raised by France regarding Chapter VI of the Draft Convention, and that there should be no further discussion of Chapter VI at this stage.

The DELEGATION OF THE RUSSIAN FEDERATION stated that it supported the discussions proceeding on the basis of the text of proposed Article 27 contained in Attachment 3 to DCME-IP/4 but that it would require a Russian translation of that text, and that it supported the comments of France regarding human rights conventions.

The DELEGATION OF JAMAICA stated that it supported the discussions proceeding on the basis of the text of proposed Article 27 contained in Attachment 3 to DCME Doc No. IP/4, that in proposed Article 27(1) the words "inevitable" and "irresistible" were used conjunctively and it would not be clear whether events beyond reasonable control could still attract liability, that the modern contractual approach was to provide for an inclusive definition with a catch-all phrase such as "and all other events beyond the reasonable control of (the Registrar)", and that in proposed Article 27(1*ter*) it was not clear whether contributory negligence was required to be taken into account or whether that was within the discretion of the court.

The CHAIRMAN stated that the Jamaican proposal regarding the definition of force majeure would widen the exception and lower the threshold of liability of the Registrar, that this was an important policy issue because, if the Registrar was not liable, then it would be the users of the system who would bear the cost of any losses, and that it was correct that proposed Article 27(1*ter*) would give the courts discretion as to whether, and to what extent, to take contributory negligence into account.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that the issues raised in the discussion would require careful consideration and consultations with the airline industries about any proposals to reallocate risks. It stated that the definition of force majeure in proposed Article 27(1) would require very careful consideration, that modern registry operations involving real-time distribution would have exceptionally little need for a force majeure defence and that a standard force majeure defence allowing exceptions for matters such as strikes would not be appropriate. It stated that it was concerned that proposed Article 27(1*bis*)(c) was too broad because it should be the responsibility of the Registry to design and deploy a system to protect itself against unauthorised third-party interlopers, and that it would be necessary to consult with the airline industry to see if they would be prepared to accept a potentially wide exception to the Registrar's liability. It stated that it was satisfied with proposed Article 27(2) but would not accept the deletion of Article XIX(5) of the Draft Protocol because it had been formulated after careful consultation with the airline industry and it would be necessary to have consultations with the industry regarding any change, that it was concerned that in implementing proposed Article 27(2) it would be essential that the Supervisory Authority's determination occur at the beginning of the process because that determination would be critical to establishing whether the air transportation industry would be willing to accept the system, and that this issue should be the subject of further consultations that should include those who had participated in the Registry Task Force meetings.

The DELEGATION OF CANADA stated that industry consultations had taken place during the development of proposed Article 27 and that the industry had participated actively in the recent meeting of the International Registry Task Force, that airlines and other users of the system would be paying the costs to fund the Registry's insurance, that the proposal contained in Attachment 3 to DCME-IP/4 represented a reasonable compromise that would produce reasonable insurance rates at

reasonable costs, and that, as States would assume no liability in relation to the International Registry, all of its potential liability would have to be covered by insurance.

The DELEGATION OF SWEDEN stated that, in drafting the definition of force majeure in proposed Article 27(1), the intention had been to limit the concept in light of the fact that the International Registry would be a web-based system with advanced technology, that, for example, it had not been possible to foresee any event where a strike could incur damage, and that the elements of inevitability and irresistibility were cumulative so that there would be an extremely limited number of cases where liability would be limited. It stated that the *UNIDROIT Principles of Commercial Contracts* related to contractual issues and might be appropriate in cases where two parties have a very long negotiation, but that they had not been considered appropriate as a model for the liability of the Registrar. It also stated that insurance would be available, as a separate policy to the policy of liability, to the Registrar to insure against the risk of hackers.

The DELEGATION OF THE NETHERLANDS stated that it required clarification about whether the proposed Article 27 would cover liability for loss suffered due to delays in the regulation of the system, and whether references to “registration” included “de-registration”.

The CHAIRMAN stated that the majority of delegations were satisfied with proposed Article 27 but that there was a need to take account of the United States of America’s concern that the proposals be acceptable to industry, that the drafting issues raised would be referred to the Drafting Committee and that, if substantive policy issues emerged from the consultations, those would need to be considered by the Commission, that the matters to be considered by the Drafting Committee were: (i) an examination of whether there would be a more feasible way of wording the exemption from liability in proposed Article 27(1), having regard to the *UNIDROIT Principles of Commercial Contracts*; and (ii) the breadth of the exemptions in proposed Article 27(1bis), and that the question of the possible deletion of Article XIX(5) would be considered when the Commission examined that Article.

The PRESIDENT OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION COUNCIL stated that he was required to depart the meeting due to previous commitments, that he was very pleased with the progress of the Conference, that the International Civil Aviation Organization had been very pleased to work with UNIDROIT and was thankful for UNIDROIT’s cooperation, and that the facilities and services provided by the South African Government had been of the highest order and were deeply appreciated.

The CHAIRMAN stated that, as the Drafting Committee would meet in the afternoon, the next meeting of the Commission would be on the morning of 2 November 2001.

The meeting rose at 12:40

COMMISSION OF THE WHOLE – SIXTH MEETING

Friday, 2 November 2001, at 9:30

President: Professor Medard Rutoijo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.)

The CHAIRMAN stated that the Informal Working Group that had been established to examine the issue of immunity of the Supervisory Authority had met on the afternoon of 1 November 2001, and that the Chairman of the group would report on its deliberations.

The DELEGATION OF CANADA stated that a meeting of the Informal Working Group had been held on the afternoon of 1 November 2001, that the meeting had been attended by representatives of the delegations of Canada, Egypt, France, Germany, Italy, the Republic of Korea, Singapore, South Africa, the United Kingdom and the United States of America, and that the meeting had agreed on a proposal to redraft Article 26(2) of the Draft Convention which was contained in DCME Doc No. 35 and which reflected the suggestion that had been made during the discussion of the Commission of the Whole that the particular immunities for each particular Supervisory Authority be specified in the relevant protocol. It stated that the meeting had also agreed on a proposal for a new Article XVI(1*bis*) of the Draft Protocol, which was also contained in DCME Doc No. 35, that under the proposal, if the International Civil Aviation Organization were to become the Supervisory Authority, the current rules under the *Chicago Convention on International Civil Aviation* concerning the International Civil Aviation Organization's immunities would be relevant, and that, if another entity became the Supervisory Authority, it would be necessary to review the draft. It stated that the meeting had also considered whether the Draft Convention should provide for the possibility of the Registrar taking legal action against the Supervisory Authority and had concluded that this issue would be best dealt with on a contractual basis between the Registrar and the Supervisory Authority.

The CHAIRMAN stated that there were no objections to the proposal of the Informal Working Group, that its proposed redraft of Article 26(2) of the Draft Convention would be adopted, and that its proposed new Article XVI(1*bis*) of the Draft Protocol would be further considered when there was more certainty as to the possible identity of the Supervisory Authority. The Chairman stated that the Commission would commence its examination of Chapter VIII of the Draft Convention, that, in light of the Commission's earlier decision to defer discussion of issues for which the European Commission had competence to negotiate, discussion of Article 29 of the Draft Convention would be deferred until the arrival of the delegation of the European Community, and that comments on Article 28 of the Draft Convention were invited.

The DELEGATION OF ANGOLA stated that it required clarification whether the holder of a subsequently-registered interest could force the holder of a registered interest with higher priority to exercise its remedies.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that in DCME Doc No. 34 it had proposed a revision of Article 28(3) of the Draft Convention, that a number of delegations had raised a question about the right of quiet possession of a lessee that had complied with all its obligations under the lease, that Article 28(3) of the Draft Convention was limited in its application to a buyer of an object which in a common law legal system would apply only to a person who took an outright ownership interest, and that the proposed revision of Article 28(3) would extend the application of that Article to a purchaser who purchased a limited interest. It stated that there were other potential difficulties with Article 28(3) of the Draft Convention which would require further consideration, that Article 28(3) of the Draft Convention dealt only with property rights but that in some jurisdictions a lessee might acquire a contractual right rather than an interest in real property, that a lessee might have no method to ensure that the lessor registered the lessee's interest, and that the circumstances in which a creditor was entitled to retain quiet possession vis-à-vis creditors might need to be defined.

The CHAIRMAN stated that the question of the protection of a lessee's right to quiet possession had been earlier referred to the Drafting Committee, and that the other issues raised by the United States of America should be considered in conjunction with discussion of the relevant articles.

The DELEGATION OF GERMANY stated that it supported the proposal of the United States of America to revise Article 28(3) of the Draft Convention and for that proposal to be referred to the Drafting Committee, and that it had comments on Article 28(6) of the Draft Convention relating to replaceable units but that the comments related specifically to aircraft and it would therefore provide those comments during the discussion of Article XIV of the Draft Protocol.

The DELEGATION OF LEBANON stated that in Article 28(2)(a) and (b) of the French text of the Draft Convention the phrase: “*la seconde garantie*” should be replaced with the phrase: “*l’autre garantie*” because it was intended to refer to any other guarantee and not necessarily only to the second guarantee. It stated that in Article 28(4) of the Draft Convention it would be necessary to clarify whether a competing interest referred only to a registered interest or could also refer to a non-registered interest. It stated its view that any holder of an interest that might affect priorities should be required to register that interest, and that any agreement affecting priorities between any two or more holders of interests should be required to be registered.

The CHAIRMAN stated that delegations with issues regarding translations should consult amongst themselves and with the Conference Secretariats and translation services.

The DELEGATION OF THE NETHERLANDS stated that it supported the proposal of the United States of America to revise Article 28(3) of the Draft Convention and supported that proposal being referred to the Drafting Committee to determine how any amendments could be incorporated into the existing text. It stated, in relation to the note in DCME Doc No. 34 which made reference to a proposal by the Aviation Working Group and the International Air Transport Association to insert into the Draft Convention a new Article 14*bis*, that it hoped that constructive deliberations would continue and that a suitable proposal could be made available to the Commission.

The DELEGATION OF JAMAICA stated that there were a number of important practical considerations relating to the situation where the holder of a registered interest had granted rights which might not themselves be registered, that the requirement of Article 7 of the Draft Convention that remedies be exercised in a commercially reasonable manner might not overcome these problems because the security agreement might not itself deal with rights of quiet enjoyment, that this was the case even though it would be manifestly unreasonable for a buyer who had consented to the rights of a lessee continuing to enjoy quiet enjoyment to rely upon its own registered interest to defeat those rights, that rights of a buyer should only be able to be exercised subject to the provisions of an existing lease, and that it was not clear whether the proposal of the United States of America would achieve this outcome.

The CHAIRMAN stated that the delegation of the United States of America had stated that its proposal did not address all the concerns that might be raised in relation to Article 28(3) of the Draft Convention.

The DELEGATION OF ARGENTINA stated that it agreed with the intervention of Jamaica, and that it required clarification whether Article 28(6) of the Draft Convention was intended to be a reference to the concept of “prospective international interest” referred to in Article 1(y) of the Draft Convention.

The DELEGATION OF JAPAN stated that it required clarification of the commentary on Article 28(4) of the Draft Convention that was contained in DCME-IP/2, and about how that Article would apply in cases where the owner of an asset held an international interest as lessor and there was a second international interest held by a chargee.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it supported the general direction of the proposal of the United States of America, that Article XIV of the Draft Protocol provided for the registration of the interests of buyers and its relationship with Article 28(3) of the Draft Convention needed to be considered, and that it would support the Drafting Committee giving consideration to extending Article 28(3) of the Draft Convention to cover the treatment of a lessee’s right to quiet enjoyment.

The DELEGATION OF THE UNITED KINGDOM stated that it supported the proposal of the United States of America, that the proposal might not address all the concerns that had been raised but would address many of them, that the proposal would also assist in jurisdictions where a lease did not

create an interest in real property because the position of the lessee was specifically addressed in that proposal, and that it would support the proposal being considered by the Drafting Committee. It stated, in relation to the comment of Lebanon that an assignee should not be affected by a variation unless it was registered in the International Registry, that this was what Article 28(4) of the Draft Convention was intended to provide, that the reference to “an assignee of a subordinate interest” was intended to refer to an assignee of an interest which was subordinated as a result of a variation of priorities by agreement, that the phrase: “unless at the time of the assignment a subordination had been registered relating to the agreement” was intended to address the issue raised by Lebanon, and that the Drafting Committee could consider the drafting if it was considered to be insufficiently clear. It stated that the issue raised by Jamaica, regarding the position of a sub-lessee if the head lessor had consented to the sub-lease but terminated the head lease, was an issue outside the scope of Article 28 of the Draft Convention and would be determined according to applicable law. It stated, in relation to the issue raised by Japan, that DCME-IP/2 was intended to reflect the intention of the Draft Convention that Article 28(3) of the Draft Convention would only affect priorities of interests of the same degree, so that it would not be open to a chargee of a sublease to gain priority over a chargee of a head lease even if the charge on the head lease was registered later in time because the sublease would be derived from the head lease.

The DELEGATION OF BAHRAIN stated that it required clarification regarding the operation of Article 28(4) of the Draft Convention in situations where an assignor did not register its interest, and that in such situations the position of the holder of other competing interests vis-à-vis the assignor was not clear but that, if an assignee would not be bound by an agreement to subordinate the interest, then the legal situation would be very complex.

The CHAIRMAN stated that the intention of Article 28(4) of the Draft Convention was to enable priority rankings to be adjusted as between parties but that any agreement as to subordination would not affect third parties.

The DELEGATION OF THE RAIL WORKING GROUP stated that it had some concerns with the United States of America’s proposal from the perspective of the rail industry, that the issue of whether a lessee should be entitled to enjoy quiet possession was commonly an issue in transactions and was generally conceded by lessors or required by local laws, that one way of dealing with the issue would be to ensure that the creditor consented in advance to the lease but that this would raise a question whether contractual consent would be binding on any assignee of the creditor, that there were also questions to be considered in relation to the position of a sublessee, and that it would be prepared to consult with other delegations to discuss these issues further.

The CHAIRMAN stated that the delegation of the Rail Working Group should consult with other delegations and with the Drafting Committee, and that it would also be possible for any concerns that related specifically to the rail industry to be dealt with in the protocol on rail rolling stock.

The DELEGATION OF CANADA stated that Article 28(3) of the Draft Convention did not deal clearly or adequately with the position of non-registered, non-consensual interests, that Article 28(3) of the Draft Convention should be amended by replacing the text of paragraph (a) with the following text: “subject to applicable non-registrable non-consensual rights and interests and an interest registered at the time of the acquisition of that interest”, and that it was reasonably certain that Article 28(3) of the Draft Convention was not intended to displace the interests of non-registrable, non-consensual interest holders and that its proposal would make this clear and unambiguous.

The CHAIRMAN stated that the proposal of Canada was also relevant to Article 39 of the Draft Convention and that it should be considered by the Drafting Committee in the context of both Article 28(3) and Article 39 of the Draft Convention. The Chairman stated, in relation to the request for clarification by Argentina and in the absence of other interventions, that Article 28(6) of the Draft Convention did not deal with prospective interests as defined by Article 1(y) of the Draft Convention.

The DELEGATION OF THE UNITED KINGDOM stated that the purpose of Article 28(6) of the Draft Convention was to ensure that where an object became installed on a larger object that would not mean that, by virtue of a doctrine of accession, the interests of the holder of an international interest in the larger object would displace the interest of the holder of an international interest in the installed object, but that the rules of priority would be determined by the applicable law and not by the Draft Convention.

The CHAIRMAN stated that Angola had not received the clarification that it had earlier sought, and invited Angola to reiterate its request for clarification.

The DELEGATION OF ANGOLA stated that it had sought clarification about the situation where two charges were secured against the same object and the debtor defaulted against the second chargee, and as to whether the second chargee could execute or detain the object of the security and limit the rights of the first chargee.

The DELEGATION OF THE DEMOCRATIC REPUBLIC OF CONGO stated that the issue raised by Angola would be answered by Article 28(1) of the Draft Convention and would depend upon the order of registration of the various interests of the chargees.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that a creditor's right to enforce remedies under Articles 7 and 8 of the Draft Convention would not be available only to chargees that had senior rights and that any chargee would be able to exercise rights, that if a junior chargee attempted to exercise remedies then a senior chargee would be able first to insist upon possession and the exercise of its rights, and that if this were not the case priority would not be meaningful. It stated that the United States of America had recently revised its law on secure transactions and that it had not been possible to include an exhaustive definition of priorities, and that it would be happy to undertake discussions with the delegation of Angola.

The DELEGATION OF THE UNITED KINGDOM stated that it agreed with the comments of the Democratic Republic of Congo and the United States of America, that any exercise by a second chargee of its remedies would take effect subject to the prior charge in favour of the senior creditor, and that Article 7(3) of the Draft Convention would require a chargee proposing to sell an asset first to give notice in writing to interested parties, including a prior chargee, so that a prior chargee would have an opportunity to consider whether to permit the sale to proceed or to exercise its own superior power of sale.

The CHAIRMAN stated that the delegation of Angola was satisfied with the clarification that had been provided. The Chairman stated that the discussion on Article 28 of the Draft Convention was concluded, that Article 28(3) of the Draft Convention would be referred to the Drafting Committee for consideration of the issue of extending its scope to include lessees and other purchasers of an interest, and of the issue of the relationship between buyers' interests and non-registrable, non-consensual interests, which would also need to be dealt with during the discussion of Article 39 of the Draft Convention. The Chairman stated that there would not be extensive discussions of Chapter IX of the Draft Convention for the reason set out in the footnote to Chapter IX, which was that there had been two opposing views on the approach that should be adopted and that it had been agreed at the Third Joint Session that three delegations would continue working on Chapter IX of the Draft Convention. The Chairman invited those delegations to advise the Commission of the current status of their consultations.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that Chapter IX of the Draft Convention had been considered at the Third Joint Session, and that since that time Professor Roy Goode had undertaken to revise Chapter IX and in particular to address the problem that the existing draft provided for associated rights to follow the assignment of an international interest whilst in most legal systems the security interest would follow the assignment of the right to payment. It stated that

in DCME Doc No. 28 it had proposed some minor changes to Professor Goode's redraft, and that it would consult with interested delegations with a view to presenting the proposals to the Commission during the following week.

The CHAIRMAN stated that comments on Chapter IX of the Draft Convention had been submitted by several delegations, including Japan, the Netherlands and the United States of America, and invited all interested delegations to consult with a view to producing a proposal.

The DELEGATION OF THE UNITED KINGDOM stated that it had been agreed at the Third Joint Session that the small informal group to work on a revision of Chapter IX would comprise France, Germany, the United States of America and Canada, and that Japan and other interested delegations would be welcome to join in the group's deliberations.

The DELEGATION OF EGYPT stated that it required clarification about the status of the discussion of Article 29 of the Draft Convention.

The CHAIRMAN stated that discussion of Article 29 of the Draft Convention had been deferred until the following week.

The DELEGATION OF GHANA stated that Article 32 of the Draft Convention could provide a model for addressing the situation where the debtor-creditor relationship was affected when the holder of a registered interest charged that interest subsequent to its registration, and that one solution might be to provide for the holder of the registered interest to be obliged to give full disclosure to the lessee and the chargee.

The CHAIRMAN stated that the comments of Ghana would be recorded by the Drafting Committee and that Ghana would be welcome to participate in the informal consultations on Article 32 of the Draft Convention. The Chairman stated that debate on the proposals arising from the informal consultations on Chapter IX would take place during the following week. The Chairman invited comments on Chapter X of the Draft Convention dealing with non-consensual rights or interests.

The DELEGATION OF SWEDEN stated that Sweden was a member of an Organisation called EUROCONTROL, that EUROCONTROL had identified a problem in relation to Articles 38 and 39 of the Draft Convention regarding the collection of air traffic fees, that it might be possible to solve those problems without amending the Draft Convention, and that, as the representative of EUROCONTROL would not arrive until the following week, it might be necessary to return to the discussion of Chapter X of the Draft Convention at a later stage.

The CHAIRMAN stated that the concerns of EUROCONTROL could be considered during discussion of the Draft Protocol and that, if necessary, discussion of Articles 38 and 39 of the Draft Convention could be revisited.

The DELEGATION OF MEXICO stated that it agreed with the position of Jamaica regarding Articles 38 and 39 of the Draft Convention.

The DELEGATION OF JAMAICA stated that the problem raised by Articles 38 and 39 of the Draft Convention was related to the definition of "non-consensual right or interest" in Article 1(s) of the Draft Convention which referred to rights or interests conferred by law, that it was unclear whether the reference to "law" included the applicable law or was limited to statutes, and that the use of the word "secure" in that definition might also create some uncertainty having regard to the nature of the Convention. It stated that it had been said that rights to payment in respect of airport dues or air navigation charges would have to be paid or else an aircraft would not be able to depart from an airport, but that it was not clear whether such rights to payment would fall within Article 38 or Article 39 of the Draft Convention. It stated that one option for addressing these uncertainties would be for the Draft Convention to state expressly and in very clear terms that nothing in the Draft Convention would affect such rights, that it was important that the application of the Draft Convention to such

rights and interests be very clear and unambiguous, that the reason why the Draft Convention should not affect such rights was that air navigation and airport charges were essential for the operation of aircraft and no-one would finance the purchase or lease of an aircraft if it was unable to operate it and to generate revenue.

The CHAIRMAN stated that the comments of Jamaica had raised substantive policy issues and invited other delegations to comment on the issues under discussion.

The DELEGATION OF THE UNITED KINGDOM stated that Articles 38 and 39 of the Draft Convention were designed to address two different types of non-consensual rights and interests, those which would arise in support of private interests such as a judgement debt which would be registered against an object and which would fall within Article 38 of the Draft Convention, and private law rights such as the rights of a repairer which may be secured by a lien and which would fall within Article 39 of the Draft Convention. It stated that there were rights of a public law nature such as rights to navigation fees or to secure payment of navigation fees and landing charges which could be secured by a public law right to detain the aircraft or to sell it in the event of non-payment, and that, if such rights were excepted from the Convention without a system for them to be specified, this would be unsatisfactory from the perspective of lenders because lenders would need to study the aviation law of different jurisdictions to determine whether they would receive priority in those jurisdictions. It stated that the purpose of the system of declarations established under Articles 38 and 39 of the Draft Convention was to introduce clarity for lenders and chargees so that they would know what kinds of interests would take priority over their registered interests in a particular jurisdiction. It stated that in DCME Doc No. 13 it had proposed amendments to deal with the problem that a declaration made by a Contracting State under Article 39(3) of the Draft Convention that a particular non-consensual right or interest would have priority over international interests would only apply in relation to interests registered in the future, and that it would be necessary to address the situation where an aircraft in respect of which an interest had been registered in another Contracting State prior to the making of the declaration entered the jurisdiction of the Contracting State that made the declaration. It stated that Article 39(3) of the Draft Convention would have the effect that a non-consensual right to detain an aircraft for non-payment of navigation fees would not take priority over an international interest that had been registered because another Contracting State had acceded to the Convention earlier. It stated that the purpose of its proposal was to ensure that there would be continuity in the system of non-consensual rights and interests so that there would be no distinction as to when an international interest came onto the International Registry, and that an aircraft that landed in any jurisdiction where a declaration had been made at the time of accession would be treated in the same way in relation to priorities of non-consensual rights and interests that had been declared, regardless of when the international interest over the aircraft had been registered. It stated that it would raise the question in the Drafting Committee whether the text within brackets in Article 39(1) of the Draft Convention should be replaced by a reference to rights or interests that had been the subject of a declaration by that Contracting State under Article 38 of the Draft Convention.

The DELEGATION OF ARGENTINA stated that it supported the comments of Mexico and Jamaica, that it was concerned that Articles 38 and 39 of the Draft Convention did not differentiate between different types of non-consensual rights and interests, that the only difference between the two Articles was whether a Contracting State had made a declaration, and that this would create a double standard in which non-consensual rights or interests were treated differently according to whether they had been registered.

The DELEGATION OF THE AVIATION WORKING GROUP stated that Chapter X of the Draft Convention dealt with a topic that was very important for the aviation industry, that it agreed with the United Kingdom that the basic idea of the two provisions was that the Draft Convention would provide at least information, and at most a priority rule, on this category of non-consensual interest, that this would provide maximum flexibility to governments and was a major step forward over the

Geneva *Convention on the International Recognition of Rights in Aircraft* which was very rigid, that the *quid pro quo* for that maximum flexibility was that everything would be within the system either because it would need to be registered under Article 38 of the Draft Convention or by virtue of a declaration, that a declaration would be able to be general or specific and that a Contracting State would be permitted to make a general declaration to cover all its interests, that it would have serious concerns with any proposal to remove a category of rights from the treaty although, if it were felt that the definition of non-consensual rights and interests was too narrow, it would be possible to discuss this and that this would be the most productive way of balancing the interests of governments with the interests of the aviation industry. It stated that Article 39 of the Draft Convention should be amended to include the phrase: “The priority is without filing or publication or registration under national law”, that this phrase had been removed from an earlier version of Article 39 of the Draft Convention, and that the purpose of Article 39 was to permit the retention of non-consensual rights under national law but not to increase the non-consensual rights under national law. It stated that the phrase in parenthesis in Article 39 of the Draft Convention should be examined by the Drafting Committee because different legal systems would treat different types of non-consensual rights differently, that some legal systems would require some form of registration to prioritise rights and others would not, that the Draft Convention should not attempt to harmonise laws of tax enforcement and that the easiest approach would be to delete the phrase in parenthesis and to leave it up to each Contracting State to say whether a type of rights fell within Article 38 and would need to be registered or fell within Article 39 and would not need to be registered. It stated that it supported the United Kingdom’s comment that Article 39 of the Draft Convention should be revised to provide for transitional rules.

The DELEGATION OF GREECE stated that, notwithstanding the explanation that had been provided by the United Kingdom, it required further clarification regarding why a judgement debt would create a non-consensual right that was classified as falling under Article 38 of the Draft Convention and why a public law right would be classified under Article 39 of the Draft Convention, that the examples that had been given by the United Kingdom had not helped to clarify the issue, and that in civil law systems there would remain the problem of rules of immediate application (“*règles d’application immédiate*”).

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported the proposal of the United Kingdom, that the proposal would need to be considered carefully by the Drafting Committee because of the concern that had been raised by the Aviation Working Group that interests that would otherwise fall within either Article 38 or Article 39 of the Draft Convention would not be removed from the scope of the Draft Convention, and that, if the correct balance was struck, this could avoid the negative reaction that some other conventions had experienced.

The DELEGATION OF FRANCE stated that Articles 38 and 39 of the Draft Convention were essential to the Draft Convention, that it understood that the types of non-consensual rights and interests to be covered by Article 39 of the Draft Convention would include air navigation charges, landing charges and airport charges, that this understanding was confirmed by DCME-IP/4 which referred to a lien on an aircraft under airport charges as being covered by Article 39 of the Draft Convention, and that it agreed with Jamaica that the drafting could be reviewed to make this clearer. It stated that it had some concerns about Article 39(3) of the Draft Convention, and that it was not clear whether a declaration made under Article 39 would have the effect of giving a non-consensual right or interest covered by the declaration priority over an international interest that had been registered prior to the making of the declaration.

The DELEGATION OF THE UNITED KINGDOM stated that it understood that Articles 38 and 39 of the Draft Convention would provide Contracting States with freedom to make declarations as to which non-consensual rights and interests they would wish to place in each category, that non-consensual rights covered by Article 38 would not enjoy any special priority and the only priority

they would have would be through registration and priority over subsequent interests, and that its earlier reference to registration of a judgement debt against an object was intended to be an example of the type of interest that the United Kingdom thought might fit within Article 38 of the Draft Convention. It stated that the type of non-consensual rights that it envisaged would be covered by declarations under Article 39 of the Draft Convention would be those rights which under domestic legal systems would ordinarily override the rights of ordinary creditors for reasons of public policy, that in the case of the United Kingdom those rights could include the right to detain an aircraft to secure payment of air navigation fees or payment of aircraft charges, and that it would be a matter for each Contracting State to determine whether a particular non-consensual right would require registration in order to take effect without priority. It stated that it shared the concern that had been raised by France and which had led the United Kingdom to prepare DCME Doc No. 13, that the concern could be addressed by either an amendment to Article 39(3) of the Draft Convention or by an amendment to the transitional provisions, and that the matter should be referred to the Drafting Committee.

The CHAIRMAN stated that, as there had been support for the United Kingdom proposal, it would be referred to the Drafting Committee.

The DELEGATION OF EGYPT stated that it supported the comments of the United Kingdom concerning non-consensual rights and interests, and that it supported the comments of Jamaica and would appreciate the Jamaican delegation providing a written proposal.

The DELEGATION OF AUSTRALIA stated that it had considered DCME Doc No. 13 and agreed that the concern raised by the United Kingdom did need to be addressed, and that the drafting would require close examination in the Drafting Committee.

The DELEGATION OF SUDAN stated that Article 39(3) of the Draft Convention should be relocated to become the first provision of Chapter X of the Draft Convention and should be redrafted as follows: “An international interest has priority over an unregistered non-consensual right or interest”.

The CHAIRMAN stated that the proposal of Sudan related to the drafting of the Article and did not involve a substantive policy change, and requested Sudan to provide its proposals in writing to the Drafting Committee.

The DELEGATION OF CANADA stated that it supported the proposal of the United Kingdom, and that it would be interested in seeing a written formulation of Jamaica’s proposal. It stated that it was concerned that pure rights of retention might not be included within the definition of “non-consensual rights and interests”, and that the definition should be closely examined. It stated that the remedial provisions of the Draft Convention should be amended in such a way as to make it absolutely clear that no remedy could be exercised by a contractual creditor that was incompatible with the seizure and detention rules that would apply to Canadian airports, air navigation services, customs authorities and other non-consensual, non-registrable rights.

The DELEGATION OF FRANCE stated that it supported the United Kingdom’s proposal contained in DCME Doc No. 13 and that the proposal would address the concern that it had raised, that it shared the interpretation of Articles 38 and 39 of the Draft Convention that had been stated by Germany, that it would be receptive to a different formulation of Article 39 that would cover all rules of public law, and that it shared the concern of Canada regarding the priority of airport taxes, landing charges and navigation charges.

The CHAIRMAN stated that some clear opinions had emerged on Articles 38 and 39 of the Draft Convention but that the Drafting Committee would also need to examine the interrelationship between the two Articles and the definition of “non-consensual right or interest”. The Chairman stated that the discussions had made it clear that the national authorities and the national legislators

would have a wide discretion to determine into which category any specific non-consensual right or interest would fall. The Chairman stated that Jamaica had raised the issue that the definition of “non-consensual right or interest” was too narrow. The Chairman stated that it had been proposed that all non-consensual charges, navigation charges and landing charges should be excluded from the scope of the Draft Convention and given priority without any need to be registered, although it had been pointed out that this could jeopardise a creditor’s position because creditors would not be able to discover from a search what rights were already burdening a particular object. The Chairman stated that there had been considerable support for both sides of the argument and that a compromise would need to be found, and that any compromise solution would need to be examined in the Drafting Committee by way of attempting to widen the scope of the definition of “non-consensual right or interest”. The Chairman stated that the issue raised by the United Kingdom had gained unanimous support in principle, that it would have to be incorporated into the Draft Convention and that it would be for the Drafting Committee to consider where in the Draft Convention the provisions dealing with transitional issues should be placed. The Chairman stated that drafting suggestions in relation to Article 39 of the Draft Convention had been made by the United Kingdom and by the Aviation Working Group, and that these suggestions had been supported and would be included in the text subject to their consideration by the Drafting Committee. The Chairman stated that the next session of the Commission would take place on Monday, 5 November 2001, at 9:30.

The meeting rose at 12:30

COMMISSION OF THE WHOLE – SEVENTH MEETING

Monday, 5 November 2001, at 9:30

President: Professor Medard Rutoijo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.)

The CHAIRMAN stated that the Commission would commence consideration of Article 40 of the Draft Convention, that it would thereafter consider Chapter XIII of the Draft Convention, and that there would thereafter be a general discussion of the Draft Convention’s final provisions.

The DELEGATION OF FRANCE stated that it required clarification about the economic and legal reasons for including sales of aircraft within the scope of the Draft Protocol, and about the extent to which a simple sale would give rise to an international interest.

The DELEGATION OF THE AVIATION WORKING GROUP stated that the main reason for including sales of aircraft within the scope of the Draft Protocol was that the legal problems relating to jurisdiction when an object moved from one jurisdiction to another were equally applicable in the case of sales, that in the context of aircraft transactions a high percentage of jurisdictions required that a conveyance be filed so it would not generally be seen as a new or unknown type of process, that Article 28(3) of the Draft Convention stated that a purchaser would take their interest free and clear of unregistered interests, and that, if sales were not included within the scope of the Draft Convention, the position of a purchaser with respect to a possible prior sale would never be clear. It stated that during the course of the development of the Draft Convention and Draft Protocol it was regarded as technically unnecessary to include sales within the definition of international interest, but that certain elements of the Draft Protocol would apply equally to sales and that the sales in those cases would be treated as if they were international interests.

The CHAIRMAN stated that the discussion of Article 40 was closed and that there had been no amendments or references to the Drafting Committee. The Chairman stated that the Commission would commence consideration of Chapter XIII of the Draft Convention dealing with the relationship with other conventions, that in the Draft Protocol there were two additional conventions to be considered, namely the 1933 Rome *Convention for the Unification of Certain Rules Relating to Precautionary Attachment of Aircraft* and the 1948 Geneva *Convention on the International Recognition of Rights in Aircraft* as well as the 1988 Ottawa *UNIDROIT Convention on International Financial Leasing*, that Chapter XIII of the Draft Convention and Chapter V of the Draft Protocol would be discussed together, that the square brackets in Article 46 of the Draft Convention related to the fact that at the time that Article was drafted it had not been clear what the title of the UNCITRAL Convention would be, and that that convention had now been adopted with the title of the *UNCITRAL Convention on Assignment in Receivables Financing*.

The DELEGATION OF AUSTRALIA stated that it required clarification about the process for discussion of Chapter XII of the Draft Convention.

The CHAIRMAN stated that the Commission would discuss Chapter XIII of the Draft Convention and Chapter V of the Draft Protocol, that it would then discuss Chapter XIV of the Draft Convention and the chapter in the Draft Protocol dealing with final provisions, and that it would then be in the position to discuss Article 29 of the Draft Convention dealing with the effects of insolvency and Chapter XII of the Draft Convention dealing with jurisdiction.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it had understood that language to be drafted by the Drafting Group would be added to the end of Article 46 of the Draft Convention which would have the effect of confining the effect of Article 46 of the Draft Convention to the three categories of object that were referred to in the initial draft of Article 2(3) of the Draft Convention, and that this would be consistent with the understanding with UNCITRAL.

The CHAIRMAN noted that the United States of America's proposal would have the effect of narrowing the exception in Article 46 of the Draft Convention and would also be likely to be less offending towards the UNCITRAL Convention.

The DELEGATION OF LEBANON stated that it required clarification regarding the relationship between the Draft Convention and Draft Protocol and the 1933 Rome Convention and the 1948 Geneva Convention.

The CHAIRMAN stated that the text of the Draft Convention clarified which convention would take precedence, and invited the Secretary General (ICAO) to provide further clarification.

The SECRETARY GENERAL (ICAO) stated that the initial draft of the Draft Convention had provided for the Draft Convention to supersede the 1948 Geneva Convention as regards aircraft and aircraft objects and as regards parties to both conventions, that at the 31st Legal Committee there had been a proposal to amend that initial draft to allow parties to the 1948 Geneva Convention to continue to apply the provisions of that convention to the extent that they were not affected by the application of the Draft Convention and Draft Protocol and that this had led to the addition of the last sentence of Article XXII of the Draft Protocol, that this addition related particularly to nationally-registered rights of securities, that, to the extent that nationally-registered rights of security were not affected, the 1948 Geneva Convention would continue to apply as it had applied in the past, that internationally-registered interests under the Draft Convention and Draft Protocol would be governed by those instruments, and that the question as to extent to which nationally-registered interests might be affected by the Draft Convention and Draft Protocol was addressed in part by the provision on transitional provisions found at the end of the Draft Protocol.

The DELEGATION OF THE UNITED KINGDOM stated that the correct title of the UNCITRAL Convention was the *United Nations Convention on the Assignment of Receivables in International*

Trade, that Article 46 of the Draft Convention was prepared on the assumption that the UNCITRAL Convention would be concluded first but that this was clearly not going to happen, and that this raised the question of whether Article 46 of the Draft Convention was necessary.

The DELEGATION OF JAMAICA stated that the provisions in Articles 45 and 46 of the Draft Convention raised a number of questions, that, in relation to the Draft Convention superseding another convention, there was a question as to how this would apply when not all Contracting States were parties to the other convention and, in relation to parties to the other convention that were not parties to the Draft Convention, that the only way for a party to the Draft Convention to avoid a difficulty would be for that party to denounce the other convention, that it agreed with the United Kingdom that there was a question whether Article 46 of the Draft Convention was necessary because it would be inappropriate for the Draft Convention to include a reference to a convention that was not in force, that the situation might arise that when the other convention entered into force it would be inconsistent with the Draft Convention and this would mean that a Contracting State would not be able to honour its obligations under the *Vienna Convention on the Law of Treaties*, and that the application of these Articles should be clarified.

The DELEGATION OF AUSTRALIA stated that it would be necessary to include provisions dealing with the relationship between the Draft Convention and Draft Protocol and other conventions, that it agreed with the United Kingdom that there was a question whether Article 46 of the Draft Convention was necessary, that, in relation to the comments made by Jamaica, it was a general principle of international law that nothing in a convention could affect the legal rights and obligations of a State that was not a party to the convention, that whatever was said in the Draft Convention and Draft Protocol about the relationship with other conventions would have no bearing upon a State that was not a Contracting State to the Draft Convention, and that it would not be necessary to amend the Draft Convention to address its effect upon non-Contracting States.

The DELEGATION OF JAMAICA stated that the practice in relation to recent conventions had been to include an express provision in the final clauses to make it very clear that the convention would only affect rights as between the parties to the convention.

The CHAIRMAN stated that Australia would have no objection to this issue being clarified in the text of the Draft Convention, and that the issue would be referred to the Final Clauses Committee for clarification.

The DELEGATION OF CANADA stated that it supported the deletion of Article 46 of the Draft Convention, and that the question of the relationship with the UNCITRAL convention could be dealt with by UNCITRAL at the time that its convention was adopted.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it agreed that the Convention should not affect the legal position of non-Contracting States but that it did not agree that clarifying language was necessary, that the inclusion of such clarifying language was not a common treaty practice, that if such language were used it would be necessary to add language on other elements of accepted practice under the *Vienna Convention on the Law of Treaties*, and that it agreed with the analysis submitted by Australia. It stated that it would not agree with the deletion of Article 46 of the Draft Convention, that there had been a close parallel between the negotiations of the Draft Convention and the UNCITRAL convention and eliminating a carefully-drafted demarcation between the two conventions would not be a positive development, that the Sixth Committee of the United Nations had in the last week approved transmitting the UNCITRAL convention to the General Assembly without any change to the draft, that as a practical matter there was virtually no likelihood that the UNCITRAL convention would not receive the endorsement of the General Assembly, that it might be possible to deal with this issue by adding an annex to the Draft Convention which included the substance of Article 46 of the Draft Convention and which would take effect upon notification by the United Nations that the UNCITRAL convention had entered into force, and that it would be

important to remain conscious of the very good working relations that had been developed with UNCITRAL and not to remove the substance of Article 46 from the Draft Convention.

The CHAIRMAN stated that it would be desirable to hear the views of other delegations as to whether Article 46 of the Draft Convention should be deleted.

The DELEGATION OF CUBA stated that Article 46 of the Draft Convention should be deleted, and that it supported the view of Canada that the solution would be for the UNCITRAL convention, at the time it was adopted, to make reference to the Draft Convention.

The DELEGATION OF EGYPT stated that it agreed with the view of the United Kingdom that, as the UNCITRAL convention had not yet entered into force, it should not be mentioned in the Draft Convention, that in order to meet the concerns that had been expressed by the United Kingdom and the United States of America and Jamaica it would be possible to delete Articles 45 and 46 of the Draft Convention and to replace them with a general provision referring to the specific provisions in the *Vienna Convention on the Law of Treaties*, and that this would be a simpler way of dealing with the issue.

The DELEGATION OF KENYA stated that the United States of America had provided useful information on the progress of the UNCITRAL convention but that that convention was still in draft form, that the Draft Convention should not relate to a convention that was still in draft form, that it supported the view of Canada that Article 46 of the Draft Convention should be deleted, and that Egypt had made a useful proposal to resolve the problem by deleting Articles 45 and 46 of the Draft Convention and replacing them with a general provision referring to the *Vienna Convention on the Law of Treaties*.

The DELEGATION OF SAUDI ARABIA stated that the difference in views seemed to relate to the lack of clarity in the relationship between the Articles, that it supported the position of Lebanon so that delegations could have more information about the position of the relationship between conventions, and that it supported the views of Canada and Cuba and the solution proposed by Egypt.

The CHAIRMAN stated that the Secretary General (ICAO) had provided information on the relationship between conventions, and that further information could be provided during informal consultations.

The DELEGATION OF SINGAPORE stated that it supported the proposal of the United States of America in relation to Article 46 of the Draft Convention.

The DELEGATION OF SWEDEN stated that it supported the comments of Singapore, that the UNCITRAL convention was in the very final stages of its preparation and it would not be credible for a new provision to be inserted in that convention, that the solution might be to include a general provision, that it would not support a general provision that made reference to the *Vienna Convention on the Law of Treaties* or to future treaties but that it would be possible to include a provision that said that the Draft Convention would supersede any international agreements relating to receivables in international trade, and that the discussion at the Diplomatic Conference would make it clear which international agreements were being referred to.

The CHAIRMAN stated that Sweden had proposed an additional solution to deal with the problem.

The DELEGATION OF JORDAN stated that, in DCME Doc No. 18, it had noted the need for clarification about the relationship between the Draft Convention and other conventions, that it had not previously received those clarifications, that it supported the view of Canada that Article 46 of the Draft Convention should be deleted because the UNCITRAL convention had not yet come into force, and that, if a compromise such as that suggested by Egypt could not be found, the Draft Convention should include text to clarify the relationship between it and other conventions in accordance with international practice.

The DELEGATION OF NIGERIA stated that it supported the views of Egypt.

The DELEGATION OF THE UNITED KINGDOM stated that Article 38(1) of the UNCITRAL convention stated that: “This Convention does not prevail over any international agreement that has already been or may be entered into and that specifically governs a transaction otherwise governed by this Convention”, that this provision appeared to deal with the problem, and that, on the assumption that the Draft Convention fell within Article 38(1) of the UNCITRAL convention, there would be no problem and Article 46 of the Draft Convention could be deleted.

The DELEGATION OF THE ARAB LIBYAN JAMAHIRIYA stated that Article 40 of the Draft Convention should apply the Draft Convention to sales and prospective sales, that it required clarification about the Article referred to by the United Kingdom, and that, in relation to Article 46 of the Draft Convention, it supported the view of Egypt that Articles 45 and 46 of the Draft Convention should be replaced with a general provision.

The CHAIRMAN stated that the United Kingdom had referred to Article 38(1) of the UNCITRAL convention and had indicated that that Article would solve the problem under discussion by giving precedence to the Draft Convention even if Article 46 of the Draft Convention were deleted, that it would be necessary to examine in greater detail the wording of Article 38(1) of the UNCITRAL convention, that copies of the UNCITRAL convention would be made available later in the day, and that a decision would need to be deferred until that point.

The DELEGATION OF THE AVIATION WORKING GROUP stated that a number of mechanisms for dealing with the problem had been proposed, that the most important consideration was that, throughout the development of the Draft Convention, the position that had been reached was that the Draft Convention would prevail over the UNCITRAL convention in respect of three categories of equipment, and that this outcome would need to be maintained with precision because any lack of clarity would require that an interest be perfected not just in the International Registry but also under the rules established in the UNCITRAL convention.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it agreed with the comments of the Aviation Working Group, that there had been an arrangement agreed to and discussed at length during coordination efforts with UNCITRAL and a failure to sustain that would create uncertainty, a need for double-filing of interests and the opposite effect that the Draft Convention was intended to create. It stated that it did not agree that a general provision would be an appropriate solution because it was necessary that the conventions that were the subject of such a provision be limited and specified, that a general provision would require potential creditors to undertake extensive and costly legal analysis before extending any credit and this would undermine the purpose of the Draft Convention, and that the Draft Convention should avoid general references to other conventions and should focus on those conventions that clearly intersected with the Draft Convention.

The DELEGATION OF CANADA stated that if Article 46 of the Draft Convention were retained it would need to be modified, that Article 46 provided that the Draft Convention would supersede the UNCITRAL convention as it related to the assignment of receivables that were associated rights, that the priority provisions of the Draft Convention would apply only to associated rights that were “purchase money” obligations, and that if an associated right was not related to the financing of an object the priority provisions would not apply and, according to Article 46 of the Draft Convention, nor would the UNCITRAL convention.

The CHAIRMAN stated that the issue raised by Canada would be examined by the Drafting Committee, that the clear view of the Commission was that the drafting of Article 46 of the Draft Convention was not appropriate, that one conclusion was that Article 46 should be deleted from the Draft Convention, that there had been no opposition to the idea that a clear demarcation should be made between the Draft Convention and the UNCITRAL convention, and that the technical means for

making that demarcation should be dealt with in the Drafting Committee. The Chairman stated that the proposal of Egypt to replace Articles 45 and 46 of the Draft Convention with a general reference to the *Vienna Convention on the Law of Treaties* had received some considerable support but that, as it had been proposed to retain Article 45 of the Draft Convention and as Articles XXII, XXIII and XXIV of the Draft Protocol dealt with the relationship between the Draft Convention and other specified conventions, there would be no reason to include a more general provision dealing with other conventions. The Chairman stated that the Drafting Committee would consider the question of the relationship between the Draft Convention and the UNCITRAL convention, and that all delegations would be provided with the text of Article 38 of the UNCITRAL convention.

The DELEGATION OF EGYPT stated that the deletion of Article 46 of the Draft Convention would diminish the utility of the whole of Chapter XIII of the Draft Convention, that it would be possible to relocate Article 45 of the Draft Convention to the Draft Protocol but that it would be preferable to include a reference to Article 30 of the *Vienna Convention on the Law of Treaties* which stated in detail the interrelationship between successive treaties that dealt with the same subject matter and which dealt with many of the questions that had been raised by other delegations, and that Chapter XIII of the Draft Convention should include an Article that required the interrelationship between the Draft Convention and other conventions to be solved according to Article 30 of the Vienna Convention.

The CHAIRMAN stated that Egypt had proposed a way of technically dealing with the issue, that it might not be necessary to include a reference to the *Vienna Convention on the Law of Treaties* as that convention would apply in its own right in any case, that the normal practice was that a convention would deal with its relationship with other conventions only in relation to conventions with the same particular subject matter, that it would be extraordinary and unprecedented for the Draft Convention to include a general reference to the Vienna Convention, and that the Drafting Committee would nevertheless have regard to the Egyptian proposal. The Chairman stated that the Commission would commence consideration of the Draft Convention's final provisions, that a Final Clauses Committee had been established to consider drafting the final provisions, that the purpose of the present discussion would be to obtain an idea of delegations' views, that if consensus could not be reached the issues would be considered in greater detail by the Final Clauses Committee, that there were final provisions in Chapter XIV of the Draft Convention and in Chapter VI of the Draft Protocol, and that in the first instance the discussion would focus on the transitional provisions in Article 55 of the Draft Convention, the question of other protocols to be adopted which was dealt with in Articles 49 and 50 of the Draft Convention, and the number of ratifications that should be necessary for the entry into force of the Draft Convention and the Draft Protocol.

The DELEGATION OF EGYPT stated that it required clarification as to whether the proposal it had made in relation to Chapter XIII was to be referred to the Final Clauses Committee for consideration.

The CHAIRMAN stated that the Egyptian proposal would be referred to the Drafting Committee because it raised questions of drafting, and that the Egyptian delegation would be welcome to provide any additional explanation or elaboration of its proposal to the Drafting Committee.

The DELEGATION OF JAPAN stated that it supported Alternative A in Article 55 of the Draft Convention at least until the cost of registration became clear, and that although Alternative B had the advantage of creating a clear priority system which included pre-existing rights and interests, it would create a risk for holders of pre-existing rights and interests who failed to register their interests.

The CHAIRMAN noted that the Japanese view was also presented in DCME Doc No. 30.

The DELEGATION OF JORDAN stated that it required clarification about the number of Contracting States that Article 47 of the Draft Convention would specify as the number required for the Draft Convention to enter into force.

The CHAIRMAN stated that the issue raised by Jordan would be discussed at a later stage.

The DELEGATION OF EGYPT stated that Article 55 should be clarified by including the phrase: “This Convention does not apply to pre-existing rights or interests established before its coming into force or its entry into force”.

The CHAIRMAN stated that Egypt’s proposal would be referred to the Final Clauses Committee, and that it was implicit in Egypt’s proposal that Egypt supported Alternative A in Article 55 of the Draft Convention.

The DELEGATION OF THE UNITED KINGDOM stated that it supported Alternative A in Article 55 of the Draft Convention, that Alternative B would have the advantage of ensuring that the International Registry contained a complete record of pre-existing rights and interests but that it would be too burdensome to require the aviation industry to register pre-existing rights and interests, and that its proposal to amend Article 55 as contained in DCME Doc No. 13 had already been debated and had been referred to the Drafting Committee.

The DELEGATION OF SWITZERLAND stated that it supported Alternative A in Article 55 of the Draft Convention.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported Alternative A in Article 55 of the Draft Convention primarily on the grounds of costs, that in DCME Doc No. 38 it had proposed a revised Alternative A for the reasons set out in that document, and that there was a possible problem with the language it had proposed in DCME Doc No. 38 which it would raise with the Drafting Committee.

The CHAIRMAN stated that it would be preferable for drafting issues related to the final provisions to be dealt with by the Final Clauses Committee in the first instance.

The DELEGATION OF SWEDEN stated that it supported Alternative A in Article 55 of the Draft Convention, and that it supported the clarification proposed by Egypt that the word “pre-existing” would relate to the time that the Draft Convention entered into force and not to the time of its adoption.

The DELEGATION OF AUSTRALIA stated that it supported Alternative A in Article 55 of the Draft Convention, that the priority of pre-existing rights or interests should be measured not from the date that the Draft Convention entered into force but from the date that the Draft Convention entered into force for the particular Contracting State in respect of which the interest arose, that it was possible that this result would be achieved through the definition of “pre-existing right or interest” in Article 1(v) of the Draft Convention but that it would be useful for the issue to be examined by the Drafting Committee.

The CHAIRMAN stated that there had been unanimous support for Alternative A in Article 55 of the Draft Convention, and invited any delegation that supported Alternative B in Article 55 of the Draft Convention to indicate that support.

The DELEGATION OF ARGENTINA stated that it supported Alternative A in Article 55 of the Draft Convention, and that it required clarification about the transitional period in Alternative A.

The CHAIRMAN stated that it was clear that some clarifying amendments would need to be made to Alternative A in Article 55 of the Draft Convention, that there had been no further requests for the floor so the support for Alternative A was unanimous, and that the Final Clauses Committee would consider Alternative A in light of the various proposals that had been presented during the discussion.

The DELEGATION OF SOUTH AFRICA stated that it was speaking on behalf of the African States, and that in DCME Doc No. 25 the African States stated their support for Alternative B in Article 55

of the Draft Convention for the reason that it would be to the advantage of debtors and that the costs of registration would be nominal.

The DELEGATION OF THE UNITED KINGDOM stated that it required clarification about the earlier debate on non-consensual rights and interests, that it had proposed language for Article 55 of the Draft Convention but that it was possible that the issue could be dealt with in Article 39 of the Draft Convention which had been referred to the Drafting Committee, and that, as Article 55 of the Draft Convention had been referred to the Final Clauses Committee, it was not clear how the possible interaction between those two Articles would be dealt with.

The CHAIRMAN stated that there would need to be some coordination between the Drafting Committee and the Final Clauses Committee, that it would be preferable for the Drafting Committee to deal with Article 39 of the Draft Convention and for the Final Clauses Committee to deal with Article 55 of the Draft Convention, and that the two committees should find an appropriate way to coordinate their consultations.

The DELEGATION OF CANADA stated that it did not want to block consensus on Alternative A in Article 55 of the Draft Convention but that it noted the position of a large number of African States in favour of Alternative B in Article 55 of the Draft Convention, that the experience in Canada had been that similar registries were automated and very streamlined and filing a notice was not complicated, and that earlier discussions in the Legal Committee had indicated that the filing fee for pre-existing transactions should be considerably reduced so that filing of pre-existing transactions would not create a financial burden. It stated that the Legal Committee had endorsed a transitional period of ten years for Alternative B, that a ten-year period would cover the usual turnover in aircraft transactions, and that this would mean that after the ten-year period all interests would be recorded in the International Registry.

The CHAIRMAN stated that Canada had been constructive in indicating that it would support the consensus that had emerged, that prior to his statement that there had been unanimous support for Alternative A in Article 55 of the Draft Convention, that there had been 25 delegations waiting to make interventions, and that since most of those delegations had since withdrawn their requests to make interventions it would be assumed that they supported Alternative A in Article 55 of the Draft Convention.

The DELEGATION OF GHANA stated that it supported the position of the African States, that the International Registry should be as comprehensive as possible, that if Alternative A in Article 55 of the Draft Convention were accepted there would be a large number of international interests that would not appear in the International Registry, that this would make the International Registry less useful, and that this was why the African States supported Alternative B in Article 55 of the Draft Convention.

The DELEGATION OF GERMANY stated that it strongly supported Alternative A in Article 55 of the Draft Convention, that Alternative A provided the easiest way to ensure complete protection of national interests that were registered before the Draft Convention came into force, that Alternative B in Article 55 of the Draft Convention would be too complicated and expensive and would create the risk of a creditor losing its nationally-registered interest, and that it supported the clarification that had been proposed by Egypt with the modification proposed by Australia.

The DELEGATION OF PAKISTAN stated that it supported Alternative B in Article 55 of the Draft Convention because Alternative A in Article 55 of the Draft Convention was too simple and had no controls, that Alternative B provided sufficient time for interests to be registered, that the scope of the Draft Convention should not be unduly limited if that could be avoided, and that if it needed to be limited in relation to aircraft this should be achieved through a provision in the Draft Protocol.

The CHAIRMAN stated that there had been clear support for Alternative B in Article 55 of the Draft Convention from the African States and Pakistan and that Canada was considering whether to support Alternative B.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that placing Alternative B in the Draft Protocol would not overcome all its concerns with that provision, that it agreed with Germany that Alternative B would be too complicated, that the United States of America's proposal regarding Article 55 of the Draft Convention would need to be radically expanded if it were to cover pre-existing rights and interests, that its concerns about costs related not to filing fees but to the cost of lawyers examining thousands of transactions, that in respect of an aircraft registry Alternative A in Article 55 of the Draft Convention, as modified and clarified, was the best solution, and that it would maintain its concerns regarding Alternative B even if Alternative B were relocated to the Draft Protocol.

The DELEGATION OF THE UNITED KINGDOM stated that it maintained its support for Alternative A in Article 55 of the Draft Convention, that there was a question whether Alternative B in Article 55 of the Draft Convention could operate successfully as there was uncertainty as to the meaning of the phrase: "in the Contracting State under the law of which it was created or arose", that, if a contract was subject to English law but the debtor was in a different country and the State of registry was in a third country, it was not clear on what basis the relevant State would be identified, and that it would be necessary for the Final Clauses Committee to examine this issue very carefully to ensure there was no ambiguity, because it would be very important that the lender was absolutely certain whether the ten-year period applied to it or whether a different ten-year period applied by reason of another State becoming a Contracting State.

The DELEGATION OF THE AVIATION WORKING GROUP stated that its views represented the views of the Aviation Working Group, the International Air Transport Association, airlines, debtors and creditors, that it had consulted widely and strongly supported Alternative A in Article 55 of the Draft Convention, that the major reason for this was that there would be large legal fees associated with reviewing past transactions under Alternative B in Article 55 of the Draft Convention and simplicity and reduction of fees would be very important in attracting ratifications, and that under Alternative B it was possible that people might miss the deadline and be deprived of their vested interests.

The CHAIRMAN stated that it would be useful to obtain clarification as to which party to a financing transaction would normally bear the legal costs of reviewing past transactions.

The DELEGATION OF THE AVIATION WORKING GROUP stated that in 95-100% of aircraft finance documents the debtor would pay all legal expenses of that type.

The DELEGATION OF CANADA stated that the difficulty in interpretation that the United Kingdom had identified in relation to Alternative B in Article 55 of the Draft Convention would also arise in relation to Alternative A in Article 55 of the Draft Convention because the definition of "pre-existing right or interest" referred to a right or interest created or arising under the law of a Contracting State, that, if Canada were a Contracting State and a question arose as to the enforceability or effectiveness in Canada of a pre-existing right that had been created under English law, it would not be within the definition of "pre-existing right or interest" in the Draft Convention, that the conclusion was that Alternative A purported to say that a pre-existing right or interest was not subject to the Convention but that, if Canada were a Contracting State and the right had been created under English law, the right would not be a pre-existing right or interest in Canada, and that the Final Clauses Committee should examine this issue and clarify whether the text was intended to exclude pre-existing rights or interests.

The DELEGATION OF THE NETHERLANDS stated that it had expressed a preference in DCME Doc No. 23 for Alternative B in Article 55 of the Draft Convention but that, since preparing

that document, it had undertaken consultations with its industry and now preferred Alternative A in Article 55 of the Draft Convention.

The DELEGATION OF CUBA stated that it had earlier had a preference for Alternative B in Article 55 of the Draft Convention, and that, based on the arguments that had been presented and in particular the arguments that had been presented on the basis of representations made by the International Air Transport Association, it now preferred Alternative A in Article 55 of the Draft Convention.

The CHAIRMAN stated that based on the discussion there was no consensus, that the issue would be referred to the Final Clauses Committee on the basis that there had been support for Alternative B in Article 55 of the Draft Convention from the African States, Pakistan and provisional support from Canada and that other delegations had supported Alternative A in Article 55 of the Draft Convention, that there seemed to be a clear majority of delegations in favour of Alternative A and a minority in favour of Alternative B, that those delegations that supported Alternative B should consult with other delegations to explore whether there would be a possibility to arrive at a compromise in the Final Clauses Committee, and that it would be preferable not to have to debate the issue again in the Commission.

The DELEGATION OF PAKISTAN stated that it considered that a minority of delegations had supported Alternative A in Article 55 of the Draft Convention because those delegations that had expressed support for Alternative A had advanced no reason except legal and compliance expenses, that legal and financial expenses were not a material fact that supported a particular alternative in a convention of the magnitude of the Draft Convention, that the scope of Alternative B was far-reaching, that the rationale for the Draft Convention was that there were problems with the existing situation and it was not then clear why the benefit of the Draft Convention should be denied to existing rights and interests as proposed under Alternative A, and that Alternative B provided the opportunity for all those who believed there were problems with the existing situation to address this by registering their interests.

The DELEGATION OF NIGERIA stated that it agreed with the comments of Pakistan, that South Africa had spoken on behalf of the African States so individual African States had not made interventions in support of Alternative B in Article 55 of the Draft Convention, and that it was not comfortable with the description of Alternative B as the minority position.

The CHAIRMAN stated that the main issue at hand was to understand the positions so that informal consultations could begin.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that there were several reasons why many delegations had supported Alternative A in Article 55 of the Draft Convention, that the airline industry had firmly supported Alternative A and it was clear that if Alternative B in Article 55 of the Draft Convention were selected this would have the effect of restricting ratifications, that the large costs of implementation would be borne by the debtor airlines, that if Alternative B were incorporated in the Draft Convention this would add considerable complexity to a number of other provisions in the Draft Convention, and that its support for Alternative A related to the need to reduce the costs of financing credit for debtor airlines and debtor countries.

The DELEGATION OF CANADA stated that not all airlines objected to Alternative B in Article 55 of the Draft Convention, that the airlines of Canada were clearly in favour of Alternative B and did not consider that it would raise major problems, and that it was possible that the airlines in the United States of America faced a different situation and it would be useful to discuss this in consultations.

The CHAIRMAN stated that the discussion on Article 55 of the Draft Convention was closed.

The meeting rose at 12:30

COMMISSION OF THE WHOLE – EIGHTH MEETING

Monday, 5 November 2001, at 14:00

President: Professor Medard Rutoijo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.)

The CHAIRMAN stated that the Commission would next discuss Article 49 of the Draft Convention, that the procedure proposed in that Article was extraordinary, that the Article was in square brackets and there was still an open question as to whether the Article would be included in the Draft Convention or whether the ordinary rules of international treaty law would also apply as regards protocols concerning other categories of object, and that it would be useful for the Commission to receive some background information regarding the Article.

The DELEGATION OF THE RAIL WORKING GROUP stated that the comments that it had submitted in DCME Doc No. 37 had also been endorsed by the Space Working Group, that the advantage of the Convention/Protocol structure was that industry-specific protocols could incorporate many of the basic ideas from the Draft Convention, and that some ideas developed for the Draft Protocol could also be implemented in the other protocols although not necessarily in the same way. It stated that capital investment was urgently required in the rail and space industries, that across Europe there was still rolling stock that had an average age close to the end of its expected useful life so that there was a great need for re-equipment, that as State funding was limited it was necessary to look to the private sector but the private sector could only provide funding if it had security, that uncertainty for lenders was much greater for rail than for aircraft because in most parts of the world there were no national registries, and that in certain parts of the world such as Africa there was a significant need for investment in railway infrastructure for transport of freight, people and aid. It stated that it recognised that Contracting States would need to review each protocol on its merits, that it hoped that the protocol dealing with railway rolling stock would be adopted quickly after the basic rules had been finalised in the Draft Convention, that the earlier conclusion of the Draft Protocol would give the aircraft industry an advantage over the rail industry and that the rail industry would not like that competitive advantage to last too long, and that including protocols for the rail and space industries would facilitate more innovative financing techniques and in particular securitisations across industry sectors which would give greater comfort to the market by spreading risk across different parts of the transportation sector. It stated that it considered that Article 49 should be included in the Draft Convention because that would represent a clear sign from the Conference that the space and rail industries were recognised as being important, that it would be important to mandate UNIDROIT to establish a process for the adoption of those protocols as quickly as possible, and that it was conscious that not every country with the potential to benefit from a protocol dealing with railway rolling stock was a member of UNIDROIT or of the Intergovernmental Organisation for International Carriage by Rail, which was why it had suggested that UNIDROIT be requested actively to consider inviting other countries to enable participation to be as broad as possible. It stated that Article 49 of the Draft Convention had adopted an unconventional structure, that it dealt with the subject of fast ratification which reflected the industry's need for the protocol to be brought into force as quickly as possible, that a paper presented by Professor Chinkin 18 months ago had been very helpful in identifying the choices, that the railway sector would prefer not to have to have a Diplomatic Conference and to be able to have a fast-track system so that follow-on protocols could be adopted quickly, that it also recognised that it would be necessary to have a diplomatic procedure, and that there were a number of choices for a diplomatic procedure including an opt-in system whereby Contracting States would be able to opt into the system and a diplomatic recognition system. It stated

that DCME Doc No. 37 contained some proposals for some small amendments to Article 49 of the Draft Convention which were explained in the document.

The CHAIRMAN stated that there was a proposal to add a new paragraph to Article 50(2) of the Draft Convention concerning the mechanism through which new protocols would be developed, that this proposal had been referred to the Drafting Committee, and that there would now be a discussion of Articles 49 and 50 of the Draft Convention.

The DELEGATION OF THE UNITED KINGDOM stated that it did not have any concerns with the principle set out in Article 50 of the Draft Convention, that it did not have any concerns with DCME Doc No. 37, that it would not insist on a formal Diplomatic Conference for future protocols, that it could not accept the first option set out in paragraph 3(a) of DCME Doc No. 37 for an opt-out system whereby UNIDROIT would adopt a protocol and it would apply to Contracting States unless they opted out within a set period of time, that some combination of the options in paragraphs 3(b) and (c) in DCME Doc No. 37 would be satisfactory, and that the most important consideration was that there would be sufficient discussion within a suitable forum for a consensus to emerge on each additional protocol to ensure that the maximum number of ratifications could take place at the end of the process.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it agreed with the comments of the United Kingdom, that it supported Article 49 of the Draft Convention but would not be able to agree with any proposal involving an opt-out mechanism, that it supported Article 49 because it took nothing away from the options of States as suggested in Article 49(4) of the Draft Convention, that Article 49(4) of the Draft Convention would have the effect of recognising that a substantial amount of work might have been undertaken in certain areas of equipment finance such that it might be possible for the States to agree on an accelerated procedure, that the *United Nations Convention on the Assignment of Receivables in International Trade* had followed an accelerated adoption process involving approval by the General Assembly, that an accelerated process would only work if there had been a substantial amount of preliminary work, and that Article 49 of the Draft Convention would not bind any State to any specific process while giving support to the possibility of an accelerated process, that it agreed with the comments of the Rail Working Group, that there was a very real need to replace existing and ageing rail stock in many regions, and that it hoped that the procedures adopted would enable the railway rolling stock of countries that needed replacement stock to be provided with better financing than had been available.

The DELEGATION OF JAMAICA stated that it was important that the methodology for the preparation and final adoption of the Draft Convention or of protocols was such as to involve the degree of participation necessary to democratise the process to ensure that there would be the potential for wide ratification, that considerable work had been done by UNIDROIT in relation to the protocols dealing with railway rolling stock and space objects and that this work would form a useful basis for further deliberations, that a crucial issue in respect of the protocols dealing with railway rolling stock and space objects was who would participate in the deliberations for their adoption, that Article 49 of the Draft Convention proposed that protocols be submitted to the Governing Council of UNIDROIT with a view to adoption by the General Assembly of UNIDROIT, that DCME Doc No. 37 proposed that a future protocol be considered by all members of UNIDROIT and such other Member States of the United Nations as UNIDROIT considered appropriate, that there was a growing acceptance that conventions should command the widest degree of participation, that it would not be appropriate for UNIDROIT to determine which States and Organisations participated in a Diplomatic Conference and that all members of the United Nations should have the opportunity to participate in a Diplomatic Conference. It stated that an opt-out system would not be appropriate and that some form of Diplomatic Conference would be needed to deal with that question because a wider participation would provide those who had not participated in earlier stages of the development of the protocol with an opportunity to express their views and to formulate an instrument that would command a

wide measure of general support, that the preparation of protocols and the process for their adoption would need to be separated in order to provide the opportunity for widespread support, that Article 50 of the Draft Convention would need to be considered carefully if the Draft Convention was to be a framework for future protocols beyond the three that had already been identified, and that it would not be appropriate to be locked into a procedure with respect to future protocols.

The DELEGATION OF ARGENTINA stated that Article 49 of the Draft Convention reflected a singular procedure that provided for the participation of some States but not others and which was concerned with the participation of intergovernmental Organisations, that it was in favour of the adoption of a Draft Convention with the understanding that any subsequent protocol would follow the negotiation and ratification procedures common to any type of treaty, that it might have a constitutional problem with Article 49(4) of the Draft Convention which provided that the procedures for adoption of protocols would be determined by the States participating in their preparation, that it was unclear whether this Article was referring to the preparation of the protocol or to the ratification procedure, and that it should be up to each Contracting State to determine its own ratification procedures.

The CHAIRMAN stated that Article 49(4) of the Draft Convention referred to procedures for adoption and not to internal ratification procedures.

The DELEGATION OF SWEDEN stated that it fully supported the development of protocols on railway rolling stock and space objects, that it would like to see those protocols concluded as quickly as possible, that it required clarification regarding the reference in Article 50 of the Draft Convention to how future protocols might be developed, that this provision would only be binding on Contracting States to the Draft Convention after it had entered into force, that the general rule for the adoption of international treaties was a Diplomatic Conference, that if Article 50 were adopted it would lead to the situation where the majority of States would not be bound by the process it prescribed and different States would be subject to different rules, that it might be possible for the Diplomatic Conference to deal with this issue in a recommendation or resolution, that it would not be appropriate for the Draft Convention to direct UNIDROIT to do anything as that was the role of the UNIDROIT General Assembly, and that it should rather request or invite UNIDROIT to do things.

The DELEGATION OF LEBANON stated that Article 49 of the Draft Convention contained a methodology for the forthcoming phase regarding how to study and adopt protocols, that such protocols could not be considered binding at this stage of the Draft Convention, and that it would be preferable for these issues to be dealt with in the Final Act of the Diplomatic Conference as had been suggested by Sweden.

The DELEGATION OF GREECE stated that it had the same concern regarding Article 49(4) of the Draft Convention as had been expressed by Argentina, and that regarding the options set out by Professor Chinkin, it favoured that third option.

The CHAIRMAN noted that the comments of Professor Chinkin were referred to in DCME Doc No. 37.

The DELEGATION OF ITALY stated that it agreed with Article 49 of the Draft Convention and in particular with a more flexible procedure concerning the future protocols.

The DELEGATION OF EGYPT stated that it supported Articles 49 and 50 of the Draft Convention albeit with some reservations, that the reference to “property” in the title to Article 49 should be changed to “assets”, that it supported the idea of a very simplified procedure for the entry into force of protocols, that it proposed that Article 50(1) be amended to commence with the phrase: “Subject to Article 49”, that this would enable Article 50(2) to be deleted, and that this should be considered by the Drafting Committee.

The DELEGATION OF BRAZIL stated that it supported the conclusion of the protocols dealing with railway rolling stock and space objects, that it was concerned that Article 49 of the Draft Convention would require that the conclusion of future protocols would be dependent upon the approval of the UNIDROIT Governing Council, that this might create some problems in the process of ratification having regard to its domestic system of law, that it agreed with the comments of Sweden, that it was unclear when the Draft Convention would enter into force and it was possible that some protocols would be concluded before the Draft Convention entered into force, and that it agreed that the substance of Article 49 should be included in a recommendation of the Conference.

The DELEGATION OF NIGERIA stated that it supported the retention of Articles 49 and 50 of the Draft Convention for the reasons set out in DCME Doc No. 37, that the protocol on railway rolling stock would benefit Africa, and that the process for adoption of the protocol should be simple and expeditious and should give an opportunity for all States to participate in its adoption and ratification.

The DELEGATION OF JAPAN stated that it supported the comments of Sweden that the substance of Article 49 should be included in a recommendation of the Conference.

The DELEGATION OF KENYA stated that it supported the retention of Articles 49 and 50 of the Draft Convention, that it would not support any proposal that would remove powers of States regarding the adoption of a protocol, that it supported the position of the Rail Working Group as set out in DCME Doc No. 37, that a Diplomatic Conference should be convened by UNIDROIT when the protocol on railway rolling stock was ready for adoption, and that States should be permitted to participate fully in the adoption of any draft protocol.

The DELEGATION OF THE RUSSIAN FEDERATION stated that it supported the development of protocols on railway rolling stock and space assets, that after the development and adoption of those protocols Article 49 of the Draft Convention would cease to have a purpose, and that it agreed with the opinion of Sweden that the substance of Article 49 should be included in a recommendation of the Conference.

The DELEGATION OF EGYPT stated that Article 49(3) of the Draft Convention referred to the UNIDROIT Governing Council and the UNIDROIT General Assembly, that it considered those references to be superfluous, and that Article 49(3) of the Draft Convention should be redrafted to refer to draft protocols being “subject to the approval of UNIDROIT and such other intergovernmental Organisations as determined by UNIDROIT”.

The DELEGATION OF PAKISTAN stated that it was not clear why it was necessary to include Articles 49 and 50 in the Draft Convention, and that it would be possible to develop a protocol even if those Articles were not included.

The DELEGATION OF THE RAIL WORKING GROUP stated that it considered that all delegations wanted the same result but there were different views about how to achieve it, that the reason it was necessary to include Articles 49 and 50 in the Draft Convention was that they had been part of the fundamental construction of the Draft Convention from its inception and they would provide a clear signal that there was a commitment from the Diplomatic Conference to develop the concepts set out in the Draft Convention for specific types of equipment, and that the Draft Convention was specifically related to highly mobile equipment and it should not be necessary to commence a whole new process to create instruments dealing with other types of highly mobile equipment. It stated that another question was whether governments would be prepared to pre-commit themselves regarding the railway rolling stock and space objects protocols and for these to usurp their diplomatic powers, that it did not regard that as the intention of the Articles, that it would accept the position that governments would need formally to approve a protocol but that it was concerned to ensure that the process would be expeditious and would not cost too much money, that it wanted the process for the development of the railway rolling stock protocol to be as inclusive as possible and involve as many

people as possible, and that a commitment in Article 49 of the Draft Convention to the development of the railway rolling stock and space objects protocols would be a strong signal to those industries and the countries needing investment that the Diplomatic Conference took those sectors seriously and wanted to provide a fast mechanism to help those industries and countries that were in need of capital investment.

The DELEGATION OF CANADA stated that Article 2(3) of the Draft Convention contained a commitment to deal with railway rolling stock and space assets, that some delegations would prefer the process for developing protocols to move very quickly so as to enjoy the earliest possible benefits while other delegations would prefer to see the protocols adopted at a Diplomatic Conference, that it regarded a Diplomatic Conference as the better approach for rallying a greater degree of support, that it appreciated the need for speed but that there was also a need to be careful to ensure that the broadest possible base of acceptance was achieved, that it was concerned about proposals to tie down the procedure and mechanism at this stage, that it supported the Swedish proposal to deal with the procedure and mechanism in a resolution of the Diplomatic Conference, and that Canada supported the concept of having additional protocols dealing with space assets and railway rolling stock but was concerned to ensure that the normal processes for their development were maintained.

The CHAIRMAN stated there had been support for Articles 49 and 50 of the Draft Convention, that amongst those delegations that had supported Article 49 there had been some concern as to whether the procedures specified in Article 49 would in all cases respect the prerogatives of States and whether they would provide a base for the acceptance of future protocols, that all the delegations that had intervened in the discussion had indicated their support for moving forward with the protocols dealing with railway rolling stock and space objects, that there was still the possibility for further commitment to those protocols to be provided for in the Draft Convention apart from the commitment in Article 2(3) of the Draft Convention, that there was an issue whether that commitment should be provided in a resolution, and that whatever solution was proposed by the Final Clauses Committee would need to take into account the need for the prerogatives of all States to be respected and for broad acceptance of the future protocols. The Chairman stated that the Commission would discuss the question of entry into force of the Draft Convention and Draft Protocol, that this involved consideration of the threshold number of ratifications, that Article 47 of the Draft Convention provided for the number of ratifications to be either three or five, that this was a relatively low number but that there was a tradition within UNIDROIT to have a relatively low number of ratifications needed for the entry into force of its conventions so as to enable interested parties to have the benefit of the convention as early as possible, and that the tradition within the International Civil Aviation Organization was different and that there had been a trend in recent years for a much higher number of ratifications to be required for the entry into force of a treaty.

The DELEGATION OF THE RAIL WORKING GROUP stated that it supported the Draft Convention requiring a low number of ratifications for it to enter into force because to require a large number of ratifications would severely restrict the possibility of other protocols coming into force relatively quickly, and that requiring a low number of ratifications would address the concern that had previously been raised by Sweden about the possibility of the Draft Convention not being in force at the time the protocol dealing with railway rolling stock was ready to be adopted.

The DELEGATION OF THE SPACE WORKING GROUP stated that it agreed with the comments of the Rail Working Group, and that Article 47(2) of the Draft Convention contained a general principle that was not concerned with entry into force and should be relocated to another part of the Draft Convention.

The CHAIRMAN stated that it was clear that Article 47(2) of the Draft Convention was not related to the issue of entry into force, and that the Final Clauses Committee would consider whether it should be placed somewhere else in the Draft Convention.

The DELEGATION OF CHINA stated that Article 47(1) of the Draft Convention should be amended to require that the Draft Convention enter into force after the deposit of the 30th instrument of ratification, that in the past most of the Conventions formulated by the International Civil Aviation Organization required 30 ratifications in order to take effect, that, as most countries would benefit from the Draft Convention, most countries would ratify it as soon as possible, and that, as there were 108 members of the International Civil Aviation Organization, the Draft Convention would not be sufficiently representative if it had only three or five Contracting States.

The DELEGATION OF AUSTRALIA stated that the choice of the number of ratifications was not simply a choice between three and five and that there were other options, that it was not overly concerned with practices under other Conventions and practices of other Organisations, that it was rather concerned that there be a sufficiently high number of ratifications to ensure that there was a truly viable international system but that the number not be so high that it would take too long for the Draft Convention to enter into force, that it would be happy with a relatively small number of ratifications but subject to its concern that, if the cost burden of the international registration system fell on too few Contracting States, this would act as a disincentive to other States, that following consultations and discussions it was reasonably convinced that it would be possible to construct a regime that did not result in the burden of the capital costs and start-up costs falling too heavily on the initial Contracting States, and that, although it did not have a strong preference for numbers, it considered that between five and seven ratifications would be appropriate. It stated that it agreed with the observations of the Space Working Group that were contained in DCME Doc No. 14, that it agreed with the comments in paragraph 17 of DCME Doc No. 14 that the Draft Convention should be very clear that a protocol would be able to amend the Draft Convention and that if a protocol was silent on an issue the Draft Convention would fill that gap, and that Article 47(2) of the Draft Convention concerned questions of interpretation and not of entry into force. It stated that paragraph 18 of DCME Doc No. 14 raised the issue of the absence in the texts of any provisions dealing with amendments to the Draft Convention and the Draft Protocol, that the only reference appeared to be an indirect reference to the Review Board to be established under the Draft Protocol, that there was no provision dealing with the mechanism and the process and voting procedures for approving amendments, and that this was an issue that the Final Clauses Committee should examine.

The CHAIRMAN stated that it had not been intended to discuss only the options of three or five ratifications and that the issue was very open, and that it would be useful to hear the views of delegations on this issue.

The DELEGATION OF SAUDI ARABIA stated that the content of Article 47 of the Draft Convention should be in the Final Act and not in the Draft Convention, and that the number of Contracting States required to bring the Draft Convention into force should be increased to between 10 and 15 Contracting States.

The DELEGATION OF BRAZIL stated that it considered that the number of Contracting States required for the Draft Convention to enter into force should be between five and eight, that it would be important that the number be low because of the relationship with other protocols, that it agreed with the comments of Australia regarding Article 47(2) of the Draft Convention, and that Article 47(2) should be relocated to the general provisions of the Draft Convention because it was related to basic aspects of the Draft Convention.

The DELEGATION OF CANADA stated that it might not be appropriate to include a number in Article 47 of the Draft Convention, that the Draft Convention was of very little use without the Draft Protocol, and that it might be easier simply to say that the Draft Convention would enter into force upon the entry into force of the first protocol. It stated that it had some serious concerns about the entry into force of the Draft Convention and Draft Protocol, that there were some provisions which could support entry into force almost immediately but that there were other provisions that would require a more delicate approach, that those provisions included the provisions dealing with the

International Registry, that the establishment of the International Registry and Supervisory Authority could take some time and this would normally have caused Canada to support a larger number of ratifications to allow time for the process of properly establishing the International Registry, that Canada would support a high number of ratifications, such as was normally provided for International Civil Aviation Organization conventions, for the entry into force of the Draft Convention until a solution was found concerning the timely establishment of the International Registry, and that when such solution was found it might be in a position to support a lower number of ratifications.

The CHAIRMAN requested Canada to clarify whether it had been referring to the issue of how the International Registry system would be financed and how it would be established.

The DELEGATION OF CANADA stated that it was concerned with the establishment of the International Registry, the financing of the International Registry, and the credibility of the International Registry.

The DELEGATION OF EGYPT stated that the Geneva *Convention on the International Recognition of Rights in Aircraft* required only two ratifications to enter into force and dealt with the same subject as the Draft Convention albeit in a different way, that Egypt would have no objection to a very low number of ratifications, and that it required clarification about why only odd numbers had been included in Article 47(1) of the Draft Convention and not, for example, the number 4.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it would shortly be distributing a more detailed proposal, that it agreed with the comments of Egypt, that the International Civil Aviation Organization had itself provided for a very low number of ratifications of the Geneva *Convention on the International Recognition of Rights in Aircraft*, that it did not know why the option of four ratifications had been omitted from the options in Article 47(1) of the Draft Convention, that to require a large number of ratifications would effectively eliminate the Draft Convention from the financial market place, that the Draft Convention offered very substantial economic benefits to many States that lacked sufficient credit facilities, that these benefits did not depend on a large number of Contracting States but could be made available between as few as two or three States, that there was no reason to require more than a small number of ratifications to bring the Draft Convention into effect, that it agreed with Canada that the issue was related to the International Registry but that this relationship did not provide the basis for creating an unacceptably large number of ratifying States or any substantial delay in the Draft Convention's entry into force, that it was very clear that the technology to establish an electronic registry was widely available, and that it would not support any provision that would lead to a delay in the extension of the Draft Convention's benefits to those countries that were seeking those benefits.

The DELEGATION OF GREECE stated that it understood the need for flexibility and speedy procedures, that it thought that participation beyond a small number of States was needed, and that it had an intermediate position of requiring between eight to ten ratifications.

The DELEGATION OF LEBANON stated that it shared the concerns of Canada and the United States of America about the need to consider the establishment of the International Registry because Article 47(1)(a) of the Draft Convention linked the entry into force of the Draft Convention with the entry into force of the Draft Protocol, that the entry into force of the Draft Convention did not depend solely on the number of Contracting States but also on the timing of the implementation of the Draft Protocol, and that it supported ten ratifications as the number required to bring the Draft Convention into force.

The DELEGATION OF JAMAICA stated that the delegations seemed to be agreed on the need to strike the right balance between the need for bringing the Draft Convention into force as soon as possible and the need to ensure that the number was adequate to command a certain level of general acceptance, that the figure of ten ratifications suggested by Lebanon represented approximately 20%

of the membership of the Diplomatic Conference and might be appropriate, that there was a very close connection between the Draft Convention and the Draft Protocol because Article 47 of the Draft Convention expressly provided that the Draft Convention would only enter into force from the date of entry into force of a protocol, that Article 16 of the Draft Convention provided for the Supervisory Authority to be provided by a protocol, that it was the Supervisory Authority that would provide for the establishment of the International Registry, that the structure clearly contemplated that the effectiveness of the system would only be ensured when a protocol came into existence, and that it considered that the figure of ten ratifications would be satisfactory.

The DELEGATION OF TURKEY stated that it supported three ratifications being required to bring the Draft Convention into force.

The DELEGATION OF INDIA stated that there had been a similar debate last year in the Legal Committee of the International Civil Aviation Organization, that interventions in that debate had evidenced the need to ensure that the number of ratifications required would indicate that the required level of acceptance had been achieved, that there had been discussion of the possibility of not including any options for the suggested number of ratifications but that “third/fifth” had been retained, that there had been no intention to limit the options to three or five ratifications, that it agreed with Canada that one option would be not to include any number of required ratifications because of the link between the entry into force of the Draft Convention and of the Draft Protocol, that it agreed that the *Geneva Convention on the International Recognition of Rights in Aircraft* required only a small number of ratifications but that that convention had been developed in 1948, that many conventions developed since then had required a larger number of ratifications, that most conventions adopted after 1948 had required 30 or 35 ratifications with the possible exception of the Montreal Supplementary Protocol of 1988 which required only 10 or 12 ratifications, that it appreciated the comments that had been made about the need to avoid unnecessary delay in the delivery of the economic benefits of the Draft Convention, and that it agreed with the theory of balance proposed by Jamaica and would support a figure of between 10 and 15 ratifications.

The DELEGATION OF ARGENTINA stated that it agreed that the Draft Convention without a protocol would be meaningless, that even if there were no number specified in the Draft Convention it would be necessary to specify a number in the protocols, that it would support a minimum number of ratifications being required for the Draft Convention to enter into force and for each protocol to specify the number of ratifications required to bring the relevant protocol into force, having regard to the work required to establish the International Registry, and that it would favour three ratifications being required for the Draft Convention to enter into force.

The CHAIRMAN requested Argentina to clarify whether it was in a position to suggest a figure for the entry into force of the Draft Protocol.

The DELEGATION OF ARGENTINA stated that it would support a minimum number of ratifications for the Draft Convention and a higher number for the Draft Protocol.

The DELEGATION OF SOUTH AFRICA stated that it was speaking on behalf of the African States, and that because of the benefits that would accrue to the African States from the implementation of the Draft Convention it would support the lowest number of ratifications for the entry into force of the Draft Convention.

The DELEGATION OF RUSSIA stated that it supported the formula that had been proposed by Canada of having no indication of a number of ratifications in the Draft Convention because the Draft Convention would have no effect without a protocol, and that it would support a relatively low number of ratifications, in the order of ten, for the entry into force of the Draft Protocol.

The DELEGATION OF THE UNITED KINGDOM stated that it supported the comments of the Space Working Group and Australia that the fact that the Draft Convention and Draft Protocol were

to be read together and that the Draft Protocol could modify the provisions of the Draft Convention needed to be specified very clearly and in a provision other than Article 47 of the Draft Convention, that it supported a small number of ratifications for entry into force of the Draft Convention and Draft Protocol, that it considered a number in the range of five to seven would be appropriate, and that in the Draft Protocol it would support a mechanism for linking the number of ratifications required for entry into force to the number of registrations that those ratifications would be likely to generate.

The DELEGATION OF KENYA stated that it supported the comments of South Africa.

The DELEGATION OF BRAZIL stated that it had earlier suggested a minimum number of between five to eight ratifications, that it agreed with the comments of Canada that the Draft Convention had no function without the Draft Protocol, and that it would support a requirement of five to eight ratifications for the Draft Protocol.

The DELEGATION OF GERMANY stated that the Draft Convention and Draft Protocol would create many benefits for manufacturers, financiers, creditors and debtors through improved possibilities for securing aircraft financing and reduced purchase costs, that those benefits should be made available as quickly as possible, that it supported a small number of ratifications as stated by the United Kingdom, and that it shared the view of Australia that the costs of establishing the International Registry would have to be covered when the new instruments came into force, but that it would not be necessary to require a high number of ratifications as there were other ways to ensure that there would be sufficient transactions to cover the costs, such as a specified percentage of world-wide aviation amongst Contracting States.

The DELEGATION OF SINGAPORE stated that it agreed with the comment of Canada that the entry into force of the Draft Convention should be tied to the entry into force of the Draft Protocol, and that if there were a need to specify a number of ratifications it would support a number between eight and ten.

The DELEGATION OF THAILAND stated that it supported three ratifications being required for the Draft Convention to enter into force and in the order of ten ratifications being required for the Draft Protocol to enter into force.

The DELEGATION OF THE NETHERLANDS stated that it agreed with the comments of Germany, and that it supported between five and ten ratifications being required for the Draft Convention to enter into force.

The DELEGATION OF SWITZERLAND stated that it was in favour of a small number of ratifications, and that it would support five ratifications being required but could support a smaller number, such as three or four.

The DELEGATION OF FRANCE stated that it supported a rapid entry into force of the Draft Convention because it would be of benefit to creditors, debtors and the aviation industry, that there were several arguments in favour of a rapid entry into force which appeared in a recent article of *Air and Commercial Law* magazine, that it was in favour of a small number of ratifications, in the order of five or seven, being required for the entry into force of the Draft Convention, that it agreed with Germany that a qualitative criterion such as a percentage of world air traffic could be added to ensure that when the Draft Convention entered into force the International Registry would be able to function reliably and efficiently, that it agreed with the view of Canada that ratification of the Draft Convention would not in itself have any meaning, and that Article 47(2) of the Draft Convention expressed very well the view that the Draft Convention and Draft Protocol were to be read together as a single document and it was difficult to see how this drafting could be further improved.

The DELEGATION OF BAHRAIN stated that it agreed with Canada that the entry into force of the Draft Convention should be linked to the entry into force of the Draft Protocol, that it agreed with the

United States of America that there was an urgent need for the entry into force of the Draft Convention, but that there should also be credibility of the Draft Convention.

The DELEGATION OF KENYA stated that it would not support the suggestion that had been made by Germany and supported by France of a qualitative approach to the entry into force criteria, and that the entry into force of the Draft Convention should not be attached to any contribution by the air transport industry.

The DELEGATION OF INDIA stated that its comments were directed to the new idea initially raised by the United Kingdom that a minimum number of transactions on the International Registry could form part of the criteria for the entry into force of the Draft Convention or Draft Protocol, that it seemed to be a good idea in principle but that it would make the criteria for entry into force complicated and subject to controversy because the likely number of transactions to be generated could always be subject to question, that it supported a figure of between 10 and 15 ratifications because it was not too low and would provide a quantity of transactions necessary to make the International Registry workable, and that a figure of 30 or 35 ratifications would delay the entry into force of the Draft Convention.

The DELEGATION OF SOUTH AFRICA stated that the African States supported between three and five ratifications as the number necessary for the entry into force of the Draft Convention.

The DELEGATION OF SUDAN stated that it supported the Canadian proposal for the entry into force of the Draft Convention to be linked to the entry into force of the Draft Protocol, that it supported India's position that the number of ratifications required be 15, and that Article 47 of the Draft Convention should be the final provision of the Draft Convention and should be amended by the deletion of Article 47(2).

The DELEGATION OF EGYPT stated that it supported between five and ten ratifications for the entry into force of the Draft Convention, that there should be a period of six months between the receipt of the number of ratifications and the entry into force of the Draft Convention to enable the establishment of the International Registry, that it did not agree with the Canadian view that the entry into force of the Draft Convention should be directly linked to the entry into force of the Draft Protocol, and that the entry into force of the Draft Convention should stand by itself because it was the framework and its entry into force should be separate from the Draft Protocol.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it agreed with the comments of Egypt regarding the entry into force of the Draft Convention standing alone, that it was convinced that a process which gave a greater degree of recognition to the Draft Convention itself would promote the development of modern finance law and would send a signal to international capital markets that assistance was especially needed in regions with a greater need for assistance, that it agreed with the statements by Brazil, France, Germany, the United Kingdom and other delegations regarding the likely effective number of ratifications required and the linkage with a qualitative concept so that the number would bear a sufficient element of realism, that it would prefer a number in the range of three to five ratifications as suggested by the African States, that it could compromise on that number but thought it would not be in the interests of countries needing credit to do so, and that it considered that Article 47(1)(b) of the Draft Convention provided the necessary linkage between the Draft Convention and the Draft Protocol and that this linkage did not require further clarification.

The CHAIRMAN stated that the linkage between the Draft Convention and the Draft Protocol would be examined by the Final Clauses Committee.

The DELEGATION OF PAKISTAN stated that the number of ratifications required could be less than three, that it would be possible to require a symbolic number of ratifications such as one, that this would have the effect of giving the Draft Convention immediate effect, and that Article 47(2) of the

Draft Convention was concerned with interpretation and should be relocated to Article 5 of the Draft Convention.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it considered that the Draft Convention should enter into force as promptly as possible, that it held this view not just because of the economic reasons that had been raised but because airlines took delivery of aircraft at different times and the longer the entry into force was delayed the greater prejudice there would be to airlines that were taking delivery of aircraft in the shorter term, that it considered a six-month delay from receipt of ratifications to entry into force to be excessive, that there was a material need to ensure that the Draft Convention entered into force, and that it would actively participate in discussions regarding the Supervisory Authority and possible provisional arrangements so that there would be certainty and predictability about what arrangements would be following the Conference.

The DELEGATION OF THE SPACE WORKING GROUP stated that a considerable number of delegations had supported the early entry into force of the Draft Convention and Draft Protocol, that it supported this view, and that it was conscious that if there were only a small number of Contracting States, this could impact on the acceptability of the Draft Convention in industry, but that it supported a low threshold of ratifications because it would be an incentive for hesitant States if the Draft Convention were already operational.

The CHAIRMAN stated that the final outcome on the issue of the number of ratifications required for entry into force of the Draft Convention would depend on the solutions decided regarding the establishment and financing of the International Registry, that all interventions would need to be reviewed after those solutions had been agreed, that there had been a great degree of flexibility shown by all delegations, that there had been no support for the proposal that the number of ratifications should definitely be more than ten, that some delegations considered the number should be in the range between 10 and 15 but only one delegation proposed a number in the order of 30, that there were numerous delegations proposing a figure at the lower end in the order of three to six ratifications, and that it was possible that the ultimate figure would be in the order of three to ten ratifications. The Chairman stated that a number of delegations had supported the inclusion of qualitative criteria while other delegations had expressed concern about whether qualitative criteria would be feasible, that this issue would be examined by the Final Clauses Committee, and that there was no consensus on the issue and it might be that it would be better to deal with the issue of guaranteeing the credibility and establishment of the system through other means. The Chairman stated that the Commission would next discuss the remaining Articles in the Draft Convention, that Articles 48, 51, 52, 53 and 54 of the Draft Convention had been raised earlier in the discussions and were not expected to be controversial, and that the Commission would then discuss Article 29 of the Draft Convention dealing with insolvency and the jurisdiction provisions in Chapter VII of the Draft Convention.

The meeting rose at 17:00

COMMISSION OF THE WHOLE – NINTH MEETING

Tuesday, 6 November 2001, at 9:30

President: Professor Medard Rutoijo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.)

The CHAIRMAN stated that the Commission would commence a discussion of the remaining Articles in Chapter XIV of the Draft Convention, that, in relation to the discussion concluded on the previous day, several delegations had suggested that Article 47(2) of the Draft Convention dealt with interpretation issues and should be relocated and that the Drafting Committee would examine that issue, that there had also been other proposals contained in paragraphs 16 and 17 of DCME Doc No. 14 which had been seconded by several delegations and which would be referred to the Drafting Committee for development of an appropriate Article. The Chairman invited comments on Articles 48, 51, 52, 53 and 54 of the Draft Convention.

The DELEGATION OF JAPAN stated that the Draft Convention should include a denunciation provision, that the entry into force of the Draft Convention would be meaningless without the entry into force of a protocol and that the Draft Convention should be amended so that it entered into force after the entry into force of any protocol, that the Draft Convention should require that a Contracting State to the Draft Convention also be a Contracting State to at least one protocol, and that if a Contracting State decided to denounce its membership of all the protocols it should also be required to denounce its membership of the Draft Convention.

The CHAIRMAN stated that the issues raised by Japan would be able to be considered by the Final Clauses Committee.

The SECRETARY GENERAL (UNIDROIT) stated that DCME Doc No. 16 had been submitted by the UNIDROIT Secretariat and contained a complete set of draft final clauses, and that the International Civil Aviation Organization was also preparing a paper containing proposals on final clauses, and that the Final Clauses Committee would have an opportunity to consider both of these papers.

The SECRETARY GENERAL (ICAO) stated that a paper prepared by the International Civil Aviation Organization would be distributed, and that the paper would contain proposals on final clauses taking into account DCME Doc No. 16 and the discussions that had taken place on the previous day.

The DELEGATION OF FRANCE stated that it required clarification regarding Article 54(3) of the Draft Convention, that the situation was normally reversed in international law so that if a State made a reservation it was to eliminate the application of a particular provision of a treaty in its relations with other States that were parties to the treaty, that if this was not the case there would be no reason to express a reservation, that the explanation of Article 54(3) that was provided in DCME-IP/2 stated that a declaration or reservation by a Contracting State would be binding on other Contracting States even if those other Contracting States had not expressed a declaration or reservation, that this was completely different to Article 54(3) which provided that the provisions of the Draft Convention that were subject to reservation would be binding on Contracting States that did not make reservations, that such a provision was not normally found in treaties, that it was not a useful provision, and that if the provision were to be retained it would need to be reviewed to ensure that it created the effect that was intended.

The DELEGATION OF THE RAIL WORKING GROUP stated that in DCME Doc No. 42 it had proposed an amendment to Article 48 of the Draft Convention dealing with the application of the Draft Convention to internal transactions, that Article 48 provided an “all or nothing” approach, that in the railway sector this could create problems as it was possible that Contracting States would like to exclude certain parts of the Draft Convention in relation to, for example, metropolitan trains and suburban underground railways and apply the Draft Convention in full to standard-gauge railways, and that the amendment to Article 48 of the Draft Convention that it had proposed would give Contracting States greater flexibility to determine whether they would exclude every internal transaction or only particular types of internal transaction.

The DELEGATION OF CHINA stated that a new Article 53*bis* should be added to the Draft Convention dealing with territorial units, that such an Article would be relevant to Contracting States to the Draft Convention as well as Contracting States to the Draft Protocol, that the text of its proposed Article 53*bis* was contained in DCME Doc No. 27, and that the proposed text was based on Article 27 of the Draft Protocol and included a new paragraph 4 that made it clear that a Contracting State would be able to make different declarations and reservations in respect of different territorial units.

The CHAIRMAN stated that the Final Clauses Committee would consider the Chinese proposal.

The DELEGATION OF CANADA stated that it agreed with the proposal that had been made by China, that it proposed that an interpretation clause should be added to the Draft Convention for the benefit of federal States and States consisting of two or more territorial units, that such a clause should be added to the final clauses of the Draft Convention and the Draft Protocol, that its original proposal was contained in DCME Doc No. 17 but that the proposal had been modified in the Public International Law Working Group, that a modified proposal would be distributed to delegations and submitted to the Final Clauses Committee, that the proposal would represent the most modern way of dealing with a federal clause, that a federal clause would be essential for States like Canada which had a federal structure or States that consisted of various territorial units, that a number of recent conventions had included such a clause, including the *UNIDROIT Convention on International Financial Leasing*, and that the articles dealing with declarations and reservations should include an additional provision that referred to the federal clauses to allow the various territorial units to be dealt with in declarations and reservations made by Contracting States that consisted of several territorial units.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it agreed with France that the drafting of Article 54(3) of the Draft Convention required some improvement, that the *Vienna Convention on the Law of Treaties* dealt with reservations but did not deal adequately with the practice that had developed under private-law treaties of States using declarations to modify the application of the particular treaty to particular territorial units, that declarations made under the Vienna Convention did not trigger reciprocity and would have no effect on the application of the relevant Article to another State that had not made a similar declaration, that this would not work in private law treaties, that Article 54(3) of the Draft Convention was intended to address this issue and required re-examination, and that it would not be possible to apply the reciprocity provisions of the Vienna Convention to the Draft Convention because that would disrupt the functionality of the Draft Convention.

The DELEGATION OF THE UNITED KINGDOM stated that it agreed with France that there was a problem with the drafting of Article 54(3) of the Draft Convention, and that although the problem might be solved by deleting the word “reservation”, the drafting would require further examination.

The DELEGATION OF JAMAICA stated that in the context of the *Vienna Convention on the Law of Treaties*, the concept of a reservation was intended to be a unilateral statement by a State with the purpose of excluding certain provisions, that under the Draft Convention a declaration would not be a

unilateral statement, that if it were decided that no reservations be permitted under the Draft Convention it could be amended expressly to provide that reservations could not be made but that declarations could be made in respect of certain matters, and that if such a provision were included it would not longer be necessary to retain Article 54(3) of the Draft Convention.

The DELEGATION OF THE NETHERLANDS stated that it supported the Chinese proposal regarding territorial units.

The DELEGATION OF AUSTRALIA stated that it supported the proposals of the Rail Working Group contained in DCME Doc No. 42, that the Draft Convention should make it very clear that a Contracting State would be able to disapply the application of the Draft Convention in relation to some types of internal transaction but not all types, that it supported the proposal of Canada contained in DCME Doc No. 17, that it did not support the Chinese proposal contained in DCME Doc No. 27, that an article on territorial units had the potential to fracture the application of the Draft Convention and to complicate its implementation and application, that businesses and organisations that were dealing with a particular Contracting State would not always have a strong appreciation of the internal political structure of another State, that such an article had the potential to increase compliance costs, that it would not object if a consensus developed to support such a provision because the users of the Draft Convention would be relatively sophisticated and because it had a federal system of government, and that it had earlier stated that the UNIDROIT proposal on final clauses did not include a provision dealing with amendments to the protocols.

The DELEGATION OF FRANCE stated that it was very clear that government authorities would not be able to accept the Draft Convention if it included a provision that was inconsistent with international law concerning reservations, that the *Vienna Convention on the Law of Treaties* did not make any distinction between types of treaties, that Article 54(3) of the Draft Convention would cause confusion, and that it supported the Jamaican proposal for the deletion of Article 54(3) of the Draft Convention.

The DELEGATION OF GREECE stated that it supported the position of France.

The DELEGATION OF ARGENTINA stated that it supported the position of France.

The DELEGATION OF BRAZIL stated that it supported the position of France, that the Draft Convention dealt with issues of private international law but that it would be a treaty made under public international law, and that the Draft Convention would be subject to the principles set out in the *Vienna Convention on the Law of Treaties*.

The DELEGATION OF EGYPT stated that it supported the position of France and the reasons cited by France in support of its position, that it agreed that the *Vienna Convention on the Law of Treaties* did not make a distinction between treaties dealing with private law issues and other treaties, that it agreed that the Draft Convention should expressly provide that reservations would not be allowed to be made, and that the Draft Convention should include a definition of “declaration”.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that the Drafting Committee should examine Article 48(2) of the Draft Convention to ensure that the list of articles referred to in that Article was complete.

The CHAIRMAN stated that the Drafting Committee would examine Article 48(2) of the Draft Convention.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it had prepared a paper on Article 54(3) of the Draft Convention for the Public International Law Working Group and that Korea had also prepared a paper and reached the same conclusion as it had, that the intention of Article 54(3) of the Draft Convention was that a Contracting State that had not made a declaration to the effect that it would not apply interim remedies would not be able to rely upon the traditional

reciprocity rule to deny interim remedies in respect of a Contracting State that had made a declaration, that this could be addressed by redrafting Article 54(3) or by specifying that declarations were not reservations for the purpose of the application of the reciprocity rule or by using an opt-in annex, and that it would be concerned if the result reached was that declarations made by each State could be considered by all other States in their relations with each other.

The DELEGATION OF CHINA stated that the phrase: “and any provisions of this Convention relating to registered interests shall apply to an internal transaction” should be deleted from Article 48(2) of the Draft Convention, and that the existing version of Article 48(2) was too broad and would create difficulties.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that Article 48 of the Draft Convention represented a substantial compromise, that because the Draft Convention dealt with third party rights it would not be a good idea to exclude internal transactions, that it would be necessary to be able to search an aircraft’s registration number on the International Registry and find out about all claims, that if it also became necessary to investigate secret arrangements made under national law this would undercut the benefit of the International Registry, and that it would not support material changes to Article 48 of the Draft Convention.

The CHAIRMAN stated that Article 48 of the Draft Convention represented a consensus that had been reached after extensive discussions throughout the history of the negotiations of the Draft Convention.

The DELEGATION OF CANADA stated that Article 48(2) of the Draft Convention should be retained, that it agreed with the comments of the United States of America, and that if Article 48(2) was deleted the Draft Convention would not work in relation to priority rules because a single aircraft could be subject to an international interest and a internal transaction and the deletion of Article 48(2) of the Draft Convention would create conflicts in such situations.

The CHAIRMAN stated that considerable concern had been expressed regarding the Chinese proposal, that the discussion would be concluded on the basis that the Final Clauses Committee would examine the issues that had been raised, that there had been support for refining Article 48 of the Draft Convention as proposed by the Rail Working Group in DCME Doc No. 42, that the Drafting Committee would examine the references in Article 48(2) of the Draft Convention to ensure that they equated with the intended scope of that Article, that the Final Clauses Committee would examine whether Article 48(2) of the Draft Convention should be transferred to the substantive provisions of the Draft Convention dealing with internal transactions, that there had been no comments regarding Articles 51, 52 and 53 of the Draft Convention but that the Final Clauses Committee could examine those Articles, that Article 54(1) and (2) of the Draft Convention had been unanimously supported but that Article 54(3) of the Draft Convention had been controversial and would need to be examined by the Final Clauses Committee, that issues regarding territorial units and a proposed Article 53*bis* had been raised by China and supported, and that Canada had made a proposal for a Federal-State interpretation clause that had been supported and on which a draft would be produced for discussion in the Final Clauses Committee.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that there had been no objections to the proposal of Jamaica regarding Article 54(3) of the Draft Convention, and that the Final Clauses Committee should examine the most appropriate mechanism for clarifying Article 54(3) of the Draft Convention.

The CHAIRMAN stated that the proposal of Jamaica would make a useful starting point for any discussions by the Final Clauses Committee of Article 54(3) of the Draft Convention.

The DELEGATION OF THE RAIL WORKING GROUP stated that the Final Clauses Committee should examine Article 54 of the Draft Convention in its entirety because the Draft Convention did

not contain any references to reservations and the Final Clauses Committee should examine whether to remove the references to reservations from Article 54 of the Draft Convention.

The CHAIRMAN stated that the discussion of the final clauses was complete, and that there were some additional provisions in the final clauses of the Draft Protocol which would be discussed at a later stage.

THE DELEGATION OF THE EUROPEAN COMMUNITY stated that it was grateful for the decision to postpone discussions of matters of interest to the European Community pending the arrival of its delegation, that the European Commission had recently adopted a number of new instruments in the field of judicial cooperation in civil and commercial matters, including a Council Regulation of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters and a Council Regulation of 29 May 2000 on insolvency proceedings, that since the European Community Treaty, the European Union Member States were no longer entitled to enter into agreements with third countries concerning obligations that might affect those rules or alter their scope, that there was not any European Community legislation providing general rules on securities and the European Community had no powers regarding the general aspects of the Draft Convention and Draft Protocol, that the exclusive competence of the European Community related to a limited number of the instruments' provisions related mainly to jurisdiction, that it was not until the previous Monday that the Council of Ministers of the European Union had adopted negotiation directives to ensure the compatibility of the Draft Convention and Draft Protocol with European instruments, that the Draft Convention and Draft Protocol would need to enable the European Community to become a member and should include an accession clause to enable accession by regional economic integration Organisations, that any such accession clause would need to ensure that the effect of accession by the European Community would be limited to matters falling within its competence, that such accession clauses had become usual in international agreements and a recent Diplomatic Conference held under the auspices of the International Civil Aviation Organization had concluded the *Montreal Convention for the Unification of Certain Rules for International Carriage by Air* which contained such a clause, that adherence by the European Community to the Draft Convention and Draft Protocol would not delay the process of ratification by European Community Member States who would be able to ratify the instruments immediately without waiting for ratification by all Member States, that adherence by the European Community to the Draft Convention and Draft Protocol would have the effect that the aspects of those instruments for which the European Community had exclusive competence would be applied uniformly throughout the European Community regardless of the number of Member States that had ratified the instruments, that the adherence to the instruments by the European Community could create a positive dynamic in favour of ratification by other Member States of the European Community, and that, in light of the importance of the Draft Convention and Draft Protocol for certain Member States, the object of the European Community during the negotiations was to ensure the best possible compatibility of the Draft Convention with Community law to ensure that Member States were not prevented from ratifying the Draft Convention because of inconsistency with Community law.

The CHAIRMAN stated that the Commission would discuss the question of an accession clause to provide for accession by the European Community. The Chairman stated that Belgium held the Presidency of the European Union, and invited comments from the delegation of Belgium.

The DELEGATION OF BELGIUM stated that on 29 October 2001 the Council of Ministers had approved a mandate authorising the European Union to negotiate in relation to issues under the exclusive jurisdiction of the European Community, and that the consequence of this was that Member States would not be able to undermine Community law and would not be able to adhere to the Draft Convention and Draft Protocol in areas under the exclusive jurisdiction of the European Community.

The DELEGATION OF SWEDEN stated that it supported the proposal that an accession clause be inserted into the Draft Convention and Draft Protocol.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it welcomed the comments of the European Community, that the practice in recent multilateral documentation was for there to be a general provision dealing with accession by regional economic integration organisations rather than a specific reference to a particular organisation, and that it hoped that the European Community would display the same flexibility that it had shown in relation to issues in such cases where rules in the Draft Convention were not totally compatible with its own legal system but on which it had been prepared to demonstrate flexibility.

The CHAIRMAN stated that he had understood that it had been the intention of the European Community to propose a general accession clause and not a clause that would deal only with the situation of the European Community.

The DELEGATION OF CANADA stated that it agreed with the comments of the United States of America, and that it would support an accession clause for regional economic integration organisations such as that which had been drafted for the *Montreal Convention for the Unification of Certain Rules for International Carriage by Air*.

The CHAIRMAN stated that there was consensus in favour of the inclusion in the Draft Convention of an accession clause for regional economic integration organisations.

The DELEGATION OF SOUTH AFRICA stated that it was speaking on behalf of the African States, and that it would need to see the proposed text of an accession clause and understand its effects before it could consider whether it supported such a clause.

The CHAIRMAN stated that an accession clause would not have any effect on matters such as the number of Contracting States since the European Community would not count as an additional Contracting State for the purposes of ratifications, that voting by regional economic integration organisations would not need to be addressed as the Draft Convention and Draft Protocol did not provide any voting procedures, that the accession clause would not jeopardise in any way the position of other Contracting States, and that further details about the implications of accession by the European Community would be provided at a later stage of the debate. The Chairman stated that the Commission would discuss Article 29 of the Draft Convention dealing with the effects of insolvency.

The DELEGATION OF EGYPT stated that Article 29 of the Draft Convention did not take account of all legal systems, that the Egyptian legal system was based on the French legal system and provided for different concepts of insolvency and bankruptcy, that under Egyptian law insolvency related to a period when a debtor was unable to pay which might lead to bankruptcy and procedures for the protection of creditors were applied only at the stage of bankruptcy, and that Article 29 of the Draft Convention should be amended to include specific reference to bankruptcy.

The CHAIRMAN stated that Article 29 of the Draft Convention when read in conjunction with the definition of “insolvency proceedings” in Article 1(l) of the Draft Convention was intended to be a neutral concept that would encompass all possible proceedings of similar kinds in different jurisdictions.

The SECRETARY GENERAL (UNIDROIT) stated that the policy of law-formulating agencies such as UNIDROIT was to avoid legal concepts that were typically associated with one legal family or another, that the term “insolvency” was chosen for this reason, that the term “insolvency” had not been used in continental Europe until the 1990s and had been regarded as an umbrella term that would include bankruptcies and procedures for the reconstitution of debtors, that bankruptcy would be regarded as a concept falling within “insolvency”, that the same approach had been taken when other international Organisations had drafted new insolvency instruments that needed to accommodate a range of domestic legal systems, and that the term “insolvency” had been used in the insolvency regulations referred to by the European Commission, in the Istanbul Convention on Cooperation between Insolvency Administrators and in the UNCITRAL Model Law on Cross-border Insolvency and had been chosen as a neutral umbrella concept which would then have to be redefined in various domestic environments.

The DELEGATION OF GHANA stated that it understood that the intention of Article 29(3) of the Draft Convention was to capture the various interests in insolvency proceedings that were meant to defeat insolvency proceedings, and that Article 29(3) of the Draft Convention was confusing and should be examined by the Drafting Committee.

The CHAIRMAN stated that the Drafting Committee would examine Article 29(3) of the Draft Convention to examine whether it could be clarified.

The DELEGATION OF SAUDI ARABIA stated that it supported the comments of Egypt.

The DELEGATION OF JORDAN stated that its laws did not recognise the concept of insolvency, that its laws only recognised bankruptcy, and that there was a great difference between the two concepts.

The CHAIRMAN stated that the concerns that had been raised were understandable, that the correct interpretation of the definition of “insolvency proceedings” in Article 1(l) of the Draft Convention was that it would encompass bankruptcy proceedings and other proceedings that led to the liquidation of assets, and that if national legal systems only recognised bankruptcy proceedings there would not be a problem as such proceedings would be within the concept of insolvency proceedings.

The DELEGATION OF EGYPT stated that it agreed with the comments of the Secretary General (UNIDROIT) but that it would be preferable for the Draft Convention expressly to state that the concept of insolvency included bankruptcy, that when the Draft Convention was ratified by different States it would become part of their domestic legal systems, and that this issue should be examined by the Drafting Committee.

The DELEGATION OF THE UNITED KINGDOM stated that the issue that had been raised by Egypt would be able to be addressed by amending Article 1(l) of the Draft Convention, that it agreed with the Secretary General (UNIDROIT) that the term “insolvency proceedings” was intended to cover any collective proceeding in which the assets and affairs of a debtor were subject to control or supervision and in particular would cover liquidational bankruptcy and the reorganisation of an insolvent outside of bankruptcy, and that it would be possible for the Drafting Committee to consider whether to amend Article 1(l) of the Draft Convention so that “insolvency proceeding” was defined to mean bankruptcy, liquidation or any other form of collective judicial or administrative proceedings.

The CHAIRMAN stated that the proposal of the United Kingdom would be considered by the Drafting Committee.

The AVIATION WORKING GROUP stated that it supported the Egyptian proposal, that it supported the inclusion of appropriate wording in Article 1(l) of the Draft Convention to clarify the doubts that had been raised, and that the revisions to the definition of “insolvency proceedings” that it had suggested during the discussion of Article 1 of the Draft Convention should also be considered by the Drafting Committee.

The DELEGATION OF EGYPT stated that it agreed with the proposal of the United Kingdom.

The DELEGATION OF THE EUROPEAN COMMUNITY stated that a new European regulation on insolvency proceedings would enter into force on 31 May 2002, that it had been adopted in cooperation with all Member States in order to develop more uniform procedures to provide disincentives against parties transferring assets or judicial proceedings from one Member State to another in order to obtain a more favourable legal position, that the new regulation would provide that the laws of the Member State in which the proceedings were commenced would determine the effect of those proceedings and that the opening of insolvency proceedings would not affect the rights of creditors in respect of tangible or intangible property, that the Draft Convention and Draft Protocol would not be inconsistent with the new regulation provided the different options set out in the Draft Protocol were retained, that the new regulation dealt with some aspects of private international law

and the Draft Convention and Draft Protocol dealt with exceptions to bankruptcy laws which were usually the domain of private international law, and that it had not had sufficient time fully to examine whether there would be a conflict with the new regulation but that at this stage all that it required was clarification that Articles 41 and 42 of the Draft Convention would not be applicable in the event of insolvency where the principal was situated in a Member State during the insolvency proceeding.

The CHAIRMAN stated that the European Community had not indicated that it had any problem with Article 29 of the Draft Convention, that the European Community had expressed concern about whether the jurisdiction provisions in Chapter XII of the Draft Convention would be applicable in the case of insolvency, and that this issue would be addressed during the forthcoming discussion of Chapter XII. The Chairman stated that the Drafting Committee would consider the definition of “insolvency proceedings” in Article 1(l) in order to address the concerns that had been raised by Egypt and in light of the suggestions that had been made by the Aviation Working Group in Appendix 2 to DCME Doc No. 7, and that Ghana’s proposal to reword Article 29(3) of the Draft Convention had not been supported but that Ghana would be invited to prepare a drafting proposal for presentation to the Drafting Committee.

The DELEGATION OF SINGAPORE stated that it required clarification about the relationship between Articles 29 and 39 of the Draft Convention, that Article 29 of the Draft Convention was related only to international interests in relation to insolvency proceedings while Article 39(1) of the Draft Convention provided that a non-consensual right under a particular State’s law would have priority over an equivalent interest in an object, and that it was not clear how a non-consensual right that was non-registrable under Article 39 would be dealt with in insolvency proceedings of the debtor if the insolvency proceedings took place in another jurisdiction.

The CHAIRMAN invited delegations to provide the clarification sought by Singapore.

The DELEGATION OF CANADA stated that it shared the concern that had been raised by Singapore, that the same concern had been raised in its consultations with the Canadian Airports Authorities and the Canadian Air Navigation instrumentalities, that those bodies had suggested that Article 29(2) of the Draft Convention be amended to read: “Nothing in this Convention impairs the effectiveness of an international interest, a non-consensual right or interest or a national interest in insolvency proceedings where those interests are effective under applicable law”, and that this issue should be referred to the Drafting Committee.

The CHAIRMAN stated that the issue that had been raised by Singapore would be referred to the Drafting Committee.

The AVIATION WORKING GROUP stated that Article 39 of the Draft Convention related to the insolvency of the debtor so that declarations made for preferred interests under Article 39 of the Draft Convention would also apply in the case of the debtor’s insolvency, and that it was appropriate that the Draft Convention did not attempt to provide complicated rules dealing with situations of insolvency.

The CHAIRMAN stated that the issue raised by Singapore had been supported only by Canada but that it should be examined by the Drafting Committee. The Chairman stated that the Commission would commence consideration of Chapter XII of the Draft Convention dealing with jurisdiction, and would at the same time consider Chapter IV of the Draft Protocol which also dealt with jurisdiction.

The DELEGATION OF ARGENTINA stated that Article 41 of the Draft Convention incorporated a drafting problem because it referred both to the courts of a Contracting State being “chosen by the parties to a transaction” and to “unless otherwise agreed between the parties”, that Article 42(3) of the Draft Convention referred to the concept of “arbitral tribunal” which was not referred to elsewhere in Chapter XII of the Draft Convention, that in Article 43(1) of the Draft Convention exclusive jurisdiction was linked to the centre of administration of the Registrar, that this would make the

selection of the Registrar more difficult because it would also be necessary to examine the way in which the courts in the Registrar's jurisdiction operated, that there would be problems with that jurisdiction being exclusive in cases such as where the courts were on strike for several months, and that in Article 43(2) and (4) of the Draft Convention it was not clear why the courts referred to in Article 41 of the Draft Convention should not also be competent to make an order.

The CHAIRMAN stated that the approach envisaged in Article 43 for the courts of the central administration of the Registrar to have exclusive jurisdiction to make orders binding on the Registrar would be essential to the functioning of the Registrar.

The DELEGATION OF THE UNITED KINGDOM stated that there were several reasons why the courts of the central administration of the Registrar should have exclusive jurisdiction, that without the provision there would be a risk that the courts of different Contracting States might make inconsistent orders and that this would place the Registrar in a difficult position, that a national court that was outside the jurisdiction of the Registrar would have no means to compel the performance of its orders, that the provisions would operate so that if a person considered that an interest had been improperly registered against it, it would apply to the national court of competent jurisdiction for an *in personam* order directing the party who had effected the registration to procure its removal, and that if such an order was not complied with, the court that made the order would be able to transmit the order to the court having jurisdiction over the Registrar with a request that the order should be reinforced by an order of that court.

The DELEGATION OF THE UNITED ARAB EMIRATES stated that it agreed with the explanation of Article 43 of the Draft Convention which had been provided by the United Kingdom, that there would be a difficulty if the Registrar was located in a State that was not a Contracting State to the Draft Convention, and that the Draft Convention should be amended to require that the Registrar be located in a Contracting State.

The CHAIRMAN stated that there was no provision in the Draft Convention or the Draft Protocol dealing with the issue that had been raised by the United Arab Emirates, that during the development of the Draft Convention it had been the understanding of a number of delegations that the Registrar would be located in a Contracting State, that the location of the Registrar in a Contracting State would be a factor that the Supervisory Authority would take into account when deciding on the Registrar, and that the Supervisory Authority would not nominate a Registrar that was not situated in a Contracting State.

The DELEGATION OF FRANCE stated that the Articles in Chapter XII of the Draft Convention had been discussed at length during previous meetings and that it was happy with the consensus positions that had been reached in relation to Articles 41, 42 and 43 of the Draft Convention, that it was extremely important that at the commencement of the chapter there was a reaffirmation of the free choice that would be available to different Contracting States, that it had difficulty with Article 44 of the Draft Convention which would apply when the Contracting Parties had not reached an agreement on the choice of a forum or the choice of a court, that Article 44 of the Draft Convention was too general and was expressed too vaguely and that this could lead to a situation where tribunals in several Contracting States claimed competence to have jurisdiction and to several aspects of a single case being split between several jurisdictions, and that Article 44 of the Draft Convention should be redrafted to require that the debtor appear before the tribunals or courts of the Contracting State where its official residence was located.

The CHAIRMAN stated that the Articles in Chapter XII comprised a delicate balance, that the purpose of Article 44 of the Draft Convention was to ensure that the Draft Convention would not in any way affect the general jurisdiction of the courts of Contracting States except as specified in the Draft Convention and Draft Protocol, and that the Draft Protocol included the State of the Registry as one additional basis of jurisdiction.

The DELEGATION OF AUSTRALIA stated that it supported the comments of the United Arab Emirates concerning the need for the Registrar to be located in a Contracting State, that it accepted the Chairman's explanation that this need was obvious but that it considered that there should be an express provision in the Draft Convention to that effect, and that the Drafting Committee should consider this issue. It stated that there was a possibility that Article 42(1) and (2) of the Draft Convention could be interpreted to mean that the courts referred to could be courts of a State that was not a Contracting State, that the commentary on Article 42 contained in DCME-IP/2 suggested that the references to courts in Article 42(1) and (2) of the Draft Convention were intended to be limited to the courts of a Contracting State, and that this inconsistency should be clarified by the Drafting Committee. It stated that there was a reference to arbitral tribunals in Article 42(3) of the Draft Convention, that, as Article 1(h) of the Draft Convention defined "court" to include arbitral tribunals of a Contracting State, it could be implied that Article 42(3) was intended to include arbitral tribunals other than those of a Contracting State, and that this issue should also be examined by the Drafting Committee.

The DELEGATION OF THE EUROPEAN COMMUNITY stated that the provisions dealing with the competence of tribunals had been extensively discussed in a special working group and had been considerably improved, that there were still some issues that required clarification, and that one issue requiring clarification was whether the conditions relating to the stipulation of a forum under Article 42 of the Draft Convention would also apply to the stipulation of a forum under Article 41 of the Draft Convention. It stated that there were a number of issues regarding the compatibility of the Draft Convention with the European Community Council Regulation No. 44/2001 on jurisdiction and the enforcement of judgements in civil and commercial matters (the "Brussels Regulation"), that Article 41 of the Draft Convention dealing with agreements about which courts would have exclusive jurisdiction might affect Article 23 of the Brussels Regulation when one of the parties to the agreement was domiciled in the European Community, and that Article 23 of the Brussels Regulation required that the clause relating to the choice of forum be valid. It stated that Article 42 of the Draft Convention relating to competent jurisdiction for the granting of interim relief was related to Article 31 of the Brussels Regulation which differentiated between tribunals depending on whether *in rem* or *in personam* measures were to be taken, that the applicability of the Draft Convention's provisions was different from those that had been developed in the European Court of Justice under European Community law which made a broader range of interim measures possible, and that Article XX of the Draft Protocol modified the provisions of the European Community's competency rules because it related to the question of the registration of an aircraft. It stated that Article 43 of the Draft Convention relating to jurisdiction to make orders against the Registrar would affect the Brussels Regulation if the Registrar was headquartered in the European Community because it would eliminate the choice of competence that was available under the Brussels Regulation, and that if the Registrar was located in the European Community it would be appropriate that the tribunal of a Member State where the headquarters of the Registrar was located have exclusive jurisdiction to take measures against the Registrar. It stated that Article 44 of the Draft Convention relating to General Jurisdiction seemed to be compatible with the European Community rules because it referred to competent jurisdiction under national legislation, and that, if a defendant were resident in the European Community, Article 44 of the Draft Convention would apply and it would not be possible to refer back to national legislation, but that if a defendant were not resident in the European Community it would be possible to refer back to national legislation.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that the Commission had earlier agreed that the application of Article 4 of the Draft Convention should be limited to Article 3 of the Draft Convention, that this meant that in Article 42(2) of the Draft Convention there would be no guidance for determining where the debtor was situated, that the earlier discussions had suggested

that specific decisions for determining where a debtor was situated would need to be developed for specific articles, and that this issue would need to be discussed in relation to Article 42(2) of the Draft Convention. It stated that it welcomed the European Community's indication that it would approach jurisdiction issues with flexibility, that the provisions dealing with jurisdiction had been discussed over a long period and had been carefully crafted on the basis of existing air finance transactions which followed well-established patterns throughout the world, that the compromises evident in the provisions had been carefully calculated in light of their effect on the credit community, that, in relation to Article 43 of the Draft Convention, it had been considered critical to constrain the possibility of actions being taken to a single jurisdiction, that the most appropriate choice for that jurisdiction was the jurisdiction of the International Registry, that it would not be appropriate for the International Registry to face the possibility of defending itself against suits in multiple jurisdictions as this would increase the cost of funding the International Registry, that, in relation to Article 44 of the Draft Convention, it had initially shared the concerns expressed by France but had been confronted with the problem of finding a single simple rule that would satisfy the requirements of numerous States, that it would be difficult to find a solution, and that, in relation to the comment by the European Community regarding Article XX of the Draft Protocol, the connection between Registry States was a common and well-structured mechanism within the context of aircraft financing and that this would need to be taken into account in any discussions on that issue.

The meeting rose at 12:30

COMMISSION OF THE WHOLE – TENTH MEETING

Tuesday, 6 November 2001, at 14:30

President: Professor Medard Rutoijo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.)

The CHAIRMAN stated that the Commission would continue its discussion of Chapter XII of the Draft Convention and Chapter IV of the Draft Protocol.

The DELEGATION OF SWITZERLAND stated that Article 41 of the Draft Convention did not address the question of the formalities for choosing a forum, that there was a risk that national judges might decide that a mode of choosing a forum such as electronic mail would not be acceptable, that Article 41 of the Draft Convention should therefore be clarified to specify the formalities for choosing a forum or to specify that a choice would be valid if it was made in writing, and that Article 1(nn) of the Draft Convention defined “writing” so that a requirement for the choice to be made in writing would not create uncertainty.

The CHAIRMAN stated that the concern that had been raised by Switzerland was similar to the comment of the European Community which the Chairman had understood to mean that Article 41 of the Draft Convention should include some formal requirements for validity of jurisdiction clauses, and that in other forums this had proven to be a difficult task.

The DELEGATION OF MEXICO stated that Article 44 of the Draft Convention omitted the traditional rule in international conventions that in the absence of an agreement between the parties the jurisdiction would be determined by the residence of the debtor, that Article 44 of the Draft Convention created uncertainty because it would be possible for multiple Contracting States to claim

jurisdiction in respect of the same issue, that it agreed with the comments of Argentina regarding Article 43 of the Draft Convention, and that Article 43(1) of the Draft Convention should be deleted.

The DELEGATION OF GHANA stated that Argentina had sought clarifications regarding Articles 41 and 42 of the Draft Convention and that these clarifications had not yet been provided, that Article 41 of the Draft Convention provided for courts of a Contracting State to have jurisdiction in respect of claims brought under the Draft Convention and Article 42(1) and (2) of the Draft Convention provided for the courts of a Contracting State to be given limited jurisdiction, and that it was not clear why Article 42(1) and (2) of the Draft Convention had been included in light of the extensive jurisdiction conferred by Article 41 of the Draft Convention.

The DELEGATION OF ARGENTINA stated that it supported the proposals that had been made by Mexico.

The CHAIRMAN stated that the first proposal made by Mexico was in relation to Article 44 of the Draft Convention and concerned the need for Article 44 of the Draft Convention to include a general connecting factor to national law and jurisdiction, that this had been earlier proposed by France, that the United States of America had noted the practical difficulties that had been encountered during the development of other conventions in drafting a general connecting factor clause, that the second proposal of Mexico was to delete Article 43(1) of the Draft Convention, and that it was possible that the deletion of Article 43(1) of the Draft Convention would undermine the whole system of providing exclusive jurisdiction for the courts of the place where the Registrar was located.

The DELEGATION OF SAUDI ARABIA stated that it questioned the value of providing for exclusive jurisdiction in Article 41 of the Draft Convention in light of the qualifications to that exclusive jurisdiction provided for in Article 42(1) and (2) of the Draft Convention, that Article 41 of the Draft Convention should be amended to provide that: “Subject to Articles 42 and 43, unless the parties agree otherwise, the courts of a Contracting State have the choice to choose the jurisdiction in respect of any claim brought under this Convention”, and that Article 42 of the Draft Convention should be amended by adding the following introductory phrase: “Without prejudice to Article 41 the courts of the Contracting States ...”.

The CHAIRMAN stated that the proposals of Saudi Arabia were for clarification purposes, that Article 41 of the Draft Convention was clearly expressed to be subject to Articles 42 and 43 of the Draft Convention, that the jurisdictions provided for in Articles 42 and 43 of the Draft Convention would be available irrespective of whether the parties had included a jurisdiction clause in their agreement, and that there would accordingly be no room for misunderstanding about the relationship between the two Articles.

The DELEGATION OF FRANCE stated that there appeared to be a contradiction between Article 26(5) of the Draft Convention and Article 43(4) of the Draft Convention, and that Article 43(4) of the Draft Convention should be amended to provide that: “Subject to other paragraphs no court may, in fact, make orders or give judgements with the reservation or subject to the reservations in previous paragraphs and pursuant to Article 26(5)”.

The CHAIRMAN stated that Article 26(5) of the Draft Convention referred to Article 26(4) of the Draft Convention, that the Commission had previously decided that Article 26(4)(a) of the Draft Convention should be deleted and that Article 26(4)(b) of the Draft Convention should be referred to the Drafting Committee for further consideration, and that the Drafting Committee should also consider whether Article 43(4) of the Draft Convention should include a cross-reference to Article 26(5) of the Draft Convention.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it had no comments on the substance of Chapter XII of the Draft Convention and that it hoped that the Articles in that chapter were substantially retained, that, in relation to the suggestion that had been made that the Registrar

should be located in a Contracting State, it would be concerned about anything that added delay to the entry into force of the Draft Convention and that as a question of law it was desirable but not technically necessary that the Registrar be located in a Contracting State as legal issues could be dealt with in a headquarters agreement, and that it would encourage the consideration of all options.

The CHAIRMAN noted that a suggestion had been made to include in the Draft Convention a requirement that the Registrar be located in a Contracting State but that other avenues could also be explored in order to find a satisfactory solution that was consistent with the other decisions to be made regarding the establishment of the International Registry.

The DELEGATION OF THE UNITED KINGDOM stated that it supported the comment of France regarding Article 43(1) of the Draft Convention, that it related to claims of damages against the Registrar under Article 27 of the Draft Convention but did not cover other types of claim against the Registrar which would be available if the Supervisory Authority waived the immunity granted to the Registrar, and that it agreed that it would be necessary to amend Article 43(1) of the Draft Convention to take account of the issue that had been raised by France. It stated that the issue of the location of the Registrar was not just a question of immunity but also involved questions of claims against the Registrar for matters such as deficiencies in the system, that if the Registrar were located in a non-Contracting State it would be difficult to envisage how those claims could be pursued, and that the question of whether the jurisdiction provisions should deal with the location of the Registrar in a Contracting State should be further examined.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported the comments of the Aviation Working Group regarding the location of the Registrar, that the location of the Registrar in a non-Contracting State might require the conclusion of agreements regarding immunities, taxes and jurisdiction but this possibility should not be excluded, that the jurisdictional provisions were structured based on the existing international practices of equipment finance and were very important for that purpose, that the retention of the provisions would be a key element in retaining the credit-worthiness of the system to be established by the Draft Convention, that it was not aware of any large-equipment transaction that did not include a choice-of-forum clause, that the additional jurisdiction provided by Article 42 was necessary because expedited remedies would be critical to the credit-worthiness of the system to be established by the Draft Convention, that asset-based financing only existed because credit could be extended in what would otherwise be unacceptably risky circumstances, that it did not agree with the proposal of Mexico for the deletion of Article 43(1) except for minor drafting changes that would not open up the possibility of the Registrar being subject to legal action in a variety of jurisdictions, that if the Registrar was subject to actions in numerous jurisdictions, this would increase the cost of the International Registry beyond what was practical, that it did not agree with the proposals to amend Article 43(4) of the Draft Convention because there were too many different systems in the different jurisdictions to be able to formulate a succinct rule of general application, that previous efforts to draft a clause that specified the full range of possible transactions resulted in draft articles that were excessively lengthy, that it would welcome efforts to draft a short and concise provision but did not think this would be possible, and that this was why it had accepted the drafting of Article 44(4) of the Draft Convention.

The DELEGATION OF CANADA stated that it supported the view of the United Kingdom that the International Registry should be located in a Contracting State, that this issue needed to be examined very carefully, that the Supervisory Authority would need to examine the conditions under which the International Registry was established, that it was possible that the conditions could include headquarters arrangements providing for the exclusion of jurisdiction but this would involve matters that would be very delicate to negotiate, that it understood that the Commission had agreed that Article 26(4)(a) of the Draft Convention would be deleted so that the Registrar would not enjoy any immunity, that in light of this it would be possible to draft Article 43(1) of the Draft Convention in a more streamlined way by attributing exclusive jurisdiction without making distinctions about the type

of action being contemplated, and that the Drafting Committee should examine Article 43(1) of the Draft Convention with a view to simplifying it.

The DELEGATION OF INDIA stated that it supported the proposal that Article 43(1) of the Draft Convention should be amended, that this could be achieved by deleting the phrase: “under Article 27” so that any action admissible against the Registrar would be covered, that the jurisdiction provisions in Articles 41 to 44 of the Draft Convention had been carefully drafted over three Joint Sessions and in the Legal Committee, that it agreed with the Aviation Working Group that it would be best to retain the provisions or only to make the minimum changes, that the provisions should not be redrafted, that it agreed with the United States of America that it was not technically necessary that the Registrar be located in a Contracting State, that it should be possible to have an agreement which would cover all requirements between the Supervisory Authority and the Registrar, but that if the Commission considered that it would be essential that the Registrar be located in a Contracting State this would best be achieved by including a requirement in the Draft Protocol that the Supervisory Authority ensure that the Registrar was located in a Contracting State, and that this would avoid the need to amend the Draft Convention.

The DELEGATION OF JAMAICA stated that the provisions in Chapter XII of the Draft Convention were predicated on the idea that jurisdiction would be agreed by the Contracting States to the Draft Convention, that even in cases where the parties chose jurisdiction this would be because the Draft Convention itself provided for the making of that choice, that Article 43 of the Draft Convention would establish a single jurisdiction that would have exclusive jurisdiction in relation to the acts of the Registrar, that it was difficult to understand how it would be possible for there to be agreements outside of the provisions of the Draft Convention relating to the State in which the Registrar was located if that State was not a Contracting State, that it supported the proposal that the Draft Convention should contain a provision requiring the Registrar to be located in a Contracting State, and that it would be preferable for the Registrar to be located in a State that was bound by all the provisions that were contained in the Draft Convention in relation to jurisdiction and other matters.

The CHAIRMAN stated that the most difficult matter that had been raised during the discussion was the issue of how to ensure that the Member States of the European Union would be in a position to ratify the Draft Convention and Draft Protocol, that if a solution was not found there would be a risk that none of the Member States of the European Union would be in a position to ratify the Draft Convention and Draft Protocol, that an informal working group would be convened to examine the issues that would arise in relation to European Union competence regarding jurisdiction, that the informal working group would draft a proposal to be discussed by the Commission, that the delegations that would comprise the informal working group would be the delegations of Argentina, Australia, Belgium, Canada, China, Egypt, the European Commission, Jamaica, Japan, Russia, South Africa, Sweden, and the United States of America, and that the discussions of the informal working group would be open-ended and open to participation by other delegations. The Chairman stated that a number of queries had been made regarding the relationship between Articles 41 and 42 of the Draft Convention, that delegations that had raised drafting issues should present written proposals to the Drafting Committee, that the Drafting Committee would consider the proposal that had been made regarding Article 42(3) of the Draft Convention and the proposal to amend Article 4 of the Draft Convention to replace the phrase: “For the purposes of this Convention” with the phrase: “For the purposes of Article 3”, that there had been queries about the use of the concept “arbitral tribunal” in Article 42(3) of the Draft Convention and that the Secretary General (UNIDROIT) would address that issue, that the Drafting Committee would consider whether to amend Article 43(1) by deleting the phrase “under Article 27” to take account of the changes that had been agreed by the Commission to be made to Article 26(4) of the Draft Convention, that the Drafting Committee would consider whether Article 43(4) of the Draft Convention should include a cross-reference to Article 26(5) of the Draft Convention, that there had been a debate on the question whether Article 44 of the Draft Convention should provide for a connecting factor and for jurisdiction to be determined by the

location of the debtor, that it had been noted that it would be extremely difficult to formulate a general provision that would be acceptable to all delegates, that the delegations seeking an amendment to Article 44 of the Draft Convention should prepare a written proposal to be provided to the Drafting Committee, that there had been clear support for the proposal that the Draft Convention and Draft Protocol should include an express requirement that the Registrar be located in a Contracting State but that some delegations had indicated that it would be possible for the Registrar to be located in a non-Contracting State, and that this issue would be further discussed during the discussion of the Registrar provisions of the Draft Protocol.

The SECRETARY GENERAL (UNIDROIT) stated that Argentina and Ghana had requested clarification about why arbitral tribunals were mentioned in Article 42(3) of the Draft Convention, that in either Russia or China the judicial organs were described as arbitral tribunals and that this was why the definition of “court” in Article 1(h) of the Draft Convention and Article 42 of the Draft Convention both referred to arbitral tribunals.

The CHAIRMAN stated that there had been no comments in relation to Article XXI of the Draft Protocol, that only the European Commission had made comments regarding Article XX of the Draft Protocol and that those comments would be considered by the informal working group, that the informal working group should commence its work as soon as possible in order to produce proposals for consideration by the Commission which could then be referred to the Drafting Committee.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported the Chairman’s proposal that the delegations seeking an amendment to Article 44 of the Draft Convention should prepare a written proposal to be provided to the Drafting Committee, and that it required clarification about whether the purpose of that invitation was to seek to redraft Article 44 of the Draft Convention so that it would focus only on the location of the debtor.

The CHAIRMAN stated that the purpose of the invitation was not to redraft Article 44 of the Draft Convention so that it referred solely to the location of the debtor, and that all interested delegations should consult with a view to achieving consensus on that issue.

The DELEGATION OF MEXICO stated that it welcomed the Chairman’s proposal that the delegations seeking an amendment to Article 44 of the Draft Convention should prepare a written proposal.

The CHAIRMAN stated that the discussion of Chapter XII of the Draft Convention and Chapter IV of the Draft Protocol had been completed, that the only chapter of the Draft Convention that remained to be discussed was Chapter IX of the Draft Convention dealing with assignments, and that as a proposal would shortly be produced the discussion of Chapter IX would be deferred until the proposal had been developed.

The DELEGATION OF JAPAN stated that Japan and the United States of America had been discussing the wording of the assignment clauses of the Draft Convention, that they were very close to agreement, that the drafting of their original proposals differed only in that the Japanese proposal dealt with assignment of associated rights while the United States of America’s proposal dealt with assignment of international interests, and that a compromise consolidated proposal would be presented in the very near future.

AGENDA ITEM 9 – CONSIDERATION OF THE DRAFT PROTOCOL

The CHAIRMAN stated that the Commission would commence discussion of the Draft Protocol, that discussion of the title and preamble to the Draft Protocol would be deferred until a later stage, and that the discussion would commence with Chapter I of the Draft Protocol.

The DELEGATION OF THE AVIATION WORKING GROUP stated that the definition of “State of registry” in Article I(p) of the Draft Protocol should be amended to include the phrase: “is entered or to be entered”, and that this amendment was required so that the definition would match the sphere of application provisions in Article IV(1)(b) of the Draft Protocol.

The CHAIRMAN stated that the proposal of the Aviation Working Group would be accepted. The Chairman stated that the Commission would next discuss Chapter II of the Draft Protocol, and that as Article XV dealt with assignment provisions, it would be discussed at a later stage.

The DELEGATION OF AUSTRALIA stated that Article X(3) of the Draft Protocol would modify the Draft Convention by adding the sale and application of proceeds of an aircraft to the list of interim relief measures, that it did not regard the sale of an aircraft as a form of interim relief, that its concerns were diminished by the fact that this modification of interim relief would only apply if a Contracting State had made a declaration to that effect, and that it required clarification whether interim relief in the form of the sale of an aircraft would be able to be applied against an aircraft object of a Contracting State that had not made a declaration during any period that the aircraft was in a Contracting State that had made a declaration.

The DELEGATION OF SOUTH AFRICA stated that it was speaking on behalf of the African States, that Article IX(3)(b)(ii) of the Draft Protocol provided that an agreement between a creditor and a debtor regarding what was a commercially reasonable manner would be regarded as conclusive, that the African States considered that the question whether a matter was commercially reasonable should be able to be considered by a court and should not be left to an agreement between the parties, and that Article IX(3)(b)(ii) of the Draft Protocol should either be deleted or made into an optional provision. It stated that in Article XI of the Draft Protocol, the African States preferred Alternative B with the proviso that the element of Alternative A that related to the requirement for an aircraft to be maintained and preserved should be incorporated into Alternative B. It stated that its positions on these issues were explained in DCME Doc No. 25.

The DELEGATION OF FRANCE stated that Article X(3) of the Draft Protocol would add the sale and application of proceeds of an aircraft as an additional form of interim relief to the list of forms of relief available under Article 12(1) of the Draft Convention, that this form of relief had an element of finality that was not normally associated with interim relief, that the addition of this form of relief would be unreasonable because the sale of an object should be permitted only after all contentious issues had been disposed of, that if Article X(3) of the Draft Protocol was retained France would not make a declaration for its application, and that it preferred Alternative B in Article XI of the Draft Protocol because it would strengthen the powers of administrators and provide a framework for the intervention of the courts.

The CHAIRMAN stated that both Australia and France had indicated that the application of Article X of the Draft Protocol would be subject to a Contracting State making a declaration to that effect, that what would be important would be that the opportunity to apply the sale and application of proceeds as an interim relief measure was retained for those Contracting States that did not have a concern in order for them to obtain better financial benefits under the Draft Convention system, that opt-in and opt-out provisions were the result of attempts to find solutions that would be acceptable to all delegations, and that Contracting States that were not happy with certain provisions would be able to make a declaration so that those provisions did not apply to them.

The DELEGATION OF GHANA stated that it had intended to support the comments of South Africa and France relating to Articles X and XI of the Draft Protocol, that it did not consider the sale of an aircraft object to be interim relief, and that the Chairman’s explanation had clarified the matter.

The CHAIRMAN stated that the Commission was still awaiting clarification regarding the request for clarification from Australia.

The DELEGATION OF THE UNITED KINGDOM stated that different legal systems had different approaches to the question of whether a sale could be ordered by way of interim relief, that common law systems generally regarded a sale as a form of interim relief, particularly in cases where the subject matter of the dispute might be deteriorating or was otherwise at risk and it would be in the interests of both parties to allow for it to be sold and for the dispute to attach the proceeds of the sale, that some other legal systems did not recognise this right, which was why Article X of the Draft Protocol required an opt in declaration, and that Article XI of the Draft Protocol provided the widest possible choice because it would enable a Contracting State to choose Alternative A in its entirety or Alternative B in its entirety or to make no declaration, in which case neither alternative would be applied.

The CHAIRMAN stated that the Commission was still awaiting clarification of the issue raised by Australia and the issue raised by South Africa, and that, as it would not be possible to pick and choose elements from Alternative A and Alternative B in Article X of the Draft Protocol, the South African issue required further discussion.

The DELEGATION OF THE UNITED KINGDOM stated that it was correct that Contracting States would need to choose between Alternative A and Alternative B and would not be able to pick and choose elements from each of the options, that, if an aircraft landed in a Contracting State that had made a declaration under Article X(3) of the Draft Protocol, the fact that the aircraft was registered in a Contracting State that had not made a declaration would not affect the power of the courts of the Contracting State that had made the declaration to apply the remedy, and that, when an aircraft was in a Contracting State that had made a declaration under Article X(3) of the Draft Protocol, it would have jurisdiction over the aircraft and its courts would have the power to apply the remedy regardless of where the aircraft came from.

The DELEGATION OF CAMEROON stated that Article X(6)(a) of the Draft Protocol included the figure of five working days in square brackets, that this issue should be discussed and resolved, that it considered five working days to be too brief for the type of legal process contemplated, and that it supported the comments of France regarding Article X of the Draft Protocol but accepted the Chairman's explanation that the fact that Article X was an opt-in provision did not make it necessary to amend the Draft Protocol.

The DELEGATION OF CANADA stated that it agreed with the comments of the United Kingdom regarding the effect of a declaration under Article X(3) of the Draft Protocol.

The DELEGATION OF THE AVIATION WORKING GROUP stated that both the International Air Transport Association and itself had prepared technical comments which were set out in Appendix 2 to DCME Doc No. 7, that the provisions under discussion were crucial to the economic assumptions underpinning the Draft Convention system, that the opt-in system had been proposed in order to provide maximum flexibility on all the sensitive points and had struck an appropriate balance on very delicate issues, and that there was the possibility of including a simplified opt-in annex that would make clear what all the optional mechanisms were and which would give comfort to States that preferred an opt-in process to an opt-out process.

The CHAIRMAN stated that the Drafting Committee could consider the question whether the structure of the opt-in and opt-out options could be streamlined.

The DELEGATION OF FRANCE stated that it accepted that Article X of the Draft Protocol would be an opt-in provision, that France would not make a declaration to apply the provisions of Article X of the Draft Protocol for the reasons stated in its previous intervention, that the fact that Article X of the Draft Protocol would be an opt-in provision did not address all its concerns, that it was possible that France would find itself in a situation where a French national was a debtor concerning an object registered in a Contracting State that had made a declaration and would have to comply with the

provision, and that it would be useful to amend Article X of the Draft Protocol to add a requirement that the Parties had first agreed to the sale and application of the proceeds.

The DELEGATION OF NIGERIA stated that, in relation to Article XI of the Draft Protocol, it had been stated that it would not be possible to incorporate elements of Alternative A into Alternative B, that no issues should be closed at a Diplomatic Conference, and that the Drafting Committee should examine the possibility of amending Alternative A to incorporate elements of Alternative B.

The CHAIRMAN stated that the system envisaged by the Draft Protocol was that there would be an option for either Alternative A or Alternative B, and that it would be possible for the Drafting Committee to examine the drafting of both alternatives.

The DELEGATION OF SINGAPORE stated that paragraph 5 of Alternative A of Article XI of the Draft Protocol referred to the creditor being given an “opportunity” to take possession, that it was unclear whether the concept of “opportunity” would be satisfied through written notice or whether something else would be required, and that this issue should be clarified.

The DELEGATION OF EGYPT stated that when the Drafting Committee considered the insolvency and bankruptcy issues it had been asked to consider it should also examine Articles I(m) and (n), XI and XII of the Draft Protocol.

The DELEGATION OF JAMAICA stated that Article IX(3)(b)(ii) of the Draft Protocol would allow the parties to determine conclusively whether a remedy had been exercised in a commercially reasonable manner, that this was a matter of public policy that should not be left to be decided by private parties even if those parties were commercially sophisticated, that the jurisdiction of the courts to decide whether a remedy had been exercised in a commercially reasonable manner should not be ousted, and that it supported the view of the African States on this issue. It also stated that Article X(6)(a) of the Draft Protocol was inconsistent with Article X(6)(b) of the Draft Protocol, that Article X(6)(a) of the Draft Protocol would require the physical export of an aircraft within five working days and that Article X(6)(b) of the Draft Protocol would require aviation authorities to act in conformity with local laws which might preclude a transfer of an aircraft within five working days, and that the order of the two provisions should be reversed.

The DELEGATION OF SENEGAL stated that it supported the interventions of South Africa and Nigeria, and that the Drafting Committee should consider incorporating elements of Alternative A in Article XI of the Draft Protocol into Alternative B in Article XI of the Draft Protocol.

The DELEGATION OF AUSTRALIA stated that it had requested clarification about the application of Article X(3) of the Draft Protocol, that it was grateful to those delegations that had provided clarifications, that it understood that, even if a Contracting State had not made a declaration under Article X(3) of the Draft Protocol, an aircraft registered in its jurisdiction could be the subject of a sale as part of an interim remedy, that a sale would have a greater degree of finality than some of the other interim orders and the process of examining the merits might not be as fulsome as would be appropriate for a final order, that, although no delegation had spoken in favour of the requirement to have a sale made available on an interim basis, it understood that there was a need to accommodate concerns that had been raised during the negotiations of the Draft Convention, and that it had concerns with the compromise that had been reached in Article X of the Draft Protocol but would not object to it proceeding if a consensus formed to that effect.

The DELEGATION OF GHANA stated that it required clarification in relation to Alternative A in Article XI of the Draft Protocol, that Alternative B in Article XI of the Draft Protocol included an opportunity for the debtor to agree that it would cure all defects, that this opportunity was not included in Alternative A, and that Alternative A should be amended expressly to provide that the debtor would have an opportunity to cure defects.

The DELEGATION OF GERMANY stated that it had prepared a proposal to clarify the relationship between Article 28(6) of the Draft Convention and Article XIV of the Draft Protocol.

The CHAIRMAN stated that the issue raised by Germany would be referred to the Drafting Committee.

The DELEGATION OF SWEDEN stated that it agreed with the comments of Jamaica regarding Article IX(3) of the Draft Protocol.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it had made several proposals in DCME Doc No. 28 regarding the Draft Protocol, that one proposal was to clarify the duty of a National Registry Authority to comply with a request for deregistration and export, that its domestic consultations had indicated the need for this clarification, and that it had proposed a new Article IX(4) which would clarify the issue and recognise that a National Registry Authority would have a duty to honour a request but should also have the ability to use its own applicable laws and rules and regulations. It stated that it had also proposed a modification to Article IX of the Draft Protocol to clarify that a creditor who proposed to deregister and export an aircraft object would be required to give notice to interested persons, that it agreed with the drafting suggestions that had been raised by the Aviation Working Group and which were also discussed in DCME Doc No. 28, that it did not object to the South African proposal to move paragraphs 5(a) and (b) of Alternative A in Article XI of the Draft Protocol into Alternative B but that it was aware that Alternative B had been carefully drafted and it was unclear whether the South African proposal would find broad support. It stated that Article IX(3)(b)(ii) of the Draft Protocol represented party autonomy, that party autonomy was one of the principal elements of the Draft Convention and Draft Protocol, and that it should only be referred to the Drafting Committee with a caution against straying from a key element of the Draft Convention and Draft Protocol.

The CHAIRMAN stated that the proposal to examine Article IX(3)(b)(ii) of the Draft Protocol arose out of concern that the agreement of the parties would be conclusive in every sense.

The DELEGATION OF KENYA stated that it supported the comments of South Africa in relation to Article IX(3)(b)(ii) of the Draft Protocol, that it agreed that this issue should be examined by the Drafting Committee, and that it supported the comments of South Africa that paragraphs 5(a) and (b) of Alternative A in Article XI of the Draft Protocol should be moved into Alternative B.

The DELEGATION OF INDIA stated that it agreed with the comments of Jamaica that Article X(6)(a) of the Draft Protocol was inconsistent with Article X(6)(b) of the Draft Protocol, that the order of the two provisions should be retained but that Article X(6)(a) should be amended by including a new introductory phrase: “Unless the applicable aviation safety laws and regulations require otherwise”, that it agreed with the comments that had been made by Jamaica and other delegations regarding Article IX(3)(b)(ii) of the Draft Protocol, and that Article IX(3) of the Draft Protocol should be deleted.

The CHAIRMAN requested India to clarify whether its proposal was to delete Article IX(3) of the Draft Protocol in its entirety or to delete only Article IX(3)(b)(ii) of the Draft Protocol.

The DELEGATION OF INDIA stated that if Article IX(3)(b)(ii) of the Draft Protocol was deleted, the remaining part of Article IX(3) of the Draft Protocol would not have any sense, and that this was why it had proposed deleting Article IX(3) of the Draft Protocol in its entirety.

The DELEGATION OF SAUDI ARABIA stated that in Saudi Arabia the working week commenced on Saturday and the weekend comprised Thursday and Friday, and that Article X(6)(a) of the Draft Protocol should be amended either by increasing the number in square brackets to accommodate all systems or by adding a reference to “5 working days in the country concerned”.

The DELEGATION OF THE EUROPEAN COMMUNITY stated that it had a comment concerning the scope of the connection between Articles X and XXVIII of the Draft Protocol which was related to its difficulties with Article 42 of the Draft Convention, that Article X(1) of the Draft Protocol stated that it applied only when a Contracting State made a declaration to that effect under Article XXVIII of the Draft Protocol and only to that extent, that Article XXVIII(2) of the Draft Protocol stated that a Contracting State would be able to declare that it would not apply Article X of the Draft Protocol partially or wholly, that Article X(3) of the Draft Protocol added a provisional measure and also referred to Article 42 of the Draft Convention, that a declaration under Article XXVIII of the Draft Protocol should apply to Article X(3) of the Draft Protocol, and that it would be compatible with the philosophy of the Draft Convention if the declaration under Article X(1) of the Draft Protocol was also applicable to Article X(2), (3) and (5) of the Draft Protocol.

The CHAIRMAN stated that the intervention of the European Commission might require further clarification.

The DELEGATION OF THE RAIL WORKING GROUP stated that the preliminary draft Rail Protocol included a provision for a court to make directions for normal maintenance and necessary repairs in connection with Article 12 of the Draft Convention, that, in relation to concerns that had been raised about Article X(3) of the Draft Protocol, it was relevant that Article 12 of the Draft Convention provided for a court to impose such terms as it considered necessary to protect interested persons in the event that the creditor ultimately failed in establishing its claim in whole or in part, and that this recognised a common practice in common law jurisdictions for interim relief to be granted subject to a security or guarantee to protect a debtor if the creditor's claim was not ultimately upheld.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that Article IX(3) of the Draft Protocol reflected a critical function of the air finance market, that in air finance contracts one of the most highly-negotiated elements was the agreement of the parties as to when default might occur, what type of remedies would be commercially reasonable, and what kind of defences could be raised, that these factors would typically be negotiated in detail and would affect the pricing of the transaction, and that this should be taken into account by the Drafting Committee.

The CHAIRMAN stated that there had been considerable support for the deletion of Article IX(3)(b) of the Draft Protocol, that only one delegation had supported the retention of Article IX(3)(b) of the Draft Protocol, and that unless further support for the Article emerged the Drafting Committee would examine the consequences of its deletion.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it had understood the discussion to have involved recommendations for reflection about whether Article IX(3)(b)(ii) of the Draft Protocol should include agreed commercial law standards such as manifest unreasonableness, that this was very different from eliminating the Article altogether, that if Article IX(3)(b)(ii) of the Draft Protocol were eliminated that would involve the removal of a critical provision from the financing mechanism of the Draft Convention, that it assumed that the delegations that made interventions would not have intended to impair the credit value of the instruments, that it had no objection to a qualifying term such as manifest unreasonableness, and that a deletion of the provision would involve a strong reversal of the policy that had been adopted during the course of the development of the instruments.

The CHAIRMAN stated that if Article IX(3)(b)(ii) of the Draft Protocol were deleted then any agreement between the parties would still be conclusive provided it was not manifestly unreasonable, that this conclusion flowed from the Draft Convention and from Article VII(2) of the Draft Protocol, and that objections had been raised about the agreement between the parties being absolutely conclusive.

The DELEGATION OF THE AVIATION WORKING GROUP stated that there had been some confusion regarding the need to amend Article IX(3)(b)(ii) of the Draft Protocol, that Article IX(3)(a) of the Draft Protocol would delete Article 7(2) of the Draft Convention, that if Article IX(3)(b) of the Draft Protocol were deleted, but not Article IX(3)(a), this would mean that the basic rule about exercising remedies in a commercially reasonable manner would be deleted, that it would be important to retain a requirement that remedies be exercised in a commercially reasonable manner, that the decision should be to delete Article IX(3) of the Draft Protocol in its entirety so that Article 7(2) of the Draft Convention would apply, that it supported Article IX(3)(b)(ii) of the Draft Protocol but would be prepared to engage in technical discussions with a view to improving the clarity of Article 7(2) of the Draft Convention, and that it agreed that the deletion of Article 7(2) of the Draft Convention would be undesirable. It stated that it had no objection to the French proposal to add the phrase: “if the parties so agreed” in Article X(3) of the Draft Protocol, that it agreed that the declaration that would be permitted by Article X of the Draft Protocol would be able to be made in respect of either or both of the provisions in Article X, and that the Drafting Committee’s examination of Article X of the Draft Protocol should not alter the substance of the provision which was to ensure prompt and expeditious actions consistent with safety laws and regulations.

The CHAIRMAN stated that Article IX(3) of the Draft Protocol would be referred to the Drafting Committee on the basis that there had been considerable support for its deletion on the ground that any agreement between the parties should not be absolutely conclusive.

The DELEGATION OF INDIA stated that it agreed with the Aviation Working Group that, if Article IX(3) of the Draft Protocol was deleted, the effect would be to apply Article 7(2) of the Draft Convention, that this would be an acceptable outcome, and that the deletion of Article IX(3) of the Draft Protocol was the only solution.

The CHAIRMAN stated that drafting proposals regarding Article IX(2) and (4) of the Draft Protocol had been made by the United States of America and were contained in DCME Doc No. 28, that these proposals were of a drafting nature and would be referred to the Drafting Committee, that the Drafting Committee would consider Article IX(3) of the Draft Protocol in light of the comments that had been made, that the Drafting Committee would consider Article X(6) of the Draft Protocol to ensure that it was clear that safety laws and regulations were respected, that the number of working days in square brackets had been accepted as five with only one delegation saying that number was not reasonable, that the Drafting Committee would consider the feasibility of transferring paragraph 5 of Alternative A in Article XI of the Draft Protocol to Alternative B, and that the Drafting Committee would consider the relationship between Articles XIV (2) and (3) and XXVIII(6) of the Draft Protocol which would be the subject of a working paper to be produced by Germany.

The DELEGATION OF THE AVIATION WORKING GROUP stated that the approach that had been adopted in the Draft Protocol was for Article IX(3) of the Draft Protocol to apply not only to conditional sales but also to leases and title reservation agreements, that a requirement that remedies be exercised in a commercially reasonable manner should apply to all types of transaction, and that the Drafting Committee should ensure that this intention was retained.

The DELEGATION OF INDIA stated it had proposed that Article X(6)(a) of the Draft Protocol be amended with the addition of the phrase: “Unless the applicable aviation safety laws and regulations require otherwise”, and that if this amendment were made it would be able to agree to the figure of five working days but that if the amendment were not made five working days would not be practical.

The CHAIRMAN stated that the Indian proposal would be considered by the Drafting Committee.

The DELEGATION OF GHANA stated that there had been considerable discussion of Article X(3) of the Draft Protocol but that the outcome of the discussion had not been recorded in the Chairman’s summary.

The CHAIRMAN stated that there had been considerable discussion of Article X(3) of the Draft Protocol, that because Article X(3) of the Draft Protocol was an opt-in Article there had been no seconded proposals for amendment of that Article, and that it had therefore not been referred to the Drafting Committee. The Chairman stated that the discussion of Chapter II of the Draft Protocol had concluded except that there was an Annex to the Draft Protocol in the form of an Irrevocable De-Registration and Export Request Authorisation, and that this annex would be discussed during the following session of the Commission.

The DELEGATION OF FRANCE stated that France's proposal regarding Article X(3) of the Draft Protocol had received support and had not been objected to, and that it was concerned that the proposal had not been referred to the Drafting Committee.

The CHAIRMAN stated that, as Article X(3) of the Draft Protocol was an opt-in provision, it was possible for France to accept Article X(3) of the Draft Protocol in its present form, that the position of France had nevertheless received support, and that the French proposal would be referred to the Drafting Committee.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported the Chairman's summary, that Article X(3) of the Draft Protocol was an optional provision, and that it supported its retention as an optional provision.

The CHAIRMAN stated that the reference of issues to the Drafting Committee meant only that the Drafting Committee would consider the issue, and that it was possible that the Drafting Committee would not recommend any amendments.

The DELEGATION OF THE AVIATION WORKING GROUP stated that the French proposal had been to insert the phrase: "if the parties agree" into Article X(3) of the Draft Protocol, that it supported this proposal, and that the proposal was a reasonable proposal made with the spirit of compromise.

The meeting rose at 17:30

COMMISSION OF THE WHOLE – ELEVENTH MEETING

Wednesday, 7 November 2001, at 9:30

President: Professor Medard Rutojo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 9 – CONSIDERATION OF THE DRAFT PROTOCOL (CONT.)

The CHAIRMAN stated that several working papers had been distributed, that DCME Doc No. 44 contained a proposal on the assignment provisions of the Draft Convention, that those provisions had not yet been discussed, that the proposal had been presented by the United States of America and was the product of intensive consultations with all interested delegations, that DCME Doc No. 43 was a paper presented by France, Germany, the Russian Federation, the United Kingdom and the United States of America, and that the paper proposed some key features of the arrangements for the registry system prior to the entry into force of the Draft Convention and Draft Protocol.

The SECRETARY GENERAL (ICAO) stated that as at 9:30 on 7 November 2001, 65 States and ten international Organisations had registered to participate in the Diplomatic Conference, that the total number of delegates participating at the Diplomatic Conference was 252, and that a revised list of registered participants would be provided during the course of the Diplomatic Conference.

The CHAIRMAN stated that the Commission would commence a discussion of the Annex to the Draft Protocol in the form of the Irrevocable De-Registration and Export Request Authorisation form, and invited delegations to comment on the annex.

The DELEGATION OF TURKEY stated that the authorisation in the Annex to the Draft Protocol should make a reference to a default under the agreement between the debtor and creditor, that the reference should clarify that the authorisation would be used in case of a default by the debtor, and that this issue should be referred to the Drafting Committee.

The CHAIRMAN stated that there were no other requests for comments on the Annex to the Draft Protocol, and that Turkey should produce a written proposal for consideration by the Drafting Committee. The Chairman stated that the Commission would commence consideration of Chapter III of the Draft Protocol.

The DELEGATION OF CHINA stated that Article XVIII(1) of the Draft Protocol should be amended by replacing the phrase: “an entity in its territory as the entity” with the phrase: “one or more entities in its territory as the entity/entities” so as to clarify that a Contracting State would be able to designate different entry points for transmitting information to the International Registry.

The DELEGATION OF JAPAN stated that the maximum sum of the obligations secured by an international security interest should be required to be registered, that it held this view notwithstanding that Article 6(d) of the Draft Convention did not require this information as a condition of the validity of a security agreement, and that to avoid potential disadvantage to a second-ranked creditor the maximum sum secured should be registered and the first-ranked creditor should be limited to that maximum sum.

The CHAIRMAN noted that the issue raised by Japan had been discussed previously in connection with the validity of a security interest, that the issue raised by Japan involved different questions related to priority of interests, and that the views of other delegations would be welcome.

The DELEGATION OF LEBANON stated that it required clarification concerning Article XVIII(1) of the Draft Protocol, that it was not clear what the process for transmitting information to the International Registry would be in cases where a Contracting State had not designated an entry point, and that it was possible that this issue would be addressed in regulations to be made by the Supervisory Authority.

The CHAIRMAN stated that the basic principle of the International Registry would be that it would be open to use by everybody, that if there was no designated entry point for a particular country, then persons interested in contacting the International Registry would do so directly by electronic means without having to use an entry point, and that the details of how these communications would be effected would be set out in the regulations of the International Registry.

The SECRETARY GENERAL (ICAO) stated that, in relation to Article XVI(1) of the Draft Protocol, the ICAO Council decided on 22 November 2000 that the functions of the Supervisory Authority were acceptable in principle to the Council, that the Council decided to defer taking a decision regarding the possible combination of the functions of the Review Board with those of the Supervisory Authority pending consideration of the report to be presented on the outcome of the Diplomatic Conference which would address the functions of the Supervisory Authority, that it was possible that Article XVI(1) of the Draft Protocol would need to be modified, and that it would be possible to present a proposal for modification following consultations.

The CHAIRMAN stated that it would be necessary for consultations to give careful thought to the position of the ICAO Council in relation to the Supervisory Authority, that it would be preferable if those consultations were not undertaken in the Drafting Committee, and that no further discussion of Article XVI(1) of the Draft Protocol would be useful until the conclusion of those consultations.

The DELEGATION OF SPAIN stated that, in relation to the proposal to amend Article XVIII of the Draft Protocol to refer to the designation of “one or more entities”, it was not clear who would designate the entities, that it would be preferable to retain Article XVIII of the Draft Protocol in its present form because interests recorded on the International Registry would be given priority and it would be preferable for only one single entity to be designated for the transmission of information to the International Registry, and that it supported the Japanese proposal that the maximum amount secured be required to be recorded on the International Registry because, if this was not required, it would be difficult for subsequent interests to be registered if the holders of those interests did not know the exact amount that had been secured by the first-registered interest.

The DELEGATION OF THE AVIATION WORKING GROUP stated that DCME Doc No. 7 included a number of relevant technical comments, that Article XVIII(2)(a) of the Draft Protocol should be amended to enable prospective interests to be registered through a designated entry point, that Article XVIII of the Draft Protocol should be amended to permit a declaration to be made to enable a Contracting State to make registrations with respect to engines through a designated entry point, that this could not be made mandatory because engines did not have nationality but that some States might find it more convenient to permit people to make filings with respect to engines, that Article XIX of the Draft Protocol should be amended to provide that the search criteria should be the manufacturer’s serial number, the name of the manufacturer, and the model designation, that these three criteria would cover all cases and would be simple, that the discussion about the need to designate the maximum amount secured by the interest involved the same substantive issue as in Article VI of the Draft Protocol, that in the case of a floating rate loan over a period of 20 years a higher amount would need to be stated, that that amount could be two or three or four times the actual amount, that this would be inappropriate in relation to Article VI of the Draft Protocol and for the same reasons it would not be appropriate to include such a requirement in Chapter III of the Draft Protocol, and that it did not have any concerns with the Chinese proposal.

The DELEGATION OF TONGA stated that it supported the Chinese proposal that Article XVIII(1) of the Draft Protocol be amended to include the phrase: “or entities”, and that this would correspond with Article 17(4) of the Draft Convention.

The DELEGATION OF THE DEMOCRATIC REPUBLIC OF CONGO stated that it required clarification regarding why the term “aircraft engine” was not included in Article XVIII(2) of the Draft Protocol.

The CHAIRMAN stated that the Aviation Working Group had proposed that the term “aircraft engine” be included in Article XVIII(2) of the Draft Protocol.

The DELEGATION OF JAPAN stated that the period of five calendar days mentioned in Article XIX(2) of the Draft Protocol was too short, and that for practical reasons it should be changed to a longer period such as ten calendar days.

The CHAIRMAN noted that the period of five calendar days mentioned in Article XIX(2) of the Draft Protocol was not in square brackets because it had been discussed and agreed at earlier meetings, but that the issue could be open for further discussion.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported the Chinese proposal, that it also understood the concern that had been raised by Spain, that what was being contemplated was that a State might have several jurisdictions within a federal system and that it might have a registry in each of those jurisdictions as an entry point, that it would be important to address the concern raised by Spain that priorities would be determined solely by when the data became searchable on the International Registry database, that it supported the drafting changes that had been proposed by the Aviation Working Group and the International Air Transport Association, that it did not support the Japanese proposal that the maximum amount secured by an international

interest be required to be stated, that the debate held in relation to the rules for the formation of an international interest had rejected that proposal and that the logic of that conclusion was even stronger in relation to a public registry, that experience from large financing transactions showed that junior debtors would be aware of the fact that a senior creditor would be able to take priority over their interests, that it was the practice in the industry to have inter-creditor agreements amongst senior and junior creditors so that everybody would know their respective rights, and that the industry and industry representatives had conducted wide consultations and had come to the conclusion that a rule that required the maximum amount secured to be declared would be unfair to debtors because it would lead to grossly inflated amounts being stated.

The CHAIRMAN stated that, following the extensive discussions previously held about a requirement to specify the maximum amount secured by an international interest, it would be preferable that there not be another lengthy discussion, that the issues were the same as those that had been previously debated, and that it would be preferable to close the discussion on the Japanese proposal.

The DELEGATION OF AUSTRALIA stated that it needed clarification that Article XIX(4) of the Draft Protocol would not require designated entry points to remain open only during business hours, that this was an important issue for Australia because it was in a different time zone to many other important financial centres, that the Drafting Committee should examine whether it would be possible to clarify this issue through a comment in the commentary, that, in relation to Article XIX(3) of the Draft Protocol, it was very important that the Supervisory Authority should not be required to carry the burden of the costs involved in the administration of the Draft Convention, that an appropriate provision needed to be included to ensure that all costs associated with the operation of the Supervisory Authority and the International Registry and other aspects of the administration of the Draft Convention and Draft Protocol were fully recoverable, that Article XIX(3) of the Draft Protocol did not contain a sufficiently broad general statement about the fact that fees would need to be based on the principle of full cost recovery, and that this should be a principle as cost recovery would not be perfect and would need to take into account the fact that the period for recovery of start-up costs for the registration system could reasonably be expected to be spread over a considerable period of time so as not to fall unfairly on the initial users of the system.

The CHAIRMAN stated that the concern raised by Australia related to the issue of the recovery of preliminary initial start-up costs, and that the comments by Australia did not envisage any change in the substance but simply some clarifying drafting which could be done by the Drafting Committee.

The DELEGATION OF EGYPT stated that it required clarification as to whether the Registrar's contract would be able to be interrupted prior to the expiration of its five-year term if the Registrar's performance did not meet expectations, that it supported the Chinese proposal that Article XVIII(1) of the Draft Protocol be amended to include the phrase: "or entities", that the designation of an entity or entities should be able to be made at any time, and that the opening phrase of Article XVIII should be redrafted to read: "At the time of ratification, acceptance, approval of, or accession to, this Protocol or at any later time ...".

The DELEGATION OF ARGENTINA stated that it required clarification regarding the proposal by the Aviation Working Group to include a reference to engines in Article XVIII of the Draft Protocol and whether that proposal was limited to Article XVIII of the Draft Protocol, that DCME Doc No. 7 included other proposals relating to other provisions, that it supported the comments of Australia regarding the funding of the Draft Protocol, and that the number of ratifications required for the Draft Protocol to enter into force should be sufficient to ensure that it could be a self-funded system.

The CHAIRMAN stated that it was proposed that the three amendments to Articles XVIII(2) and XIX of the Draft Protocol that had been submitted by the Aviation Working Group in DCME Doc No. 7 would be accepted unless there were any objections.

The DELEGATION OF ARGENTINA stated that the proposals of the Aviation Working Group should either be referred to the Drafting Group or read out in the Commission, and that it was not appropriate that those proposals be accepted without any consideration.

The CHAIRMAN stated that the first proposal of the Aviation Working Group was to amend Article XVIII(2)(a) of the Draft Protocol so that it would read: “International interests or prospective international interests in assignments of international interests or prospective assignments in, or sales of prospective sales of helicopters or airframes pertaining to aircraft for which it is the State of Registry”, that the second proposal was to add a new Article XVIII(2)(d) of the Draft Protocol which would read: “International interests or prospective international interests in, assignments of international interests or prospective assignments in, or sales or prospective sales of, engines, that they may so be transmitted”, and that the third proposal was related to the search criteria defined in Article XIX(1) of the Draft Protocol which would be amended to read: “For the purposes of Article XVIII(5) of the Convention, the search criteria for an aircraft object shall be its manufacturer’s serial number, the name of the manufacturer, and its model designation”.

The DELEGATION OF SINGAPORE stated that Article XIX(3) of the Draft Protocol should specify that the operating costs could include the cost of upgrades of computer servers and software, and that a specific reference to that effect should be included.

The DELEGATION OF THE RUSSIAN FEDERATION stated that it agreed with the proposals of the Aviation Working Group, that it supported the Chinese proposal that Article XVIII(1) of the Draft Protocol be amended to include the phrase: “or entities”, and that it understood that Article XVIII of the Draft Protocol would require that the responsibility for the completeness and reliability of the information recorded in the International Registry would be that of the designated entry point.

The DELEGATION OF SUDAN stated that Article XIX(5) of the Draft Protocol should be amended to read: “The insurance or financial guarantee referred to in Article 27(2) of the Convention should cover all legal liabilities of the Registrar according to the terms of the Article.”

The CHAIRMAN stated that Article XIX(5) of the Draft Protocol was closely connected to Article 27 of the Draft Convention, that Article XIX(5) of the Draft Protocol expressly referred to Article 27(2) of the Draft Convention, and that both provisions had been referred to the Drafting Committee.

The DELEGATION OF INDIA stated that it required clarification regarding the proposal of the Aviation Working Group that Article XVIII of the Draft Protocol be amended to include reference to engines, that it had understood that the designated entry points would be concerned with matters within the jurisdiction of the relevant Contracting State but that aircraft engines were not normally subject to State registration requirements, that the use of the word “only” in Article XVIII(2) of the Draft Protocol was intended to limit the scope of the provision to those areas falling within State responsibility, that the Aviation Working Group’s proposal regarding prospective interests appeared to be very good but would need to be examined to determine whether notifications regarding prospective interests would be routed through the designated entry point, that it agreed with the Aviation Working Group’s proposal regarding Article XIX(1) of the Draft Protocol, that Article XIX(3) of the Draft Protocol had been very carefully drafted to take into account the principle of cost recovery and did not raise any concerns except for the cost of the Review Board, that prior to the conclusion of the Diplomatic Conference it would be necessary to decide on which Organisation would be the Supervisory Authority, and that Article XVI(3) of the Draft Protocol should be amended to require that the Supervisory Authority ensure that the Registry was located in a Contracting State.

The CHAIRMAN stated that the amendment to Article XVIII(2) of the Draft Protocol which had been proposed by the Aviation Working Group would be voluntary in that it would be voluntary for States to make the declaration and voluntary for parties to avail themselves of the national designated entry points, that the Aviation Working Group’s proposal to amend Article XVIII(a) and (d) of the

Draft Protocol to refer to prospective international interests would be referred to the Drafting Committee, that the Secretary General (ICAO) would be invited to make comments regarding the position of the Supervisory Authority, and that the Indian proposal to amend Article XVI(3) of the Draft Protocol would need to be discussed by the Commission.

The DELEGATION OF THE UNITED KINGDOM stated that it did not support the Australian comments regarding Article XIX(3) of the Draft Protocol, that Article XIX(3) of the Draft Protocol had been carefully worded, that it referred to “reasonable costs” to deter lavish expenditure on buildings and equipment, that it supported the Singapore proposal for amendments to Article XIX(3) of the Draft Protocol, and that it supported the amendments that had been proposed by the Aviation Working Group.

The DELEGATION OF AUSTRALIA stated that it had not suggested that the concept of reasonableness should be removed from Article XIX(3) of the Draft Protocol, that its previous intervention related to the need to ensure that the costs of administering the Draft Convention were closely monitored, that it agreed with Singapore that cost recovery should include ongoing expenses such as computer upgrades and that these costs might be covered by the existing provision, that the costs of establishing a Review Board and of convening Conferences was uncertain and potentially high and should not be borne by Contracting States, that the users of the system should pay for all its costs, and that it was possible that the existing wording of Article XIX(3) of the Draft Protocol covered the issue but that the Drafting Committee should examine this issue very carefully.

The CHAIRMAN stated that Australia’s main concern was related to the establishment of the Review Board and any costs that might be incurred in relation to its functioning, that this issue would be discussed in relation to Article XXII of the Draft Protocol, and that this would be when the need for any further drafting would be assessed.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it was concerned about the Australian comments regarding budgetary issues, that the issues regarding the Review Board were wholly separate from Article XIX of the Draft Protocol, that there had been no disagreement with the principle established in Article XIX(3) of the Draft Protocol and that it would not support any drafting change to that Article, that the language of the Article had been carefully considered and drafted and it would not be necessary to amend it, that, in relation to the suggestions to amend Article XVIII, it would be possible to address the issue by inserting the word “voluntary” or “optional” in the title to that Article, that designated entry points would not be mandatory, and that it would be a matter for each Contracting State to consider and decide whether it would use a designated entry point and whether that designated entry point would be able to transmit information regarding aircraft engines.

The CHAIRMAN stated that the delegations that had expressed concerns regarding Article XIX(3) of the Draft Protocol might have those concerns satisfied by the discussions on other Articles so that it was not yet necessary to decide whether there would be a need to reconsider the drafting of Article XIX(3) of the Draft Protocol.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it did not support the comments of Australia regarding Article XIX(3) of the Draft Protocol, that it agreed with the comments of the United Kingdom and the United States of America, that it would not be correct to assume that the users of the International Registration system would be the only beneficiaries, that Contracting States and others would be beneficiaries, that it would be inappropriate for a small number of airlines in Contracting States to fund international services and Conferences which would be for the benefit of the worldwide community, that there would be many ways to reduce costs, including adopting structural arrangements such as those under the *Convention on the Marking of Plastic Explosives for the Purpose of Identification* and voluntary participation in the Review Board, and that its proposal that the term “aircraft engine” be included in Article XVIII(2) of the Draft Protocol would mean that Contracting States would have a choice whether to include aircraft engines.

The DELEGATION OF INDIA stated that Article 16 of the Draft Convention would allow the Supervisory Authority to dismiss the Registrar prior to the expiration of the Registrar's five-year contract.

The CHAIRMAN stated that India's interpretation of Article 16 of the Draft Convention was correct.

The DELEGATION OF LEBANON stated that the functioning of the International Registry would have two stages, that the first stage would be to receive information from Contracting States and the second would be to facilitate searches of that information, that the second stage would not require the involvement of a designated entity as searches would be able to be undertaken by anybody, that the first stage would need to be done through an entity or entities appointed by the Contracting State, and that Article XVIII(1) did not make this clear and should be amended by replacing the word "may" with the word "shall".

The CHAIRMAN stated that it was correct that any person would be able to make a search of the International Registry, that Lebanon's proposal to make the designation of an entry point compulsory would be contrary to the intention of a system that would give Contracting States a choice whether to designate an entry point, that some Contracting States might wish to let the parties themselves access the International Registry directly, and that it would be assumed that the Commission did not intend to alter this structure.

The DELEGATION OF CAMEROON stated that Article XVIII(1) of the Draft Protocol was sufficiently clear and did not require further clarification, that each Contracting State would be able to designate one or more entry points, that this designation would be optional and would be able to include a single entry point or several entry points, that the International Registry would be 100% electronic, that the level of sophistication of equipment in some Contracting States would not accommodate electronic communications, and that the Diplomatic Conference or the Registrar should provide support to those States who required support for the electronic equipment necessary to enable them to communicate with the International Registry.

The CHAIRMAN stated that the issue of support to States in relation to electronic equipment was important, and that further consultations would need to be undertaken before that issue could be resolved.

The DELEGATION OF SINGAPORE stated that it did not agree that the Supervisory Authority would be able to dismiss the Registrar prior to the expiration of the Registrar's five-year contract, that Article 16(2)(b) of the Draft Convention provided that the Supervisory Authority would appoint and dismiss the Registrar "except as otherwise provided by the Protocol", that the Draft Protocol included mandatory language that the first Registrar would be appointed for a period of five years, that the Commission should be cautious about amending this requirement in light of the principle of reasonable cost recovery, that reasonable cost recovery might require a period in excess of five years, and that it did not oppose the principle that the Registrar could be dismissed for failure to do its job.

The CHAIRMAN stated that the language of the Draft Protocol was mandatory and could be interpreted to mean that there would be no way for the Supervisory Authority to dismiss the Registrar during the first five-year period, that if there were misapplications of the functions of the Registrar justifying the dismissal of the Registrar, the Supervisory Authority would be in a position to dismiss the Registrar during the first five-year period, and that the text was not clear on this point because it was part of the compromise between providing security for the Registrar for the first five years and retaining the prerogative of the Supervisory Authority to dismiss the Registrar during that period.

The DELEGATION OF SENEGAL stated that it supported the comments of Cameroon.

The DELEGATION OF SOUTH AFRICA stated that it was speaking on behalf of the African States, that DCME Doc No. 35 recorded the position of the African States regarding Article XVI of the Draft

Protocol, that the African States supported the International Civil Aviation Organization being the Supervisory Authority and having the right to nominate the Registrar, that the International Civil Aviation Organization was in a position to promote the growth of aviation globally, that, in relation to Article 47 of the Draft Convention, the African States did not support the inclusion of quantitative criteria as had been proposed in DCME Doc No. 43, that the number of ratifications required for entry into force of the Draft Convention should be between five and seven, and that linking entry into force to quantitative criteria would be discriminatory.

The CHAIRMAN stated that the discussion of Chapter III of the Draft Protocol was concluded, that the issue of who would be the Supervisory Authority specified in Article XVI(1) of the Draft Protocol was still open, that the issues that had been raised by the Council of the International Civil Aviation Organization would be able to be dealt with in informal consultations to consider whether any drafting additions to Article XVI(1) of the Draft Protocol would be necessary, that this issue would be revisited following the general discussion of the Supervisory Authority and the Registrar on the basis of DCME Doc No. 43, that Article XVIII(1) of the Draft Protocol would be amended to refer to “entity” in singular and plural, that a corresponding amendment would be made to Article 17(4) of the Draft Convention, that an amendment to the list of items in Article XVIII(2)(a) of the Draft Protocol as proposed by the Aviation Working Group in DCME Doc No. 7 would be referred to the Drafting Committee for further clarification, that Article XVIII(2)(d) of the Draft Protocol would be amended to provide for an optional possibility for Contracting States to designate national entry points in relation to aircraft engines with the Drafting Committee to consider the drafting to ensure that it was clear that this would be a voluntary possibility, that Article XIX(1) would be amended to reflect the proposals relating to the search criteria to be used as presented on page 4 of Appendix 2 of DCME Doc No. 7, that there had been extensive discussions regarding Article XIX(3) of the Draft Protocol and that the language of that Article would not be amended, but concerned delegations would have the right to revisit the issue following the discussion of the provisions dealing with the Review Board and other related issues, that XIX(4) of the Draft Protocol would be referred to the Drafting Committee for it to examine whether any amendment would be necessary to take account of the concern raised by Australia, and that the entire issue of Article 27 of the Draft Convention had been referred to the Drafting Committee, so it was not necessary also to refer Article XIX(5) to the Drafting Committee.

The DELEGATION OF EGYPT stated that it had proposed that the opening phrase of Article XVIII of the Draft Protocol should be redrafted to read: “At the time of ratification, acceptance, approval of, or accession to, this Protocol or at any later time”, and that it required clarification about the status of that proposal.

The CHAIRMAN stated that there had not been any support for the Egyptian proposal.

The DELEGATION OF INDIA stated that it supported the Egyptian proposal.

The CHAIRMAN stated that the Egyptian proposal would be referred to the Drafting Committee.

The DELEGATION OF MEXICO stated that it supported the Egyptian proposal.

The DELEGATION OF JORDAN stated that it supported the proposal of Japan that the period of five calendar days referred to in Article XIX(2) of the Draft Protocol should be increased, that Saudi Arabia had suggested that the Article be amended to take account of the different time periods between different countries, and that Article XIX(2) should be amended to refer to working days instead of calendar days.

The DELEGATION OF SUDAN stated that it supported the Egyptian proposal, and that in Arabic the word for “entity” should be “*kaeyen*” and not “*heaya*”.

The DELEGATION OF SAUDI ARABIA stated that it supported the Egyptian proposal, and that it had proposed that Article XIX(2) of the Draft Protocol should be amended to refer to working days instead of calendar days.

The DELEGATION OF SINGAPORE stated that it had proposed that the word “operating” in Article XIX(3) of the Draft Protocol should be clarified, that this proposal had been supported, and that it should be referred to the Drafting Committee.

The CHAIRMAN stated that the Singapore proposal had been intended to meet the concern that had been raised by Australia and that as it did not meet that concern it would not be pursued, and that the issue could nevertheless be referred to the Drafting Committee. The Chairman invited further comments on the issue of whether Article XIX(2) of the Draft Protocol should be amended to refer to ten working days instead of five calendar days.

The DELEGATION OF AUSTRALIA stated that it had no difficulty with Article XIX(2) of the Draft Protocol as it had been drafted, that there had been some uncertainty about the definitions of working days and of calendar days, and that it would have no difficulty if the Article were amended to refer to five working days.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it could support the proposed amendment to Article XIX(2) of the Draft Protocol, and that in the interests of good faith it was necessary to point out that the extension of the number of days would be to the disadvantage of potential debtors.

The DELEGATION OF INDIA stated that it could support an amendment to Article XIX(2) of the Draft Protocol that retained five as the number of days but substituted “calendar days” with “working days”.

The DELEGATION OF THE UNITED KINGDOM stated that it supported the Australian proposal to amend Article XIX(2) of the Draft Protocol to provide for five working days.

The DELEGATION OF THE ARAB LIBYAN JAMAHIRIYA stated that it supported the Australian proposal to amend Article XIX(2) of the Draft Protocol to provide for five working days.

The DELEGATION OF KENYA stated that it supported an amendment to Article XIX(2) of the Draft Protocol to provide for five working days.

The DELEGATION OF EGYPT stated that it supported an amendment to Article XIX(2) of the Draft Protocol to provide for five working days.

The DELEGATION OF THE NETHERLANDS stated that it supported an amendment to Article XIX(2) of the Draft Protocol to provide for five working days.

The CHAIRMAN stated that the proposal to amend Article XIX(2) of the Draft Protocol to provide for five working days would be accepted unless there were any objections.

The DELEGATION OF SAUDI ARABIA stated that it had proposed an amendment to Article XIX(2) of the Draft Protocol to provide for 30 working days, and that it could accept the proposal to amend Article XIX(2) of the Draft Protocol to provide for five working days in light of the concerns that had been expressed by Australia.

The CHAIRMAN stated that Article XIX(2) of the Draft Protocol would be amended to provide for five working days.

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.)

The CHAIRMAN stated that the Commission would discuss Chapter IX of the Draft Convention, and that proposed text for that chapter was contained in DCME Doc No. 44.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that the proposals contained in DCME Doc No. 44 represented an effort to accommodate the fact that financiers of expensive mobile equipment frequently assigned associated rights, that the problem faced was that to use the International Registry to record priority for a right to payment would require registration against an object, that it was proposed that Article 30 of the Draft Convention be amended to conform to expectations under national law that the assignment of an interest would follow the assignment of the right to payment, that, in relation to Article 31 of the Draft Convention, assignors and assignees were really interested in the right to payment and the proposal was to amend Article 31 of the Draft Convention to reflect this, and that in the rest of Article 31 of the Draft Convention there were references to associated rights having been assigned together with the related international interest with the exception that, in relation to the registration aspects of the Draft Convention, the interest that would be assigned on the record would relate to the particular object that would establish priority. It stated that the only other material change proposed was to Article 35 of the Draft Convention which had been designed to accommodate the problem that associated rights could be secured by an international interest even though those rights themselves might have nothing to do with the interest, that a creditor might assign its interest in a loan that it had made to a debtor and on its face that loan would have nothing to do with any object but that under a separate agreement that creditor might have received from that same debtor an interest that secured everything that the debtor owed to the creditor, that when the creditor wanted to assign that loan there would be nothing to alert the assignee that there would be a need to search the International Registry against the object, that the assignee of the unrelated non-object-related indebtedness should not be disadvantaged and should be able to rely on national laws instead of the International Registry, that the way that this had been attempted to be achieved in the past was by identifying the nature of the right to payment that was being assigned, that this would work for a lease or title reservation agreement but, in the case of a security agreement, it would only work if the indebtedness related to the object that the priority of the International Interest would follow, that the proposal presented the new idea that if the organic documents relating to the debt actually made reference to the object in respect of which they could receive priority because any assignee would look to the documents, that since preparing the proposal there had been a further idea that both the old connecting factor and the new connecting factors should be included in Article 35 of the Draft Convention for priority, that this was because there had been discussions over many years with the United Nations Commission on International Trade Law to the effect that the object-related nature of the indebtedness would be used as the means of identifying the associated rights that would receive priority and a completely new approach could potentially cause problems, and that this issue should be the subject of further discussion in the Commission and in the Drafting Committee with a view to preparing a further revised proposal for Article 35 of the Draft Convention.

The CHAIRMAN stated that delegations were invited to comment on DCME Doc No. 44, and that it would subsequently be necessary to discuss DCME Doc No. 43.

The DELEGATION OF JAPAN stated that it supported the direction of the proposals contained in DCME Doc No. 44, that in DCME Doc No. 33 it had proposed that there be greater focus on the assignment of associated rights in order to harmonise with the legal principle that security should follow the associated rights, that the proposals in DCME Doc No. 44 adequately accommodated those concerns, and that it thanked the delegations involved in the preparation of DCME Doc No. 44 for their efforts.

The DELEGATION OF GERMANY stated that the Chairman had referred Chapter IX of the Draft Convention to a small informal group which had been formed during the Third Joint Session and which comprised Canada, France, the United States of America and other States, that members of the small informal group had exchanged their views prior to the Diplomatic Conference based on a draft that had been produced by Professor Roy Goode, that it required clarification from the United States of America as to whether DCME Doc No. 44 was a paper presented on behalf of the small informal group or whether it was presented by the United States of America.

The CHAIRMAN stated that it had been understood that consultations would include all interested States and not only those which had been involved in the issue prior to the commencement of the Diplomatic Conference, that DCME Doc No. 44 had been formally presented by the United States of America but that it represented the consensus view of all the interested delegations that had taken part in the consultations.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it had not been possible to organise a meeting of the small informal group, that comments had been sought and discussions held with interested delegations, that every delegation had been invited to participate in that process, and that it would be interested in receiving any additional comments or suggestions prior to the proposals being referred to the Drafting Committee.

The DELEGATION OF CANADA stated that it supported the proposals contained in DCME Doc No. 44, that the proposals did not have any bias towards civil law jurisdictions or other types of legal system but were of general application, that this would greatly facilitate the understanding of the Draft Convention by those who would be making use of it in the future, and that it had some technical comments which it would raise during the discussions in the Drafting Committee.

The DELEGATION OF THE CZECH REPUBLIC stated that it appreciated the proposals contained in DCME Doc No. 44, that in DCME Doc No. 10 it had proposed that a new Article 30(3) of the Draft Convention be added to indicate the conditions that an assignment of a transfer would be subject to and to whom such an assignment could be made, that this proposal was based on requests from its air carriers, that the proposal was aimed at strengthening the position of air carriers by eliminating or diminishing their fears of unreasonable claims by creditors in case of default, and that its proposal should be referred to the Drafting Committee.

The DELEGATION OF THE UNITED KINGDOM stated that Article 35 of the Draft Convention was intended to restrict priority to a purchase money security interest and that the United States of America's proposal would extend the scope of the provision to purchase money obligations secured on any object, and that a third party who took an assignment of a loan which did not make it clear that it was covered by a security interest in an object under an earlier agreement would not have its priority affected by the Draft Convention but by the applicable law.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it supported the proposals in DCME Doc No. 44, and that it did not support the proposal of the Czech Republic but that a debtor would have the right specifically to consent to any transfer.

The CHAIRMAN stated that the Czech Republic proposal had not been supported, that the Czech Republic would be able to submit a proposal to the Drafting Committee for further consideration, that the proposals in DCME Doc No. 44 would be referred to the Drafting Committee for further consideration, that DCME Doc No. 43 was concerned with the establishment of the Registry system, and that Germany would be invited to introduce the paper.

The DELEGATION OF GERMANY stated that DCME Doc No. 43 had been presented by the delegations of Germany, France, the Russian Federation, the United Kingdom and the United States of America, that DCME Doc No. 43 contained a general proposal that the Draft Convention and Draft Protocol enter into force two months after the fifth or seventh ratifications had been deposited, and that additionally 5% or 10% of worldwide air traffic be represented among Contracting States, that the requirement for representation of worldwide air traffic was necessary in order to ensure that the costs of establishing the Registry system could be covered by the fees resulting from registered transactions, that DCME Doc No. 43 also contained some guidelines for the establishment of the International Registry to ensure that the International Registry would be able to commence registrations of security interests when the Draft Convention and Draft Protocol entered into force,

that DCME Doc No. 43 proposed that an International Registry Commission be established with the support and assistance of the International Civil Aviation Organization, that further details of this proposal were contained in Part A of DCME Doc No. 43, that Part B of DCME Doc No. 43 provided guidelines for the establishment of the International Registry concerning the selection of the Registrar, the time of its establishment and the fees for use of the International Registry which should include start-up funds from numerous sources such as the aviation industry, and that the ideas expressed in DCME Doc No. 43 should be included in the Final Act of the Diplomatic Conference to the extent that they were not reflected in the Draft Convention or the Draft Protocol.

The CHAIRMAN stated that DCME Doc No. 43 would be considered in informal consultations, that there would be an open-ended informal consultation group comprising Brazil, Canada, China, France, India, Nigeria, Singapore, Switzerland and the United States of America, that the African States had already expressed concern about the idea of the entry into force provisions including qualitative criteria so DCME Doc No. 43 would need to be considered very carefully, and that the informal consultation group would also examine the issue of the Council of the International Civil Aviation Organization acting as the Supervisory Authority and the issue of what drafting would need to be included in Article XVI(1) of the Draft Protocol.

The DELEGATION OF EGYPT stated that it should be included in the membership of the informal consultation group.

The CHAIRMAN stated that Egypt would be included in the membership of the informal consultation group.

The meeting rose at 13:15

COMMISSION OF THE WHOLE – TWELFTH MEETING

Friday, 9 November 2001, at 9:30

President: Professor Medard Rutoijo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.)

AGENDA ITEM 9 – CONSIDERATION OF THE DRAFT PROTOCOL (CONT.)

The CHAIRMAN stated that the Commission would commence a discussion of technical matters relating to the titles and preambles of the Draft Convention and Draft Protocol in relation to which there were proposals contained in DCME Doc No. 51, of the jurisdictional issues that were dealt with in DCME Doc No. 52 which had been prepared by the Informal Consultation Group, and of the Mexican proposal concerning Article 44 of the Draft Convention. The Chairman stated that the Draft Convention included the word “UNIDROIT” in square brackets, and invited comments from the Secretary General (UNIDROIT).

The SECRETARY GENERAL (UNIDROIT) stated that there were varying traditions on naming international instruments, that some UNIDROIT conventions were named after their subject matter and others included UNIDROIT in their title, that the UNIDROIT Governing Council had approved the instruments on the basis that “UNIDROIT” was included in square brackets in their titles, that following consultations with the Governing Council it would be proposed that the title of the Draft Convention reflect the fact that it would be adopted in Cape Town and be called the “Cape Town Convention on International Interests in Mobile Equipment”.

The CHAIRMAN stated that the official title of the Draft Convention would be “Convention on International Interests in Mobile Equipment” and that it would be known as “The Cape Town Convention of 2001”, and that consequential changes would be made to the title of the Draft Protocol, to the preamble to the Draft Protocol, and to Article II of the Draft Protocol.

The DELEGATION OF INDIA stated that the word “the” should be inserted into the title of the Draft Convention so that its title would be “The Convention on International Interests in Mobile Equipment”.

The CHAIRMAN stated that the word “the” would be added to the title of the Draft Convention. The Chairman invited comments on the preambles to the Draft Convention and the Draft Protocol.

The DELEGATION OF THE RUSSIAN FEDERATION stated that, as the Draft Protocol was related to aviation matters, its preamble should include a reference to the Chicago *Convention on International Civil Aviation* which was the base document in international civil aviation matters, and that the reference should state “respecting the principles and objectives of the Convention on International Civil Aviation signed in Chicago on 7 December 1944”.

The DELEGATION OF KENYA stated that it was pleased to accept the title of the Draft Convention as “The Cape Town Convention”, and that it supported the comments of India.

The DELEGATION OF EGYPT stated that it supported the Russian proposal, that it congratulated UNIDROIT and the International Civil Aviation Organization on the work that they had done in preparing the Draft Convention and the Draft Protocol, that the Russian proposal could be improved by including references in the Draft Convention not only to the Chicago *Convention on International Civil Aviation* but also to any similar conventions such as the outer space treaties.

The CHAIRMAN stated that the Russian proposal was intended to be included in the Draft Protocol.

The DELEGATION OF CUBA stated that it supported the Russian proposal that the preamble to the Draft Protocol include a reference to the Chicago *Convention on International Civil Aviation* and the principles upon which that convention was based, and that it supported Egypt’s proposal regarding the Draft Convention.

The DELEGATION OF INDIA stated that it would be preferable to complete discussion of the preamble to the Draft Convention before discussing the preamble to the Draft Protocol.

The CHAIRMAN stated that the preambles to the Draft Convention and the Draft Protocol would be discussed together, and that the Russian proposal related to the Draft Protocol and the Egyptian proposal related to the Draft Convention.

The DELEGATION OF MEXICO stated that it supported the Egyptian proposal and the Russian proposal.

The DELEGATION OF INDIA stated that it required clarification regarding the proposed wording of the Russian proposal.

The CHAIRMAN stated that it would be necessary to view the final wording of the proposals before they could be finally agreed.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it had no objection to the Russian proposal, that it had examined the Chicago *Convention on International Civil Aviation* and determined that the Draft Convention did not intersect with it, that a reference to the Chicago Convention would be helpful, that it understood that the Egyptian proposal was that subsequent protocols should include in their preambles references to relevant international instruments, and that every reference to other international instruments would need to be examined very carefully because they could raise complicated legal issues.

The CHAIRMAN stated that the Egyptian proposal related to the preamble to the Draft Convention.

The DELEGATION OF EGYPT stated that a reference to another international instrument in the preamble to the Draft Convention would not affect legal obligations under those other international instruments and would not raise any problems from a legal perspective.

The DELEGATION OF JAMAICA stated that it supported the Russian proposal because of the general relevance of the *Chicago Convention on International Civil Aviation* to the Draft Convention and Draft Protocol and because issues such as nationality of aircraft and registration and transfer of registration of aircraft were expressly dealt with in the Chicago Convention, that Article 82 of the Chicago Convention required Contracting States to undertake not to enter into any international obligations which would be inconsistent with their obligations under that Convention, and that a reference to the Chicago Convention in the preamble would be an appropriate indication of the role of that Convention in relation to matters dealt with in the Draft Convention.

The DELEGATION OF SWEDEN stated that the preamble to the Draft Convention used the phrase: “State Parties”, that the Draft Convention used the phrase: “Contracting States”, and that the Drafting Committee should examine that inconsistency.

The CHAIRMAN stated that the issue raised by Sweden would be examined by the Drafting Committee, that the delegations that had an interest in the Russian proposal and the Egyptian proposal would be invited to produce a written text of the paragraphs proposed to be added to the Draft Convention and the Draft Protocol, and that the text of the proposals would then be discussed by the Commission.

The DELEGATION OF SOUTH AFRICA stated that it appreciated the decision that the Draft Convention be referred to as “The Cape Town Convention”, that the position of the African States on the preamble was stated in DCME Doc No. 25, and that the fourth paragraph of the preamble to the Draft Convention should be amended to read: “Desiring to provide broad and mutual economic benefits for all interested parties”.

The CHAIRMAN stated that the South African proposal had been accepted.

The DELEGATION OF INDIA stated that it had no objection to a reference to the *Chicago Convention on International Civil Aviation* being inserted into the preamble to the Draft Protocol, and that it had some concerns about the Egyptian proposal to amend the preamble to the Draft Convention.

The CHAIRMAN stated that the discussion of the preamble would continue following the production of the written text of the paragraphs proposed to be added to the Draft Convention and the Draft Protocol, and that the Commission would commence discussion of DCME Doc No. 51.

The DELEGATION OF BELGIUM stated that DCME Doc No. 51 included a proposal for the inclusion of a provision in the Draft Convention to deal with a potential problem involving EUROCONTROL, that EUROCONTROL was an international Organisation with 30 European Member States governed by an international convention, that EUROCONTROL had the task of collecting route charges on behalf of its Member States, that charges attached as a lien to the aircraft which incurred the charge, that the charges were required to be collected according to the law of the particular Member State, that the Draft Convention and Draft Protocol did not include provisions that would enable EUROCONTROL to register its non-consensual rights or interests, and that it proposed that the text in paragraph 4 of DCME Doc No. 51 be incorporated into the Draft Protocol.

The CHAIRMAN stated that during the discussion of Article 39 of the Draft Convention Sweden had stated that it would be necessary to discuss the technical issue relating to EUROCONTROL, and that the proposal was for the text in paragraph 4 of DCME Doc No. 51 to be incorporated into the Draft Protocol at a place to be determined by the Drafting Committee.

The DELEGATION OF EUROCONTROL stated that EUROCONTROL's membership comprised the 15 States of the European Union as well as Bulgaria, Croatia, Cyprus, the Czech Republic, the Former Yugoslav Republic of Macedonia, Hungary, Malta, Moldova, Monaco, Norway, Romania, the Slovak Republic, Slovenia, Switzerland and Turkey, that the Belgian proposal was aimed at preserving and protecting the *status quo* for EUROCONTROL in EUROCONTROL States but would not enhance existing rights, that EUROCONTROL was seeking to have the same rights as States in relation to Article 39 of the Draft Convention, that the intention of EUROCONTROL was that the proposal would have no effect on third countries, that EUROCONTROL billed approximately four billion Euro each year on behalf of its Member States to 3500 airlines throughout the world, that in excess of 99% was collected and 85% was collected on the due date of the monthly bill, that if the *status quo* were not maintained these percentage figures would decline, and that EUROCONTROL had a duty to protect the interests of its Member States.

The DELEGATION OF THE UNITED KINGDOM stated that the issue raised by the Belgian proposal was not within the competence of the European Union so that Member States of the European Union would be free to take their own positions on the issue, that it supported the Belgian proposal, that it had intended to cover the interests of EUROCONTROL in its own national declaration under Article 39 of the Draft Convention, and that, as the creditor for route charges was EUROCONTROL itself, it would be preferable for EUROCONTROL to make its own declaration.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it would be necessary to undertake further examination of the Belgian proposal, that it needed to examine whether the language in the final sentence of the proposal would be sufficient to confine the effect of a notice and any interest covered by that notice to EUROCONTROL members and to confine the collection of charges or the exercise of other entitlements to only those that arose from and on behalf of a State that was a Contracting State to the Draft Convention, and that it would need to examine whether there were other concerns that might need to be reflected within the context of notices that could be provided to EUROCONTROL.

The CHAIRMAN stated that the United States of America had given preliminary support to the Belgian proposal, and that more consultation would be needed and further drafting would be required.

The DELEGATION OF JORDAN stated that it supported the proposal that was contained in DCME Doc No. 51, that it would be important to ensure the rights of other Member States pertaining to the charges of air navigation, and that in DCME Doc No. 18 it had recorded the importance of guaranteeing the rights of creditors with respect to Contracting States of the Draft Convention.

The DELEGATION OF SOUTH AFRICA stated that Articles 38 and 39 of the Draft Convention made it very clear that only a Contracting State would be able to make a declaration, that it understood the position of EUROCONTROL but that there would be difficulties if EUROCONTROL had made a declaration but its relevant Member States had not, and that it agreed with the position of the United Kingdom that insofar as the United Kingdom was concerned the right of EUROCONTROL to collect charges would be covered by the declaration to be made by the United Kingdom once it became a Contracting State to the Draft Convention.

The DELEGATION OF SENEGAL stated that it supported the Belgian proposal, and that in Africa there was a similar Organisation to EUROCONTROL called ASENCA which was based in Madagascar.

The DELEGATION OF EGYPT stated that it had sympathy with the Belgian proposal but required clarification of some issues, that it was not clear whether EUROCONTROL intended to become a party to the Draft Convention, that if EUROCONTROL did intend to become a party to the Draft Convention it would not be able to make the declaration that had been proposed by Belgium, and that it was not clear whether the provision dealing with Regional Economic Integration Organizations that it had been agreed to adopt would apply to EUROCONTROL.

The CHAIRMAN stated that EUROCONTROL was not seeking to become a Contracting State to the Draft Convention and Draft Protocol, and that EUROCONTROL was seeking the right to make declarations on its own behalf irrespective of whether its Member States had made a declaration.

The DELEGATION OF EGYPT stated that it required clarification about how an international Organisation like EUROCONTROL could be given the right to make declarations under the Draft Convention without being a party to the Draft Convention.

The DELEGATION OF CANADA stated that it understood the problem that EUROCONTROL was encountering, that it would be necessary to give thought to how to resolve that problem, that if EUROCONTROL was not a party to the Draft Convention there would be issues related to enforcement and the ability to search declarations which would be lodged by, and searchable in the name of, Contracting States, that the Belgian proposal might make it necessary that systems be reconfigured, and that a small informal group should be convened to examine how the provisions of the Draft Convention would be affected by the EUROCONTROL proposal.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it agreed with the comments of Canada, Egypt, South Africa and the United States of America that the Belgian proposal would need to be very carefully examined, that it required clarification regarding the intended legal difference between the Belgian proposal and the situation where the Member States of EUROCONTROL made declarations in respect of EUROCONTROL's rights under national law, that it required clarification about how the Belgian proposal would affect the current system, particularly in relation to the situation between a EUROCONTROL Member State and a EUROCONTROL non-Member State, that it required clarification about whether it was proposed that EUROCONTROL Member States be precluded from making a declaration under the Draft Convention, and that it was not convinced that the Belgian proposal was necessary but would work cooperatively to find a solution.

The DELEGATION OF JAMAICA stated that the Commission had discussed this issue in connection with Articles 38 and 39 of the Draft Convention, that the Draft Convention would provide that airport charges and air navigation charges that currently had priority would be able to continue to enjoy that priority, that the Drafting Committee had considered the situation where charges did not have their foundation in law but in the fact that non-payment of charges might result in air traffic control authorities refusing to grant permission for aircraft to depart, that the Drafting Committee had considered a number of proposals to address this issue which were contained in an informal proposal, that it had made a proposal that it thought had been accepted in the Drafting Committee, that the proposal was that nothing in the Draft Convention would affect the rights of detention or arrest in respect of an aircraft for the non-payment of aviation charges and fees for airport usage, including landing fees and air navigation charges, that under that proposal the position of EUROCONTROL would be protected because the exclusion of that category of rights from the scope of the Draft Convention would have the effect of preserving those rights, that it would not be necessary for declarations to be made in relation to that category of right, that it had earlier explained that it was essential that those rights be preserved as they were essential for the operation of aircraft and the generation of income by aircraft, and that its proposal would directly address the concerns that had been raised by EUROCONTROL.

The CHAIRMAN stated that the Belgian proposal had been supported by some delegations, that many delegations had expressed concerns and had identified issues requiring clarification, that some delegations had questioned whether the Belgian proposal was necessary, that an opportunity would be given to EUROCONTROL to clarify the issues that had arisen during the discussion, and that following that clarification the issue would be referred to informal consultations with a view to the formulation of a further proposal for submission to the Drafting Committee.

The DELEGATION OF EUROCONTROL stated that it acknowledged that concerns had been expressed regarding the Belgian proposal, that EUROCONTROL was an international Organisation separate from its Member States, that it acted on behalf of its 30 Member States to recover route charges, that the EUROCONTROL route charge was constituted as a single charge made up of the different portions of the route overflown in all Member States and constituting a single charge due in respect of each flight which constituted a single claim by EUROCONTROL payable to EUROCONTROL at its headquarters in Belgium, that the charge attached as a lien to the aircraft which incurred the charge irrespective of whose hands it might be in, and that EUROCONTROL therefore had a lien on an aircraft allowing enforcement of a right *in rem* against the aircraft. It stated that EUROCONTROL's rights were enshrined in legislation in its Member States, that it did not wish to enhance those rights but merely to preserve its existing position so as to be able to avail itself of the detention rights which were currently available to it, that, as EUROCONTROL was the sole holder of a single claim, there might be difficulty if Member States were to make a declaration on its behalf, that there would be extreme complications if EUROCONTROL were required to subrogate its rights to Member States, that it had refrained from suggesting that it be able formally to accede to the Draft Convention to avoid unnecessary complications, that Article 36(2) of the *Vienna Convention on the Law of Treaties* provided that a right would arise for a third State from a provision of a treaty if the parties to the treaty intended the provision to accord that right to the third State and the third State assented to that, that it would be happy to assent to accepting the right to make a declaration if the Draft Convention permitted it to do so, that if this could not be accommodated it would request that it be permitted to ask for accession to the Draft Convention, and that EUROCONTROL was not part of the European Union and its Member States acted independently from the European Union in the context of EUROCONTROL matters.

The DELEGATION OF INDIA stated that the proposal regarding EUROCONTROL involved legal complications, that if all Member States of EUROCONTROL did not become Contracting States under the Draft Convention it would be very difficult to ensure that the benefit of EUROCONTROL's membership of the Draft Convention was limited to those of its Member States that were Contracting States, that there was a big question regarding whether EUROCONTROL would be entitled to accede to the Draft Convention and make declarations, and that it appeared that EUROCONTROL and its Member States would be able to deal with the problem by way of amendments to their own documents.

The DELEGATION OF THE CZECH REPUBLIC stated that it supported the Chairman's summary and suggestion.

The DELEGATION OF THE NETHERLANDS stated that it supported the position of EUROCONTROL and the Chairman's suggestion.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported the comments of India, that it continued to have sympathy with the position of EUROCONTROL but that problems arose from the fact that the EUROCONTROL charge was a single charge, that it would not be possible to have a system where a number of States that were not Contracting States to the Draft Convention would be able to have their air navigation interests enforced through the Draft Convention's mechanisms by virtue of the declaration system and its effect on priorities, that there would need to be some internal modification of the EUROCONTROL mechanism so that in lieu of a single charge there could be an allocated charge that would be separately identifiable for a Member State that was also a Contracting State, and that the same problem would exist even if EUROCONTROL were accorded the right to become a party to the Draft Convention.

The DELEGATION OF ARGENTINA stated that it supported the comments of India, that the same debate had taken place in the Commission when it had been raised by Jamaica, and that it should not be an issue that was decided in the Drafting Committee.

The CHAIRMAN stated that there were different opinions as to whether it was precisely the same issue that had been discussed earlier in the Commission, and that the issue would need to be considered in informal consultations.

The DELEGATION OF SENEGAL stated that the legal personality of Organisations was separate from the legal personality of States, that one of the solutions would be to define what an aviation organisation was because this was a different concept from a Regional Economic Integration Organisation, that it would be concerned if the rights of ASECNA were jeopardised by the Draft Convention, and that it required clarification as to whether Member States of such Organisations would be in a position to ratify the Draft Convention.

The CHAIRMAN stated that there would be informal consultations coordinated by the Delegation of South Africa, and that, if a consensus was reached, the text arising from such consultations would be referred to the Drafting Committee. The Chairman stated that the Commission would discuss two issues relating to jurisdictional issues, that these issues had been referred to an informal consultation group to consider the specific problems relating to the European Community Member States in relation to the jurisdictional provisions of the Draft Convention and the Draft Protocol, that the informal consultation group had reached a consensus which was detailed in DCME Doc No. 52, and that there was another proposal that had been presented by Mexico in DCME Doc No. 47.

The DELEGATION OF SWEDEN stated that a number of States had participated in the informal consultation group discussions, that the European Community could change its legislation in order to ratify the Draft Convention but that this would be a question of timing and the question of whether to initiate amendments to Community legislation was the exclusive right of the European Commission, that the legislative process in Brussels was quite slow, that if the problems were not solved in the Draft Convention they would need to be solved with Community legislation which would take at least five years to achieve, that the proposal in DCME Doc No. 52 related to three Articles and also proposed the inclusion of a new Article 44*bis*, that the proposed amendment to Article 41 of the Draft Convention would state the formal requirements of agreements to which Article 41 of the Draft Convention related and that such agreements should be in writing or otherwise concluded in accordance with the law of the forum, that this proposal related only to formal requirements and there was no intention of introducing the possibility of using concepts of reasonableness to question such agreements, that Article 42 of the Draft Convention provided for jurisdiction in relation to Article 12 of the Draft Convention, that Article 12 of the Draft Convention was an optional provision, that the problems of European Community legislation relating to Article 42 of the Draft Convention were relatively minor and to require European Community Member States to opt out of Article 12 of the Draft Convention would be the equivalent of “killing a fly with a sledgehammer”, that the informal consultation group had decided that European Community Member States should be able to utilise Article 12 of the Draft Convention, that to achieve this it was proposed that a reference to Article 42 of the Draft Convention be introduced into Article 53 of the Draft Convention and that there be some additional language to clarify the application that States that had made a declaration would carry out, that the proposed new Article 44*bis* would clarify that the provisions of Chapter XII of the Draft Convention would not apply to insolvency proceedings, that this would be a clarifying statement, that it would not be intended to preclude any action being brought against a party which was in insolvency or in bankruptcy and that a claimant would still be able to bring an action against a debtor in bankruptcy or insolvency, that the informal consultation group had opted to use the same solution in relation to Article XX of the Draft Protocol which provided for jurisdiction in the State of Registry in relation to Articles 42 and 44 of the Draft Convention as was used in relation to Article 44 of the Draft Convention itself, and that the provision in Article 53 of the Draft Convention had been duplicated.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it supported the proposals contained in DCME Doc No. 52, that the comments by Sweden had clarified the proposals, and that it

assumed that the proposal in relation to Article 41 of the Draft Convention was intended to refer to “the laws of that forum” instead of “the laws of the forum”.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported the proposals contained in DCME Doc No. 52, and that it recognised the cooperative spirit that had been demonstrated by the delegates from the European Union and the European Commission.

The DELEGATION OF SWEDEN stated that the assumption of the Aviation Working Group was correct and that the proposal in relation to Article 41 of the Draft Convention was intended to refer to “the laws of that forum”.

The DELEGATION OF THE EUROPEAN COMMUNITY stated that it was grateful to all delegations that had participated in the compromise solution.

The CHAIRMAN stated that the proposals in DCME Doc No. 52 had been supported and would be adopted with a change to the proposal regarding Article 41 of the Draft Convention to replace “the laws of the forum” with “the laws of that forum”. The Chairman invited Mexico to introduce DCME Doc No. 47.

The DELEGATION OF MEXICO stated that one area in which civil law systems and common law systems were different was in relation to residual clauses concerning issues of jurisdiction if the parties had not reached an agreement regarding jurisdiction, that in civil law systems the residence of the debtor determined the jurisdiction, that this ran counter to common law systems, that the formulation of Article 44 of the Draft Convention was very unsatisfactory and would give rise to many problems, that DCME Doc No. 47 proposed that Article 44 of the Draft Convention be eliminated, and that Article 44 of the Draft Convention dealt with a very minor problem but if it were retained it would create a serious hindrance to ratification by some States with codified laws.

The DELEGATION OF EGYPT stated that it supported the Mexican proposal to delete Article 44 of the Draft Convention.

The DELEGATION OF ARGENTINA stated that it supported the Mexican proposal, that the Mexican proposal would eliminate a problem from the Draft Convention, and that the Mexican proposal would not substantively change the Draft Convention because in the unlikely event that the parties to a transaction did not choose their jurisdiction they would have recourse to the conflict rules which would produce similar solutions to those presented in Article 44 of the Draft Convention.

The CHAIRMAN stated that the Mexican proposal would not disturb the substance of the jurisdictional provisions in the Draft Convention.

The DELEGATION OF SAUDI ARABIA stated that it supported the Mexican proposal.

The DELEGATION OF CUBA stated that it supported the Mexican proposal.

The DELEGATION OF INDIA stated that it supported the Mexican proposal, and that one additional benefit of the proposal was that the new Article 44*bis* that was proposed in DCME Doc No. 52 would be more easily able to be accommodated in the Draft Convention.

The DELEGATION OF THE ARAB LIBYAN JAMAHIRIYA stated that it supported the Mexican proposal and the comments of India.

The DELEGATION OF FRANCE stated that it had formulated criticisms of Article 44 of the Draft Convention for the same reasons that had been advanced by Mexico, that it had proposed an amendment to Article 44 of the Draft Convention which had not been supported, and that it supported the Mexican proposal.

The CHAIRMAN stated that Article 44 of the Draft Convention would be deleted, that Article 44*bis* in DCME Doc No. 52 would become the new Article 44 of the Draft Convention, and that the Drafting Committee would consider the title of the new Article 44 of the Draft Convention.

The DELEGATION OF SWITZERLAND stated that Articles XX and XXI of the Draft Protocol referred to Article 44 of the Draft Convention and that those references should be deleted.

The CHAIRMAN stated that the Drafting Committee would check all cross-references between the Draft Convention and the Draft Protocol for accuracy and consistency.

The DELEGATION OF THE EUROPEAN COMMUNITY stated that the French and English versions of Article 41 of the Draft Convention and Article XXVIII of the Draft Protocol were not consistent.

The CHAIRMAN stated that the translations of the Draft Convention and Draft Protocol would be checked for consistency. The Chairman stated that the discussion of jurisdictional issues had been completed and that the Commission would return to the discussion of the Preamble, that a proposed draft of an addition to the preamble to the Draft Protocol which referred to the *Chicago Convention on International Civil Aviation* had been prepared, that there had been clear support for that proposed addition, that the proposed third preambular clause of the Draft Protocol was: "In accordance with the principles and rules of the Convention on International Civil Aviation, signed on 7 December 1944 in Chicago", that another proposal had been prepared by Egypt, and that the Egyptian proposal was to add a preambular clause to the Draft Protocol which said: "Mindful of the principles of law contained in the Convention on International Civil Aviation done at Chicago on 7 December 1944, and the consideration of the principles established in the Conventions relating to the other Protocols of the present Convention".

The DELEGATION OF THE RUSSIAN FEDERATION stated that its proposal was to add the following two clauses to the preamble of the Draft Protocol: "To the objectives and principles of the Convention on International Civil Aviation done at Chicago on 7 December 1944" and "Considering it important to take into account the provisions of the Chicago Convention in the implementation of the Protocol".

The CHAIRMAN invited delegations to comment on the Egyptian proposal.

The DELEGATION OF INDIA stated that it supported the Egyptian proposal, that the Egyptian proposal should be amended to remove the reference to "of law" so that it would say: "Mindful of the principles contained in the Convention on International Civil Aviation done at Chicago on 7 December 1944", and that it supported the second clause that had been proposed by the Russian Federation.

The DELEGATION OF KENYA stated that the Draft Protocol referred to the *Chicago Convention on International Civil Aviation* as having been "signed" and that the Draft Convention referred to the Chicago Convention as having been "done", and that the terminology used should be consistent.

The DELEGATION OF FRANCE stated that it agreed with the proposal of the Russian Federation, that it had concerns about a reference to the *Chicago Convention on International Civil Aviation* being included in the preamble to the Draft Convention, that the Draft Convention was intended to be a base convention which would apply to different types of mobile equipment, and that it would not be appropriate for the base convention to give priority to one particular type of mobile equipment.

The DELEGATION OF AUSTRALIA stated that it supported the comments of France, that it was difficult to understand the utility of referring to the *Chicago Convention on International Civil Aviation* in the base convention when it would be possible for the recognition of relevant aviation conventions to be placed in the Draft Protocol, that if the base convention was to include a reference to relevant aviation conventions it should also include references to relevant conventions dealing with

the peaceful uses of outer space, and that references to the Chicago *Convention on International Civil Aviation* should be confined to the Draft Protocol.

The DELEGATION OF GREECE stated that it supported the proposal of the Russian Federation and the comments of France.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that, in light of the comments that had been made, it agreed that the Draft Convention should not contain a specific reference to the Chicago *Convention on International Civil Aviation*, that if a general provision was retained the wording of that provision would be important, that wording such as “due consideration of principles expressed in relevant conventions” should be used, and that it would be necessary to be cautious because there were two other protocols under development.

The CHAIRMAN stated that there had been support for the Egyptian proposal, that many delegations had expressed concern about the necessity of including the clause proposed by Egypt in the Draft Convention, and that, in light of the fact that there would be references to the Chicago *Convention on International Civil Aviation* in the Draft Protocol, the delegation of Egypt would be invited to comment.

The DELEGATION OF EGYPT stated that there had been some concerns expressed about the utility of referring to the Chicago *Convention on International Civil Aviation* in the Draft Convention, that there was a need for the Draft Convention to refer to the basic conventions relevant to specific protocols, and that it would be possible to dispense with a specific reference to the Chicago Convention by referring to the basic conventions relating to the protocols of the Draft Convention, and that those basic conventions should be respected and should continue to apply.

The DELEGATION OF THE AVIATION WORKING GROUP stated that the Drafting Committee should examine the proposals relating to the preamble, that it supported the inclusion of a reference to the Chicago *Convention on International Civil Aviation*, that it would be necessary to be careful to ensure that a reference to the Chicago Convention did not alter the legal effect of the Draft Convention, that the preamble would be relevant in the case of interpretation of the Draft Convention, that the Chicago Convention was based on principles of nationality while the Draft Convention dealt with an international situation, that in addition to a reference to the Chicago Convention it would be useful to refer to the further development of air law in this field in order to indicate that the Draft Convention followed on from the Chicago Convention but did not alter its legal effect, that it would be preferable to avoid references to principles of law, that it would be useful for the preamble to the Draft Protocol to refer to the objectives of the treaties and to the further development of air law, and that the Drafting Committee should examine that proposal.

The DELEGATION OF THE RAIL WORKING GROUP stated that it supported the comments of France, that it would be difficult to explain the presence of a reference to the Chicago *Convention on International Civil Aviation* in the Draft Convention, that it would be appropriate for references to specific conventions to appear in the relevant protocols, and that it would have no objection to very general language in the preamble to the Draft Convention.

The CHAIRMAN stated that the Egyptian delegation would provide a new version of its proposal with more general language that took into account the concerns that had been expressed and which would be prepared in consultation with Australia, France, Greece, the United States of America, and other delegations that had expressed concerns, that if a consensus text were produced it would be forwarded to the Drafting Committee, and that consultations should also be undertaken with the Delegation of the United Nations. The Chairman stated that the Commission would discuss the proposal made by the Russian Federation for further text to be added to the preamble of the Draft Protocol, and that the proposal was for there to be a third preambular clause of the Draft Protocol which would read: “In accordance with the principles and objectives of the Convention on

International Civil Aviation signed on 7 December 1944, and mindful of the importance of taking into account the provisions of the Chicago Convention in the implementation of this Protocol”.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported the suggestion of the Aviation Working Group that there be a reference to the further development of air law, including its effect in the Draft Convention.

The CHAIRMAN stated that it would be useful if a text of the Aviation Working Group proposal could be produced to assist delegations to take a position on the issue.

The DELEGATION OF INDIA stated that it had doubts about the use of the term “in accordance with” because the Chicago *Convention on International Civil Aviation* did not include any provisions that had the effect of requiring the Draft Convention to be adopted, that it was mindful of the provisions of the Chicago Convention but that the Draft Convention was not “in accordance with” that convention, and that the two clauses of the Russian Federation’s proposal should be combined so that it would read: “Mindful of the principles and objectives of the Convention on International Civil Aviation signed at Chicago on 7 December 1944 and the importance of taking into account the provisions of this Convention in implementation of this Protocol”.

The CHAIRMAN stated that India had referred to the part of the text that had been adopted prior to the discussion of the Russian Federation’s proposal but that it would not be a problem to amend that text as had been suggested by India, that this issue should be referred to the Drafting Committee, that there had been a proposal by the Aviation Working Group to add some wording in the preamble to the Draft Protocol, and that the proposal had been supported by the United States of America.

The DELEGATION OF THE RUSSIAN FEDERATION stated that it supported the proposal of the Aviation Working Group, and that in addition to the Chicago *Convention on International Civil Aviation* it would be possible to refer to legal instruments related to aviation law.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it would withdraw its proposal.

The CHAIRMAN stated that the discussion regarding the preambles had concluded, that it had been decided that the preamble to the Draft Protocol would be referred to the Drafting Committee to consider the proposals that had been discussed and that the Egyptian delegation would consult with interested delegations to produce a text of a general nature that would be added to the preamble to the Draft Convention. The Chairman invited the Chairman of the Final Clauses Committee to advise the Commission about the progress of that committee.

The DELEGATION OF JAMAICA stated that the Final Clauses Committee had made substantial progress, that there were two outstanding issues to be resolved, that the first issue requiring resolution was the question whether there would be a Review Board for the purposes of facilitating any amendment to the Draft Convention or whether there would be a review provision as well as an independent provision dealing with amendments to the Draft Convention, that the second issue requiring resolution related to the application of the Draft Convention under the transitional provisions in respect of what was contained in Alternative A and Alternative B relating to pre-existing rights and interests, and that following the discussion of those issues in the Commission there would be a need for further consideration by the Final Clauses Committee.

The CHAIRMAN stated that there would be informal consultations regarding the issues being considered by the Final Clauses Committee, that there had been an ongoing consultation process regarding the establishment of the International Registry, the issue of the Council of the International Civil Aviation Organization becoming the Supervisory Authority and the nature of any redrafting of Article XVI(1) of the Draft Protocol, and that the co-Chair of those informal consultations would be invited to advise the Commission about the progress of the consultations.

The DELEGATION OF FRANCE stated that the informal consultation group had met twice, that it was in the process of drafting a draft resolution dealing with the establishment of a permanent Supervisory Authority and the establishment of a transitional type of Supervisory Authority or Commission, and that proposals contained in DCME Doc No. 47 and DCME Doc No. 48 would be taken into account as far as possible.

The CHAIRMAN stated that the draft resolution would be discussed at the following meeting of the Commission.

The meeting rose at 13:00

COMMISSION OF THE WHOLE – THIRTEENTH MEETING

Monday, 12 November 2001, at 14:30

President: Professor Medard Rutojo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 12 – ADOPTION OF THE FINAL ACT OF THE CONFERENCE AND OF ANY INSTRUMENTS, RECOMMENDATIONS AND RESOLUTIONS RESULTING FROM ITS WORK

The CHAIRMAN stated that the Commission would commence discussions of DCME Doc No. 60 which was a Draft Final Act, that the first part of DCME Doc No. 60 explained what had happened and what were the official bodies established by the Diplomatic Conference, that it included a list of delegates, that there were a number of omissions and inconsistencies, and that delegations with concerns about omissions or inconsistencies should raise those concerns with the Secretariat.

The DELEGATION OF PAKISTAN stated that there were a few delegations that had submitted their letters of credentials by facsimile, that the originals of those facsimiles were in transit, and that those delegations should be recorded in DCME Doc No. 60 because facsimiles were accepted in courts of law.

The CHAIRMAN stated that the Credentials Committee would decide whether to accept letters of credentials that had been submitted by facsimile. The Chairman stated that the discussion of the resolutions would be based on the resolutions contained in DCME Doc No. 60, and that the SECRETARY GENERAL (ICAO) would be invited to present Resolution 1 in DCME Doc No. 60.

The SECRETARY GENERAL (ICAO) stated that Resolution 1 in DCME Doc No. 60 dealt with the consolidated text, that it was directly linked to DCME Doc No. 50, that as a result of discussions between the two Secretariats there was a single draft consolidated text which was presented in DCME Doc No. 50, that DCME Doc No. 50 presented a single text without any of the proposed changes under consideration by the Drafting Committee and the Final Clauses Committee, and that the resolution was separately reproduced in DCME Doc No. 58.

The DELEGATION OF THE ARAB LIBYAN JAMAHIRIYA stated that the official name of its country was Jamahiriya, the Great Arab Libyan Jamahiriya, and that this should be corrected on the list of countries.

The DELEGATION OF JAMAICA stated that it supported Resolution 1 in DCME Doc No. 60, that it required clarification regarding whether there would be further discussion of the status of the text, that in Resolution 1 in DCME Doc No. 60 the proposed consolidated text was referred to as an authoritative consolidated text, and that the status of the consolidated text required clarification.

The DELEGATION OF THE UNITED KINGDOM stated that it supported Jamaica's request for clarification about the status of the consolidated text, that it had been clear that legal obligations would derive not from the consolidated text which would not be the instrument adopted by Contracting States but from the Draft Convention and the Draft Protocol, that it was concerned about the language of the ultimate recital which referred to it being an authoritative consolidated text as opposed to an approved text, that Resolution 1 in DCME Doc No. 60 assumed that the text would be complete at the conclusion of the Diplomatic Conference, that there were likely to be issues of grammar and translation that delegations would not have sufficient time to examine prior to the conclusion of the Diplomatic Conference, and that there should be some provision for revision in respect of minor grammatical and language issues.

The DELEGATION OF EGYPT stated that it agreed with the comments of Jamaica and the United Kingdom, that Egypt had presented DCME Doc No. 40 which had directly determined the legal status of the consolidated text and had advocated an approach that would give the consolidated text non-official status, that the language used in Resolution 1 in DCME Doc No. 60 was inconsistent with that proposal, and that this was an important issue because it was relevant to determining the legal status of the consolidated text which should only be informal in nature.

The DELEGATION OF SAUDI ARABIA stated that it supported the comments of the United Kingdom and Egypt.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it agreed with the previous comments that the word "authoritative" in Resolution 1 in DCME Doc No. 60 should be substituted with "approved", that it agreed with the comment of the United Kingdom regarding the need for some provision for revision in respect of minor grammatical and language issues, that it was important that the consolidated text be correct and free from errors as it would be widely used, that Resolution 1 in DCME Doc No. 60 should include a mechanism for a final draft to be circulated by the two Secretariats to all participating States to give them time to assess the consolidated text and to provide comments, that it had participated in the development of a closely-related convention by the United Nations Commission on International Trade Law, that there had been some technical errors discovered in that convention when it was too late to correct them and there had been no mechanism to correct errors, and that it sought guidance from the two Secretariats.

The SECRETARY GENERAL (ICAO) stated that there had been a practice in the United Nations to provide for the possibility of correcting errors of a non-substantive nature such as linguistic errors within a period of 60 days or 90 days following the adoption of instruments, that under the authority of the President of the Diplomatic Conference it could be possible to provide not only for linguistic errors to be corrected but also for errors relating to the consolidation of the consolidated text to be corrected provided the corrections did not affect matters of substance, that Jamaica and the United Kingdom were correct that legal obligations under the instruments would only flow from the Draft Convention and the Draft Protocol, and that the consolidated text would not be open for signature or ratification and would not have the status of a binding ratified instrument.

The CHAIRMAN stated that all delegations were satisfied that the consolidated text referred to in Resolution 1 in DCME Doc No. 60 would be for working purposes only and would not have any authoritative status, and that the easiest way to proceed would be to delete the word "authoritative" from Resolution 1 in DCME Doc No. 60.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it agreed with the Chairman's proposal, and that the Conference should also consider adopting a proposal regarding the practice of the United Nations which had been referred to by the Secretary General (ICAO).

The CHAIRMAN stated that it would be within the prerogative of the President of the Diplomatic Conference to allow for a checking period after the Diplomatic Conference had taken place to allow an opportunity for any linguistic errors to be checked.

The PRESIDENT stated that the issue referred to by the Chairman had been raised in the Drafting Committee, and that he would be positively disposed to consider the possibility of authorising a checking period after the Diplomatic Conference to allow an opportunity for any linguistic errors to be checked on the basis that the substance of the text was not affected.

The DELEGATION OF SOUTH AFRICA stated that at previous meetings it had raised concerns about the status of the consolidated text, that if the consolidated text was formally “adopted” it would be conferred with an official status, that this had not been the intention when the issue had been discussed at previous meetings, and that at previous meetings it had been stated that the consolidated text would be a working text designed to assist States that might have difficulty implementing the Draft Convention and the Draft Protocol.

The DELEGATION OF GERMANY stated that it agreed with the comments that had been made by the United States of America and the United Kingdom, that it shared the concerns that had been raised by South Africa, that it might not be sufficient merely to delete the word “authoritative” in the recital to Resolution 1 in DCME Doc No. 60, that it would be necessary to make the status of the consolidated text very clear and to include a positive statement as to its status as a text to be used for working purposes only, that it was grateful for the explanation by the Secretary General (ICAO) that it would be possible to have a process to make amendments of a non-substantive nature following the Diplomatic Conference, that it could only agree to such a process if it was possible to know whether the draft of the consolidated text contained all the substantial points of the Draft Convention and the Draft Protocol, that it would be necessary to have sufficient time to examine this, and that it was doubtful whether there would be sufficient time to do this prior to the conclusion of the Diplomatic Conference.

The DELEGATION OF INDIA stated that it agreed with South Africa that at previous meetings there had been a clear understanding that the consolidated text would have no status other than as a working document for States that wanted to use it, that a concern had also been expressed by some States that the consolidated text should have some kind of authenticity and be issued from an official source, and that it agreed with the suggestion made by Germany that the consolidated text be adopted by a resolution of the Diplomatic Conference but that that resolution should make it explicitly clear that the consolidated text was only to be used as a working reference text.

The CHAIRMAN stated that there did not seem to be differing views and that it was a question of finding the appropriate wording of the resolution.

The DELEGATION OF EGYPT stated that it agreed with South Africa and Germany that the word “authoritative” in the recital to Resolution 1 in DCME Doc No. 60 should be replaced with a word such as “informal” or “working”, and that it was concerned that the resolution proposed that the consolidated text be “adopted” because the text of the consolidated text had not been carefully scrutinised by the Diplomatic Conference.

The CHAIRMAN stated that the Egyptian comments were further elaborated in DCME Doc No. 40.

The DELEGATION OF CANADA stated that it agreed with the comments of the United States of America, that it would have no difficulty with the adoption of Resolution 1 in DCME Doc No. 60 provided the word “authoritative” was removed, that the issue of the status of the consolidated text had not been finally decided by the Legal Committee although many views had been expressed, and that it was reassured that after the conclusion of the Diplomatic Conference it would be possible to go through all three texts and make minor adjustments.

The DELEGATION OF PAKISTAN stated that it was concerned that it would not be fair to adopt a document without having gone through it clause by clause, that this could lead to complications at a later stage, that for this reason it was inappropriate that Resolution 1 in DCME Doc No. 60 referred to the consolidated text being “adopted”, that it agreed that the word “authoritative” should be deleted, and that the two Secretariats would be able to circulate a consolidated text following the conclusion of the Diplomatic Conference.

The DELEGATION OF ARGENTINA stated that it agreed with the comments of Egypt, Germany and South Africa, that it would not be necessary formally to adopt the consolidated text which would be only a working document for the countries that needed it, and that the two Secretariats should carefully and slowly review the consolidated text following the conclusion of the Diplomatic Conference and hand it out to those countries that needed it.

The DELEGATION OF THE UNITED KINGDOM stated that the recital in Resolution 1 in DCME Doc No. 60 which read: “Recognizing the need of the international civil aviation community to facilitate the implementation of the rules applicable to aircraft objects in a user-friendly manner” should be added to the subsequent recital and amended to read: “Recognizing the need of the international civil aviation community to facilitate the implementation of the rules contained in the Convention and Protocol applicable to aircraft objects in a user-friendly manner”, that this would indicate what the purpose of the consolidation was and the reference to the rules being in the Draft Convention and the Draft Protocol would indicate that those were the authentic sources of the legal obligations rather than the consolidation, that it agreed that the word “adopt” was problematic, and that it agreed that it would be difficult to review carefully the consolidated text prior to the conclusion of the Diplomatic Conference.

The SECRETARY GENERAL (UNIDROIT) stated that some of the concerns about the use of the word “adopt” in the recital to Resolution 1 in DCME Doc No. 60 might have arisen from the fact that UNIDROIT usually used the verb “to approve” in relation to non-legally binding instruments, and that it had been agreed between the President and the two Secretariats that the timeframe necessary to complete the correction and tidying-up of the consolidated text would be between 60 and 90 days.

The CHAIRMAN stated that the proposal that had been made by the United Kingdom to amend and relocate the recital commencing with the words: “Recognizing the need of the international civil aviation community ...” would be adopted, that the word “adopts” would be replaced with the phrase: “take note of”, that this would mean that the first, second and third paragraphs of Resolution 1 in DCME Doc No. 60 would remain unchanged, that the fourth paragraph would be deleted, that the fifth paragraph would be supplemented by the addition of the phrase: “with the drawing up of a consolidated text to facilitate the implementation of the rules contained in the Convention and the Protocol in a user-friendly manner”, and that the operative paragraph of the recital would be amended to commence with the phrase: “The Conference hereby takes note of the consolidated text ...”.

The DELEGATION OF EGYPT stated that the title of Resolution 1 in DCME Doc No. 60 would need to be amended as it referred to “adoption”, and that it should be amended to be “Status of the Consolidated Text”.

The CHAIRMAN stated that the title of Resolution 1 in DCME Doc No. 60 would be examined so that it was consistent with the text of the resolution. The Chairman stated that Resolution 2 in DCME Doc No. 60 related to the establishment of the Supervisory Authority and the International Registry, that DCME Doc No. 54 dealt with these issues and included a draft Article XVI of the Draft Protocol, and that both the resolution and the draft Article would be discussed together.

The SECRETARY GENERAL (ICAO) stated that DCME Doc No. 54 set out a revised drafting proposal for Article XVI of the Draft Protocol to which Resolution 2 in DCME Doc No. 60 referred, that the revised drafting proposal for Article XVI of the Draft Protocol made reference to the fact that

the international entity which would be appointed as Supervisory Authority would be designated by a resolution agreed to at the Diplomatic Conference, that Resolution 2 in DCME Doc No. 60 would be where that designation would be made, that the first and second paragraphs of the resolution invited the International Civil Aviation Organization to accept the functions of the Supervisory Authority upon entry into force of the Draft Convention and Draft Protocol, that the resolution invited the International Civil Aviation Organization to establish a Commission of Experts with the task of assisting the Supervisory Authority as from the entry into force of the Draft Convention and the Draft Protocol, that between the adoption of the Draft Convention and Draft Protocol and their entry into force the resolution envisaged setting up a Preparatory Commission that would act as Provisional Supervisory Authority, that it had been unanimously agreed at the informal consultations that the Preparatory Commission should carry out its functions under the guidance and supervision of the Council of the International Civil Aviation Organization, that the setting up of the Preparatory Commission and its membership would be issues for the Diplomatic Conference to determine, that the terms of reference of the Preparatory Commission would be set out in the fourth paragraph of the resolution and would include a funding mechanism to be based on start-up funding provided voluntarily, and that Resolution 2 in DCME Doc No. 60 represented the results of discussions at four meetings of the informal consultation group.

The CHAIRMAN stated that Resolution 2 in DCME Doc No. 60 and DCME Doc No. 54 were the product of wide consultations.

The DELEGATION OF FRANCE stated that it would have been possible for the preambular clauses to Resolution 2 in DCME Doc No. 60 to have made reference to Article 25 of the *Vienna Convention on the Law of Treaties*, that the second-last paragraph of Resolution 2 in DCME Doc No. 60 referred to the International Registry beginning its functions with a target date of one year from the adoption of the Draft Convention but at the latest by the time of entry into force of the Draft Convention and Draft Protocol, that it was not certain how long the entry into force of the Draft Convention and Draft Protocol would take but it could be more than one year, that the second-last paragraph of Resolution 2 in DCME Doc No. 60 should be amended to say: “at the latest by the time of entry into force” or: “in any case upon the entry into force of the Convention and the Protocol”, that it considered the one-year period referred to in Resolution 2 in DCME Doc No. 60 too brief and that it should be amended to 15 months, that the setting up of the International Registry would involve not just the establishment of a registry system but also the appointment of the International Registrar, and that the third paragraph of Resolution 2 in DCME Doc No. 60 should be amended to make it absolutely clear that the Provisional Supervisory Authority would have full power and authority to take all actions necessary for the establishment of the International Registry.

The CHAIRMAN stated that the text of Resolution 2 in DCME Doc No. 60 represented a compromise text that had been developed during informal consultations which had included France, that it would be preferable not to make changes to the text at that late stage, and that the comments of France would be open for discussion.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported the text of Resolution 2 in DCME Doc No. 60, and that the language had been agreed during several sessions of the informal consultation group.

The DELEGATION OF CUBA stated that it supported the text of Resolution 2 in DCME Doc No. 60, that the resolution provided that the Commission of Experts would be comprised of persons designated by the signatory States of the Draft Convention and the Draft Protocol while the Preparatory Commission would be comprised of persons nominated by specified States, that it required clarification whether the States specified to nominate members of the Preparatory Commission would be limited to signatory States of the Draft Convention and the Draft Protocol, and that in the Spanish text of DCME Doc No. 54 the word “ready” had been translated as “*listo*” instead of “*pronto*”.

The CHAIRMAN stated that the Preparatory Commission would be established by the Diplomatic Conference and it would not be necessary for the States that took part in its work to be signatories to the Draft Convention and Draft Protocol, and that this would be a different situation to that applying to the Commission of Experts.

The DELEGATION OF THE UNITED ARAB EMIRATES stated that it had earlier expressed concern that there was no provision in the Draft Protocol regarding the location of the International Registry, that it had proposed that the International Registry be established in a Contracting State, and that a fourth clause should be added to Resolution 2 in DCME Doc No. 60 to provide that: "The Preparatory Commission shall ensure that the International Registry be set up in a Contracting State."

The CHAIRMAN invited the Secretary General (ICAO) to comment on the observations of the United Arab Emirates.

The SECRETARY GENERAL (ICAO) stated that the issue of the location of the International Registry was not within the mandate of the informal consultation group but was a matter of substance that should be discussed in the Commission of the Whole.

The CHAIRMAN stated that the issue raised by the United Arab Emirates would be discussed at a later stage.

The DELEGATION OF KENYA stated that it supported Resolution 2 in DCME Doc No. 60.

The DELEGATION OF NIGERIA stated that it supported the comments of the United States of America, and that it supported the comment of the United Arab Emirates that the International Registry should be located in a Contracting State.

The CHAIRMAN stated that the issue of the location of the International Registry would be discussed at a later stage, that during the earlier discussion there had been considerable support for the inclusion of a clause that would state that the International Registry should be located in a Contracting State, and that there had also been opposition to the inclusion of such a clause.

The DELEGATION OF GERMANY stated that it required clarification as to whether the reference to "upon the entry into force" in the second recital of Resolution 2 in DCME Doc No. 60 was a reference to the establishment of the Commission of Experts or to assistance with the Supervisory Authority.

The DELEGATION OF FRANCE stated that its concerns regarding Resolution 2 in DCME Doc No. 60 were fundamental to the future credibility of the system, that it agreed with the substance of the compromise that had been reached, that there were some points that required clarification, that its proposal that the second-last paragraph of Resolution 2 in DCME Doc No. 60 be amended to say: "at the latest by the time of entry into force" or: "in any case upon the entry into force of the Convention and the Protocol" was intended to improve the logic of the text, that it was a legitimate concern to question the distinction between the International Registry and the Registry System and that it required clarification whether the reference to "Registry" would also involve the right to designate a Registrar prior to the entry into force of the Draft Convention, and that its proposal that the third paragraph of Resolution 2 in DCME Doc No. 60 be amended to make it absolutely clear that the Provisional Supervisory Authority would have full power and authority to take all actions necessary for the establishment of the International Registry required consideration because the Provisional Supervisory Authority would be overseeing the system in the interim period and would need to have the means to carry out all its tasks.

The CHAIRMAN stated that the points that had been raised by France had not yet raised concern with other delegates, and that it was possible that some of the French concerns arose out of translation issues.

The DELEGATION OF CANADA stated that it supported the text of Resolution 2 in DCME Doc No. 60, and that the French translation did not include the idea of a target date which was a key part of the compromise that had been agreed in the informal consultation group.

The DELEGATION OF THE ARAB LIBYAN JAMAHIRIYA stated that it supported the text of Resolution 2 in DCME Doc No. 60, and that it supported the Registrar being located in a Contracting State.

The DELEGATION OF ARGENTINA stated that it required clarification regarding why the number of members of the Preparatory Commission would not be limited while the number of members of the Commission of Experts would be limited to 15.

The CHAIRMAN stated that no number had been specified regarding the membership of the Preparatory Commission because the consultations regarding its membership were still underway and the final number had not been determined.

The DELEGATION OF FRANCE stated that it supported the comments of Canada regarding the French translation of the text, that it was still seeking clarification regarding whether the reference in Resolution 2 in DCME Doc No. 60 to the establishment of the Registry meant that the Registrar would be designated prior to the entry into force of the Draft Convention and the Draft Protocol, and that it was still seeking clarification regarding whether the Preparatory Commission would have the authority to take legal steps such as concluding contracts and issuing tender bids.

The SECRETARY GENERAL (ICAO) stated that the establishment of the International Registry by the Preparatory Commission would include the designation of the Registrar because that would be an essential element of setting up the Registry, that the Preparatory Commission would be in a position to carry out legal acts such as making appointments and concluding contracts to the extent that was necessary for it to carry out its tasks, and that the establishment of the Commission of Experts referred to in paragraph 2 of Resolution 2 in DCME Doc No. 60 would be related to the time period upon entry into force.

The CHAIRMAN stated that the discussion of Resolution 2 in DCME Doc No. 60 had concluded. The Chairman stated that the Commission would commence discussions of Resolution 3 in DCME Doc No. 60, that this resolution related to the procedure that should be followed in relation to the other protocols under preparation, that a large number of delegations had taken part in the development of the resolution, and that the resolution could be found in DCME Doc No. 56.

The DELEGATION OF SWEDEN stated that the delegations involved in the preparation of DCME Doc No. 56 included the delegations of the Rail Working Group and the Space Working Group, that DCME Doc No. 56 was largely self-explanatory, that the final paragraph referred to a Diplomatic Conference, and that the competent bodies of UNIDROIT would be invited to ensure that any Diplomatic Conference was as effective and short as possible.

The CHAIRMAN stated that Resolution 3 in DCME Doc No. 60 appeared to meet all the concerns that had been raised during the discussions on Article 49 of the Draft Convention, that there had been no requests from delegations to speak on Resolution 3 in DCME Doc No. 60, and that the discussion of Resolution 3 in DCME Doc No. 60 had been concluded.

The DELEGATION OF EGYPT stated that it would not be necessary to convene a Diplomatic Conference to adopt future protocols that were developed under the Draft Convention, that it would be sufficient for there to be a Conference of Contracting States to the Draft Convention, and that the reference to a Diplomatic Conference should be deleted from Resolution 3 in DCME Doc No. 60.

The CHAIRMAN stated that the issue of convening a Diplomatic Conference to adopt future protocols had been an important point for many delegations, that many delegations were concerned that it was the prerogative of States that their views and positions should be able to be expressed at a Diplomatic Conference, and that the compromise position reached in Resolution 3 in

DCME Doc No. 60 was to provide for Diplomatic Conferences but to stress that they should be as short as possible.

The DELEGATION OF EGYPT stated that Resolution 3 in DCME Doc No. 60 did not represent a compromise because it mandated Diplomatic Conferences, that the idea that had been current during the development of the Draft Convention was that there should be a simple way for dealing with the procedures relating to protocols, and that requiring a Diplomatic Conference to be held was inconsistent with this.

The CHAIRMAN stated that Resolution 3 in DCME Doc No. 60 included a commitment made by the Diplomatic Conference to recognise the importance of the work that was being done and also the importance of reaching results in those endeavours as soon as possible and of safeguarding the prerogatives of sovereign States.

The DELEGATION OF INDIA stated that if meetings for the adoption of protocols were restricted to Contracting States this would block the participation of States that were interested in the particular protocol but were not yet Contracting States, and that a Diplomatic Conference would be open to all States.

The CHAIRMAN stated that there had been no support for the Egyptian position, and that the discussion of Resolution 3 in DCME Doc No. 60 was closed on the understanding that the Diplomatic Conference strongly supported any means by which the objective of adopting the remaining protocols could be achieved as soon as possible. The Chairman stated that the Commission would commence discussions of Resolution 4 in DCME Doc No. 60, and that this resolution was intended to meet the concerns of certain delegations that they have the necessary technical know-how and equipment necessary to provide for the linkage between national registration authorities and the International Registry.

The SECRETARY GENERAL (UNIDROIT) stated that Resolution 4 in DCME Doc No. 60 had been formulated by the two Secretariats.

The CHAIRMAN stated that there had been no requests from delegations to speak on Resolution 4 in DCME Doc No. 60, and that the discussion of Resolution 4 in DCME Doc No. 60 had been concluded. The Chairman stated that the discussion of the draft Final Act in DCME Doc No. 60 had been concluded subject to a review of technical terms, the list of States with credentials, and the list of States to form the Preparatory Commission.

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.)

AGENDA ITEM 9 – CONSIDERATION OF THE DRAFT PROTOCOL (CONT.)

The CHAIRMAN stated that the Commission would commence discussion of DCME Doc No. 61 which comprised the interim report of the Drafting Committee, and that the report would be discussed on a chapter-by-chapter basis.

The DELEGATION OF THE UNITED KINGDOM stated that the interim report of the Drafting Committee covered the whole of the Draft Convention and Articles I to IX of the Draft Protocol, that since the interim report had been prepared there had been further revisions by the Drafting Committee, that the Drafting Committee had identified various policy issues remaining to be decided by the Commission of the Whole, that these issues were listed in the report and included Articles 2, 3, 4, 17(2bis), 21, 32(1)(c) and 42(2)(b) of the Draft Convention, that the Drafting Committee hoped that these issues could be decided as quickly as possible so that the Drafting Committee would be able to implement the decisions, and that the transitional provisions in what would become Article 60 of the Draft Convention and the definitions of pre-existing interest in Article 1(v) of the Draft Convention and the transitional provisions of the Draft Protocol had been left to the Final Clauses Committee. It stated that the preamble to the Draft Convention included the word “The” before “draft Convention”, that this had been decided by the Commission of the Whole but that the Drafting

Committee had included a footnote recommending against this change as it was quite unusual, that the preamble to the Draft Convention included the phrase: “desiring to provide broad and mutual economic benefits”, that the preamble contained the phrase: “taking into consideration the objectives and principles enshrined in the existing Conventions relating to such equipment”, and that no specific references to any other convention had been made because the Draft Convention was not equipment-specific.

The CHAIRMAN stated, in relation to the issue of whether to include the word “The” in the title of the Draft Convention, that if there was no delegation that insisted on retention of the word “The” it would be able to be deleted.

The DELEGATION OF INDIA stated that it would be possible to check the titles of other conventions to determine if they included the word “The”, and that it agreed with the proposal that the final preambular clause be amended by adding the phrase: “taking into consideration the objectives and principles enshrined in existing Conventions relating to such equipment”.

The CHAIRMAN stated that the Drafting Committee had examined the practice in relation to titles of other conventions, and that this is why the Drafting Committee had proposed the deletion of the word “The” from the title of the Draft Convention.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it was concerned about the use of the word “enshrined” in the proposed final preambular clause of the Draft Convention, that previous drafts of the proposed final preambular clause of the Draft Convention had used the words “reflected in”, that there were complicated issues regarding the nature of the intersection between the Draft Convention and future protocols and other international conventions, and that the use of the word “enshrined” could suggest that other international conventions had been examined and that all the principles contained in those conventions would be applied.

The CHAIRMAN stated that the proposed final preambular clause of the Draft Convention commenced with the phrase: “taking into consideration”, that this was not a very heavy text, and that the United States of America’s proposal could be accepted if it was supported.

The DELEGATION OF THE UNITED ARAB EMIRATES stated that it was concerned about the use of the phrase: “existing Conventions” in the proposed final preambular clause of the Draft Convention, that the word “convention” was not a defined term according to the *Vienna Convention on the Law of Treaties*, that “treaty” was a defined term according to the Vienna Convention, and that the Draft Convention used the word “Convention” to refer to the Draft Convention itself.

The DELEGATION OF SOUTH AFRICA stated that it agreed with the comments of the United States of America, that in South African law the preamble would serve as an aid to interpreting a law, that the phrase: “taking into consideration” would indicate that for the purposes of the Draft Convention there had been a consideration of what was in other conventions and that this should be taken into account in interpreting the Draft Convention, that the use of the phrase: “taking into consideration” in the proposed final preambular clause to the Draft Convention would open up all kinds of unintended challenges, and that the phrase: “taking into consideration” should be replaced with a phrase such as: “noting the objectives and principles in the existing Conventions”.

The DELEGATION OF PAKISTAN stated that it supported the comments of the United States of America and South Africa regarding the use of the word “enshrined” in the proposed final preambular clause to the Draft Convention, and that the word “enshrined” should be replaced with the word “enunciated” so that the proposed final preambular clause to the Draft Convention would read: “taking into consideration the objectives and principles enunciated in existing Conventions in relation to such equipment”.

The CHAIRMAN stated that the delegation of Egypt had originally proposed that the proposed final preambular clause to the Draft Convention be amended to read: “noting the objectives and principles

enunciated in existing Treaties relating to such equipment”, and that this proposal would satisfy all the concerns that had been expressed.

The DELEGATION OF EGYPT stated that it supported the proposal of the United States of America to amend the proposed final preambular clause of the Draft Convention by replacing the word “enshrined” with the phrase: “reflected in”, that it did not agree with the South African proposal because it would weaken the preamble, and that it required clarification about why the phrase: “existing Conventions” had been used.

The DELEGATION OF INDIA stated that conventions such as the *Chicago Convention on International Civil Aviation* and other conventions relating to other types of object would be quite important, that it supported the use of the phrase: “taking into consideration” even if that meant that it was invoked for interpretational purposes, that it supported the proposal of the United States of America to amend the proposed final preambular clause of the Draft Convention by replacing the word “enshrined”, and that it would suggest that “enunciated” or “principles contained in existing Conventions” be used.

The DELEGATION OF CUBA stated that it agreed with the comments of India, that the word “enshrined” in the proposed final preambular clause of the Draft Convention should be replaced with “enunciated” or “reflected”, and that it supported the use of the phrase: “taking into account” because the word “noting” was too weak.

The DELEGATION OF SUDAN stated that the proposed final preambular clause of the Draft Convention should be amended to refer to the objectives and principles of existing Conventions relating to such equipment, and that this would avoid the need to use the word “enshrined”.

The DELEGATION OF THE UNITED KINGDOM stated that the proposed final preambular clause of the Draft Convention referred to “existing” conventions because it would not be possible to take into account conventions that had not yet been made, that this would be different if the purpose of the provision was to deal with the relationship between the Draft Convention and future conventions, and that it would be helpful to the Drafting Committee if the Commission could reach an agreement on the use of the phrase: “taking into consideration” and of the word “enunciated” in the proposed final preambular clause of the Draft Convention.

The CHAIRMAN stated that, having regard to the comments that had been made during the discussions, the proposed final preambular clause of the Draft Convention would read: “taking into consideration the objectives and principles enunciated in existing Conventions relating to such equipment”.

The SECRETARY GENERAL (UNIDROIT) stated that the French version of DCME Doc No. 61 showed in bold print the amendments and in shaded print only French drafting amendments, that it did not show all the drafting amendments from the English text, and that this would be rectified.

The DELEGATION OF THE UNITED KINGDOM stated that the Drafting Committee had proposed that the definition of “insolvency proceedings” in Article 1(l) of the Draft Convention be amended to take account of those countries where the word “insolvency” did not have a clear meaning, and that this had been carried through the Draft Convention so that, for example, Article 29 of the Draft Convention would refer to “insolvency proceedings”, that Article 1(o) of the Draft Convention had been amended by the insertion of the words “held by a creditor” to clarify who held an international interest, that the Drafting Committee had not reached a conclusive view on Article 2(3) of the Draft Convention because it depended on the outcome of discussions on Article 50 of the Draft Convention, that Article 2(4) of the Draft Convention had been amended to state a positive proposition rather than a negative proposition, that Article 5*bis* of the Draft Convention would provide for the relationship between the Draft Convention and the Draft Protocol and would state that they were to be read and interpreted as a single instrument and that the Draft Protocol would prevail in the event of any

inconsistency, that there were a number of definitional issues that had not yet been resolved, that in Article 4(2) of the Draft Convention a question had arisen as to whether the definition of the situation of the debtor would be exclusively for the purposes of Article 3(1) of the Draft Convention or should also be applicable in other provisions that referred to the situation of the debtor such as Article 42(2)(b) of the Draft Convention, that the Drafting Committee decided that this would not be appropriate, that this was a question for the Commission to decide because the Draft Convention would give up to six alternative ways to determine whether a debtor was situated in a Contracting State, that the objective was to give the Draft Convention the widest possible sphere of application under Article 3, and that the Drafting Committee considered that the application of Article 4(2) of the Draft Convention to Article 42(2)(b) of the Draft Convention would cause confusion.

The CHAIRMAN stated that the Commission would proceed on the basis that Drafting Committee proposals would be accepted unless there was opposition to the proposal.

The DELEGATION OF JORDAN stated that the Arabic text of the proposed definition of “insolvency proceedings” in Article 1(l) of the Draft Convention referred to “insolvency, liquidation or other collective” and should be amended to refer to “insolvency, liquidation or other procedures”.

The CHAIRMAN stated that translation issues would be considered by the Diplomatic Conference’s translation services and that the delegation of Saudi Arabia had agreed to be the contact point for Arabic translation issues.

The DELEGATION OF SOUTH AFRICA stated that the informal working group considering the proposal of Belgium relating to EUROCONTROL was working on a possible compromise, that this work had not been completed, and that the possible compromise could impact on the definition of “non-consensual right or interest” in Article 1(s) of the Draft Convention.

The CHAIRMAN stated that the proposals of the Drafting Committee regarding Chapter I of the Draft Convention had been agreed subject to the caveats that had been noted by the United Kingdom.

The DELEGATION OF THE UNITED KINGDOM stated that the Drafting Committee had not recommended any amendments to Chapter II of the Draft Convention. It stated that several amendments had been proposed for Chapter III of the Draft Convention, that the Drafting Committee had decided that whenever an Article or paragraph in the Draft Convention was subject to a declaration, this should be clearly indicated, that it was proposed that Articles 7(1) and 12 of the Draft Convention would contain a reference to declarations, that Article 7(1) of the Draft Convention would be divided into two paragraphs in order to make it clear that, if the chargee decided to apply for a court order authorising or directing a remedy that would not require the consent of the debtor, it was proposed that Article 7(6) of the Draft Convention be amended to ensure that the duty to distribute was not owed only to the immediately ranking holder after the secured creditor but to all subsequently ranked creditors in order of priority, that it was proposed that Article 10(2) of the Draft Convention include a definition of substantial default for cases where there was no agreement as to what was meant by default, that the proposed definition of substantial default was: “default which substantially deprives the creditor of what it is entitled to expect under the agreement”, that it was proposed that Article 14 be amended to clarify which parties were referred to and that it would read: “any two or more of the parties referred to in this chapter, whatever the relationship between them, may derogate from the provisions of the chapter in so far as they do not cover the Articles that are mandatory in character”, that Article 14*bis* would deal with the quiet possession of the debtor, and that the Drafting Committee intended that Article 14*bis* would be put into the Draft Protocol and expanded but had not yet had the opportunity to consider it.

The CHAIRMAN stated that there had been no requests for comments and that the proposals of the Drafting Committee regarding Chapter III of the Draft Convention had been accepted.

The DELEGATION OF THE UNITED KINGDOM stated that the Drafting Committee had not proposed any significant changes to Chapter IV of the Draft Convention, that it was proposed that paragraphs (d) and (e) of Article 15(1) of the Draft Convention be rearranged so that the subordination provision would cover not only what it previously covered but would also encompass the subordination of interests referred to in the preceding paragraphs, that the Drafting Committee had been asked to consider defining legal or contractual subrogation but that this had proved to be difficult because the concept was so wide and amorphous, that the Drafting Committee had proposed adding the words: “legal or contractual subrogation under the applicable law”, and that there was a small drafting change proposed for Article 16(2)(c) of the Draft Convention.

The DELEGATION OF FRANCE stated that the title of Chapter IV of the Draft Convention was “The International Registration System”, that Chapter IV of the Draft Convention contained two Articles dealing with the International Registry and the Supervisory Authority and the Registrar, that in response to a question it had asked earlier it had been informed that the International Registry covered the Registrar, that the Article dealing with the International Registry did not mention the Registrar, and that that approach contradicted the explanation that it had earlier been given.

The CHAIRMAN stated that France would be able to undertake consultations and that, if there was support for its comments, the Commission would be in the position to consider an amendment.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it required clarification whether the French proposal was to insert the word “System” after the words “International Registry” in the title to Resolution 2 in DCME Doc No. 60.

The CHAIRMAN stated that France had indicated that its proposal was to insert the word “System” after the words “International Registry” in the title to Resolution 2 in DCME Doc No. 60. The Chairman stated that the proposals of the Drafting Committee regarding Chapter IV of the Draft Convention had been accepted subject to any agreement emerging from informal consultations to accept the French proposal.

The DELEGATION OF THE UNITED KINGDOM stated that the Drafting Committee had proposed a number of changes to Chapter V of the Draft Convention, that Article 17(1)(a) of the Draft Convention was still under consideration, that the Drafting Committee had proposed that Article 17(1)(c) of the Draft Convention be amended to include the phrase: “other than information and documents relating to a registration” in order to ensure that a person who wanted to challenge the accuracy of a search certificate would have the ability to challenge it and to gain access to the necessary information and documents, that the Drafting Committee had proposed that Article 17(2) of the Draft Convention provide that the Registrar have no duty to enquire whether a consent had in fact been given or was valid, that this proposal reflected the fact that the system envisaged by the Draft Convention would be purely electronic and would not involve any human intervention, that proposed Article 17(2*bis*) was in square brackets and dealt with the issue of what would happen when an interest that was registered as a prospective international interest became an international interest, that the Drafting Committee had taken the view that it would be unnecessary to require a further registration if all the particulars that were required for a registration had already been filed in respect of the prospective international interest, that it was proposed that the entry in the International Registry would not state that a person had an international interest or a prospective international interest but that they had or intended to acquire an international interest, that the Drafting Committee had proposed that Article 17(3) of the Draft Convention be amended by the addition of the phrase: “made searchable”, that the Drafting Committee had proposed that Article 17(4) of the Draft Convention be amended to refer to “entry point or entry points” and that the Contracting State would be able to specify requirements to be satisfied before information was submitted to the International Registry through an entry point, that the Drafting Committee had proposed that Article 18(2) of the Draft Convention be amended to clarify that a registration would be complete, if valid, only upon the entry of required information that would make the registration searchable, that the Drafting

Committee's proposal in relation to Article 18(4) of the Draft Convention was a continuum point that a person whose prospective international interest became an international interest would only benefit from retrospective priority back to the time of the registration of the prospective international interest if the registration of the prospective international interest was current, that, if the prospective international interest had lapsed or been discharged before the granting of the international interest, the priority on registration of the international interest would date from the time of its registration, that the Drafting Committee had proposed that the title of Article 18 of the Draft Convention be changed because it would be more accurate for that title to refer to validity and time of registration, that the Drafting Committee had proposed that the title of Article 19 of the Draft Convention be changed because that Article was concerned with the question of whose consent would be required for registration, that the Drafting Committee had proposed that Article 21(1) of the Draft Convention be amended to clarify that a person would be able to make a request or a search by electronic means concerning international interests or prospective international interests, that the Drafting Committee had proposed that a new Article 21(3) of the Draft Convention be added to provide that a search certificate would indicate that the creditor had acquired or intended to acquire an international interest but would not indicate whether what was registered was an international interest or a prospective international interest, that the proposed new Article 21(3) of the Draft Convention would enable a prospective international interest to become an international interest without any further filing and without anybody being misled as to the status of the registered instrument, that the Drafting Committee had proposed that the references to: "on demand" in Article 24(1) and (2) of the Draft Convention be changed to: "without undue delay", and that the Drafting Committee had proposed that a new Article 24(4) be added to provide that if a registration was incorrect or ought not to have been made, for example because the security agreement never existed or there was an error with the particulars of the registration, the person in whose favour the registration was made would be required to procure its discharge or amendment.

The CHAIRMAN stated that, as there had been no requests from delegations to make comments, the proposals of the Drafting Committee regarding Chapter V of the Draft Convention had been accepted.

The meeting rose at 17:05

COMMISSION OF THE WHOLE – FOURTEENTH MEETING

Tuesday, 13 November 2001, at 14:30

President: Professor Medard Rutoijo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.)

AGENDA ITEM 9 – CONSIDERATION OF THE DRAFT PROTOCOL (CONT.)

The CHAIRMAN stated that the Commission would commence discussion of the report of the Final Clauses Committee which was contained in DCME Doc No. 57.

The DELEGATION OF JAMAICA stated that the report of the Final Clauses Committee was contained in DCME Doc No. 57 and the addendum to DCME Doc No. 57, that the Final Clauses Committee had been established on 31 October 2001 and had had three meetings, that it had commenced its work on the basis of DCME Doc No. 16 which had been prepared by the UNIDROIT Secretariat and the text that had been prepared by the Secretariat of the International Civil Aviation Organization, and that the Final Clauses Committee had mandated the two Secretariats to develop a composite text. It stated that, in relation to Article 47 of the Draft Convention, the Final Clauses

Committee had come to a consensus that the Draft Convention should be opened for signature in Cape Town on 16 November 2001 and thereafter would be open for signature to all States at the headquarters of UNIDROIT in Rome, that the reason for this was that the Final Clauses Committee had proposed that UNIDROIT be the Depositary of the Draft Convention, that the Draft Convention would be subject to ratification, acceptance or approval, and that States that did not sign the Draft Convention would be able to accede to it. It stated that Article 48 of the Draft Convention related to the particular problem of Regional Economic Integration Organisations, that the Final Clauses Committee had come to a consensus on the text to be included in Article 48 of the Draft Convention, that the proposal was that a Regional Economic Integration Organisation would be able to become a party to the Draft Convention to the extent that the Organisation had competence over the matters governed by the Draft Convention, that a Regional Economic Integration Organisation would not be counted where there was a requirement to count the number of Contracting States, that the Final Clauses Committee had proposed that Article 48(2) of the Draft Convention provide that a Regional Economic Integration Organisation would provide a declaration to the Depositary specifying the matters governed by the Draft Convention that fell within its competence and would notify the Depositary of any changes or new transfers of competence, and that references in the Draft Convention to Contracting Parties or State Parties would include equally a reference to the Regional Economic Integration Organisations unless otherwise provided.

It stated that Article 49 of the Draft Convention dealt with entry into force, that the Final Clauses Committee had discussed the number of deposits of instruments of ratification that should be required to bring the Draft Convention into force, that there had been a considerable consensus that the number should be kept to an absolute minimum, that the proposals considered had included a proposal that the number of ratifications required should be one, that the Final Clauses Committee had reached a consensus that the Draft Convention should enter into force upon the deposit of the third instrument of ratification, that the Final Clauses Committee had further decided that, to the extent that the entry into force of the Draft Convention applied to a category of object covered by a protocol, the entry into force would only be as from the time of the entry into force of the protocol and would be subject to the terms of that protocol, and that the Final Clauses Committee had further decided that the Draft Convention would enter into force for other States at the expiration of three months from the date of deposit of the instrument of ratification. It stated that Article 50 of the Draft Convention dealt with internal transactions, that the Drafting Committee had also considered internal transactions and had reached agreement about the definition of what would constitute an internal transaction and about the scope of Article 50(2) of the Draft Convention, and that the provisions proposed by the Final Clauses Committee to be contained in Article 50(2) of the Draft Convention would be adjusted to be in conformity with the recommendations of the Drafting Committee.

It stated that Article 51 of the Draft Convention dealt with future protocols and the process for future work to take place in relation to extending the application of the Draft Convention through protocols relating to categories of object other than those enumerated in Article 2(3) of the Draft Convention, that the Final Clauses Committee proposal would give that function to the Depositary and would require that any future work involve all Member States of the United Nations, all Members States of the Depositary, and relevant intergovernmental Organisations, that these participants would participate in negotiations to develop a preliminary draft text which would be communicated to the bodies indicated in proposed Article 51(3) of the Draft Convention, that the Depositary would convene a Diplomatic Conference when the draft protocol was ready for adoption, and that the Diplomatic Conference would ensure that there was full review of the draft protocol's provisions prior to the adoption of the relevant protocol. It stated that the Final Clauses Committee had proposed that Article 51(6) of the Draft Convention make reference to Article 46 of the Draft Convention, that the Drafting Committee had proposed that Article 46 of the Draft Convention be deleted, and that if that proposal was accepted a consequential amendment would need to be made to Article 51(6) of the Draft Convention. It stated that the territorial units referred to in Article 42 of the Draft Convention

related to Contracting States that had different systems of law which were applicable to different units within its system and enabled a declaration to be made to extend the application of the Draft Convention to all its territorial units or only to some of them, and that this was dealt with in Article 52 of the Draft Convention. It stated that Article 53 of the Draft Convention dealt with the designation of courts for the purposes of the Draft Convention, that Article 54 of the Draft Convention dealt with the possibility of a Contracting State also making a declaration that while an object was within its territory the chargee would not grant a lease of that object in that territory, and that the Final Clauses Committee had not recommended any modification to the original text of these Articles. It stated that Article 55 of the Draft Convention addressed the question of declarations regarding relief pending final determination, that the Final Clauses Committee had proposed that the text of Article 55 of the Draft Convention, which would have allowed a declaration to be made excluding the application of Article 12 of the Draft Convention, be modified by the proposal contained in DCME Doc No. 52, that the Final Clauses Committee had reproduced in Article 55 of the Draft Convention the text of what was contained in DCME Doc No. 52, which would provide that a Contracting State would be able to declare at the time of ratification, acceptance, approval or accession to the Draft Protocol that it would not apply the provisions of Article 12 of the Draft Convention and that the related provisions of Article 42 of the Draft Convention would be applied only in part, and that the declaration would need to specify the conditions on which that part of Article 42 of the Draft Convention would be applied and the other forms of relief that would be available.

It stated that the Commission had decided that reservations to the Draft Convention would not be permitted, that the Final Clauses Committee had proposed that Article 56 of the Draft Convention provide that no reservations would be able to be made but that declarations authorised by specific articles of the Draft Convention would be able to be made in accordance with those Articles, that the purpose was to bring together in a single Article a list of all the Articles of the Draft Convention under which declarations might be made, and that, in relation to Article 56 of the Draft Convention, the Final Clauses Committee had agreed that it would be important to make an interpretative statement for the purposes of the *travaux préparatoires* because the recommendation of the Final Clauses Committee was that reservations should not be permitted but that declarations would not constitute reservations because they would define the scope of the Draft Convention and therefore would not trigger the application of the rules relating to reservations under the *Vienna Convention on the Law of Treaties*. It stated that Article 57 of the Draft Convention dealt with subsequent declarations which might be made by notification to the Depositary and with the question of when those declarations would take effect, that Article 58 of the Draft Convention dealt with the withdrawal of declarations, and that Article 59 of the Draft Convention dealt with denunciations. It stated that Article 60 of the Draft Convention dealt with transitional provisions, that paragraph 1.6 of the addendum to DCME Doc No. 57 indicated that different views had been expressed regarding Article 60 of the Draft Convention, that during the discussions in the Commission it had been proposed that Alternative A in Article 60 of the Draft Convention be retained and modified to read: “Unless otherwise declared by a Contracting State at the time of ratification, acceptance, approval or accession, this Convention does not apply to a pre-existing right or interest which shall retain the priority it enjoyed before the entry into force”, that the Final Clauses Committee was unable to arrive at a consensus on the issue and had decided that there were substantive issues requiring the consideration of the Commission, and that informal consultations were continuing and a revised consensus proposal would be developed.

It stated that the second part of the report of the Final Clauses Committee was contained in the addendum to DCME Doc No. 57, that it had already indicated that Article 46 of the Draft Convention would be amended and that the terms of what would happen in relation to the understandings that were reached in the Drafting Committee regarding the application of Articles 12 and 42 of the Draft Convention were contained in paragraph 1.4 of the addendum to DCME Doc No. 57, and that paragraph 1.6 of the addendum to DCME Doc No. 57 related to the transitional provisions of Article 60 of the Draft Convention. It stated that Article 61 of the Draft Convention dealt with the

Review Conference, amendments and related matters, that the Final Clauses Committee had taken the view that it would be useful to have yearly reports presented as to the manner in which the international regime established by the Draft Convention had operated in practice and that the Depositary would be in the best position to prepare those reports, that the Final Clauses Committee had recognised that the question of whether to take any action on matters would need to involve Contracting States and had therefore recommended that Article 61(2) of the Draft Convention contain the machinery where, at the request of not less than 25% of the Contracting States, a Review Conference of Contracting States would be convened, that such Review Conferences would review the practical operation of the Draft Convention and its effectiveness in facilitating asset-based financing and leasing of objects covered by its terms, the judicial interpretations given to the application of the Draft Convention, the functioning of the international registration system, the performance of the Registrar, the oversight of the Registrar by the Supervisory Authority, and whether any modifications to the Draft Convention's arrangements relating to the International Registry would be desirable, that the Final Clauses Committee had proposed that Article 61(2) of the Draft Convention also provide that any amendments to the Draft Convention would have to be approved by at least a two-thirds majority of the Contracting States participating in the Review Conference and would come into effect in relation to the Contracting States that had ratified the amendments, and that the Secretariats of UNIDROIT and the International Civil Aviation Organization had agreed with the approach recommended by the Final Clauses Committee.

It stated that Article 62 of the Draft Convention dealt with the depositary functions, that the Final Clauses Committee had agreed that UNIDROIT should be the Depositary for the Draft Convention, and that Article 62(2) of the Draft Convention dealt with the traditional functions of the depositary which were reflected in most conventions and dealt with in the Vienna Convention. It stated that the Final Clauses Committee had approached the Draft Protocol by first bringing the provisions of the Draft Protocol into line with the provisions of the Draft Convention so that the two instruments would not be inconsistent, that Article XXV of the Draft Protocol largely conformed to what was already contained in Article 47 of the Draft Convention, and that Article XXV(5) of the Draft Protocol affirmed that a State would not be able to become a Contracting State to the Draft Protocol unless it had first become a Contracting State to the Draft Convention. It stated that Article XXVI of the Draft Protocol dealt with Regional Economic Integration Organisations and reflected in identical terms the provisions contained in Article 48 of the Draft Convention. It stated that Article XXVII of the Draft Protocol dealt with the number of instruments of ratification that would be required to be deposited in order to bring the Draft Protocol into force, that the Final Clauses Committee had initially agreed that the number of ratifications required should be three but that some delegations had expressed reservations, and that a footnote to proposed Article XXVII of the Draft Protocol in the addendum to DCME Doc No. 57 noted those reservations.

It stated that Article XXVIII of the Draft Protocol related to declarations, that the Final Clauses Committee had approached this Article with a view to ensuring that the provisions of the Draft Protocol that were subject to declarations were identified in a single Article, and that the Final Clauses Committee had proposed that Article XXIX of the Draft Protocol state exhaustively that declarations made under the Draft Convention would be deemed also to have been made under the Draft Protocol unless otherwise stated. It stated that the Final Clauses Committee had proposed that Article XXX deal with reservations using the same formula that had been proposed in relation to the Draft Convention, that it had identified that no reservations would be able to be made to the Draft Protocol but that declarations authorised under Articles XXVII, XXIX, XXX and XXXI of the Draft Protocol would be able to be made in accordance with those Articles, and that the same interpretative statement that had been made in relation to the Draft Convention was also applicable to the Draft Protocol. It stated that Article XXXI of the Draft Protocol dealt with subsequent declarations and reflected what was contained in Article 57 of the Draft Convention, that Article XXXII of the Draft Protocol dealt with withdrawal of declarations and reflected what was contained in Article 58 of the Draft Convention, and that Article XXXIII of the Draft Protocol dealt with denunciations and

reflected what was contained in Article 59 of the Draft Convention. It stated that Article XXXIV of the Draft Protocol dealt with Review Conferences, amendments and related matters and reflected what was contained in Article 61 of the Draft Convention, and that Article XXXV of the Draft Protocol dealt with depositary functions and reflected what was contained in Article 62 of the Draft Convention.

The CHAIRMAN invited delegations to comment on the report of the Final Clauses Committee.

The DELEGATION OF INDIA stated that, during the discussions in the Final Clauses Committee, there had been a number of interventions to the effect that the number of ratifications required for the Draft Protocol to enter into force should be different from the number required for the Draft Convention, that the Final Clauses Committee had agreed that the number of ratifications required for the Draft Convention to enter into force should be three, that the discussion regarding the Draft Protocol was truncated due to a lack of time, that the figure of “three” had been inserted into the report of the Final Clauses Committee report in order to facilitate discussion in the Commission, that the issue of the number of ratifications required for the entry into force of the Draft Protocol was an important issue which should be given sufficient time for debate in the Commission, that the international character of the Draft Convention and Draft Protocol required that the number of ratifications required for entry into force of the Draft Protocol be more than two or three because such a number would make the Draft Protocol appear to be a bilateral or trilateral instrument, that it considered that at the minimum a two-digit figure would be necessary in order to give the necessary degree of respectability and credibility to the Draft Protocol, and that it proposed that the number of ratifications required for the entry into force of the Draft Protocol should be ten.

The CHAIRMAN stated that it was clear that there was not yet a consensus on the number of ratifications that should be required to trigger the entry into force of the Draft Protocol, that the Chairman of the Final Clauses Committee had made it clear that reservations had been expressed during the Committee’s discussions, and that it would be preferable to postpone discussion of that issue until after the other issues in the report of the Final Clauses Committee had been debated. The Chairman stated that the issues remaining to be debated included Article 50 of the Draft Convention which dealt with internal transactions and which remained to be debated in the Drafting Committee, Articles 46 and 51(6) of the Draft Convention and the issue of the reference to the annex in relation to certain other international conventions, Article 60 of the Draft Convention on transitional provisions, and the number of ratifications required for the entry into force of the Draft Protocol, and that these issues would be further debated following the discussion of the report of the Final Clauses Committee.

The DELEGATION OF SWITZERLAND stated that it had been proposed that Article 61 of the Draft Convention and Article XXXIV of the Draft Protocol provide that an amendment be approved by at least a two-thirds majority of States and enter into force when it had been ratified by three States, and that the provisions should refer to “ratified, approved, accepted or adhered to” in order to include the possibilities that a Contracting State had acceded to the Draft Convention after the adoption of the amendment and either before or after its entry into force.

The DELEGATION OF AUSTRALIA stated that Article 5*bis*(2) of the Draft Convention which had been proposed by the Drafting Committee provided that a protocol would prevail over the Draft Convention to the extent of any inconsistency, that in light of this provision it was surprising that there was a provision in the Draft Convention dealing with amendments to the Draft Convention, that the intention was that amendments to the Draft Convention and Draft Protocol would be effected through amendments to the Draft Protocol which would then override the Draft Convention and act as amendments to the Draft Convention, that it was difficult to understand the utility of the proposed provision in the Draft Convention, that it was possible that the operation of the provision in the Draft Convention could create curious results, that, if the two-thirds majority referred to in Article 61 of the Draft Convention comprised Contracting States that had ratified several protocols, it was possible that the amendment to the Draft Convention could apply to only one of many Contracting States to a

particular protocol, and that it sought clarification from the Chairman of the Final Clauses Committee as to how Article 5bis(2) of the Draft Convention was taken into account in preparing the Articles. It stated that it required clarification regarding when an amendment would come into force in relation to the fourth Contracting State to ratify the amendment, and that it was not clear whether the amendment would be backdated to the time that it came into force for the previous three Contracting States or upon that fourth Contracting State ratifying the amendment. It stated that the Commission should ensure that there was sufficient time devoted to the discussion about the number of ratifications that would be required for the entry into force of the Draft Protocol because it was an issue on which a range of varying views had been expressed.

The DELEGATION OF CANADA stated that during the discussions in the Final Clauses Committee it had proposed that the former Article XXVII of the Draft Protocol be reinstated in order to permit the extension of the Draft Convention and the Draft Protocol to territorial units, that its proposal had been fully supported by the Chinese delegation, that there had been no opposition to the proposal, that the former Article XXVII of the Draft Protocol should be reinstated into the Draft Protocol, and that the reference to Article 52 of the Draft Convention that was contained in Article XXIX of the Draft Protocol should be deleted. It stated that in DCME Doc No. 17 and DCME Doc No. 27 the Chinese and Canadian delegations had made proposals regarding the interpretative clause for States with territorial units, that the proposals had been discussed with other delegations, that new proposals had been submitted during the Final Clauses Committee meetings, that the proposal had been modified to read as follows: “If by virtue of a declaration under the Article, the Convention and Protocol extend to one or more territorial units of a Contracting State, the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law enforced in a territorial unit to which the Convention and Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and Protocol apply. If by virtue of a declaration under this Article the Convention and Protocol extend to one or more territorial units of a Contracting State, any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and Protocol apply. And finally, if by virtue of a declaration under this Article the Convention and Protocol extend to one or more territorial units of a Contracting State, any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities in a territorial unit to which the Convention and Protocol apply and any reference to the national registry or the Registry authority in that Contracting State shall be construed as referring to the aircraft register or to the Registry authority in force in the territorial unit or units to which the Convention and Protocol have been extended unless otherwise provided in a declaration”, and that the proposal would be made available in writing to all delegations.

The DELEGATION OF THE UNITED KINGDOM stated that Article 48(3) of the Draft Convention provided that any reference to a Contracting State or States or a State Party or State Parties would apply equally to a Regional Economic Integration Organisation unless otherwise provided, that there were no Articles of the Draft Convention that “otherwise provided”, that Article 48(3) of the Draft Convention was too wide because it could produce unexpected effects such as requiring consultation with a Regional Economic Integration Organisation in respect of the Supervisory Authority, that Article 48(3) should be amended to provide that references to Contracting States included references to Regional Economic Integration Organisations “where the context so required”, and that its comments in relation to Article 48(3) of the Draft Convention were equally applicable to Article XXVI of the Draft Protocol.

The DELEGATION OF SWEDEN stated that DCME Doc No. 52 contained a proposal of the informal consultation group on jurisdiction issues regarding Article 53 of the Draft Convention and Article XXVIII(5) of the Draft Protocol, that these proposals had not been amended by the Commission and should be inserted into the final text produced for consideration by the Plenary, that the Final Clauses Committee’s proposal for Article 61(2) of the Draft Convention would be

interpreted such that a Regional Economic Integration Organisation would be able to be counted in relation to a request on behalf of its Member States for the convening of a Review Conference, and that it supported the comments relating to Regional Economic Integration Organisations that had been made by the United Kingdom and Switzerland.

The CHAIRMAN stated that DCME Doc No. 52 had been adopted in-principle by the Commission on the understanding that all jurisdictional issues had been referred to the Drafting Committee, that the Drafting Committee had redrafted the provisions, that the substance of the provisions had not been altered, and that the delegation of Sweden would be invited to indicate whether it had a problem of substance with the provisions as they had been redrafted by the Drafting Committee.

The DELEGATION OF SWEDEN stated that the provisions that had been redrafted by the Drafting Committee did cause problems of substance, that Article 55 of the Draft Convention as it had been redrafted by the Drafting Committee did not relate to Article 42 of the Draft Convention in the same way that Article 53 as proposed in DCME Doc No. 52 did and that it did not include the specific clarifying sentence in the second part, that Article XXVIII of the Draft Protocol related to Articles 12 and 42 of the Draft Convention and not to Article XX of the Draft Protocol, that it was not clear whether it had been decided to delete Article XX of the Draft Protocol, that both provisions related to Article 12 of the Draft Convention, and that, because Article 12(6) of the Draft Convention gave the opportunity to add additional interim relief without an obligation to provide information pertaining thereto, it was not considered that a Contracting State that only partly opted out should be subject to the obligation to provide information in conformity with Article 12 of the Draft Convention.

The DELEGATION OF INDIA stated that it supported the comments of Australia regarding the review and amendment provisions of the Draft Convention and the Draft Protocol, that it supported the Australian proposal questioning the need for the Draft Convention to contain amendment provisions, and that it supported the proposal of the United Kingdom to amend Article 48(3) of the Draft Convention.

The DELEGATION OF EGYPT stated that Article 61(1) of the Draft Convention should refer to “yearly reports or otherwise” as it was possible that something important regarding the operation of the International Registry might happen in between yearly reports and the Depositary should have the opportunity to deal with sudden operational practices that might need to be reported to the Contracting States, that Article 61(2) of the Draft Convention should be amended to specify who would be required to convene a Review Conference, and that Review Conferences should be convened by the Depositary.

The DELEGATION OF THE UNITED NATIONS stated that the United Nations Legal Sub-Committee had started the consideration of the Draft Convention at its 40th session in April 2001, that the United Nations Legal Sub-Committee had decided to establish an *ad hoc* consultative mechanism to review the issues relating to the Draft Convention and a space protocol, that it had been agreed that the *ad hoc* consultative mechanism would operate under the aegis of the Legal Sub-Committee and that the results of consultations would be reported to the Legal Sub-Committee at its 41st session in 2002, that the first session of the *ad hoc* consultative mechanism had been hosted by the French Government in Paris on 10 and 11 September 2001, that 27 Member States had attended that meeting and that the meeting had also been attended by the United Nations, the European Space Agency and UNIDROIT, that at the first meeting the *ad hoc* consultative mechanism had concentrated on five basic issues, that the first issue was the relationship of the proposed new international regime to the existing body of space law, that the second issue was the nature and framework of the international registration system, that the third issue was the role of the Committee on the Peaceful Uses of Outer Space and its Legal Sub-Committee in the future development of the project, that the fourth issue was the form and manner by which a Legal Sub-Committee would transmit its views and findings to UNIDROIT, that the fifth issue was the future status of the future space protocol on the agenda of the Legal Sub-Committee, that the issue that had been most discussed was the relationship between the

proposed new international regime and the existing body of space law, that the challenge identified was the need to couple an essentially State-based legal regime in the existing outer space treaties with newly-emerging, commercially-driven international finance practices in a manner that would ensure that sufficient rights could be obtained through the established regime to facilitate commercial finance and capital markets lending for space activities, that many participants had emphasised the need to ensure a fair balance between the interests of governments and the private law interests of non-governmental entities, that the meeting had explored the potential role of the United Nations and the extent to which the position of the International Civil Aviation Organization as a possible Supervisory Authority in the aviation sector might serve as a model for the United Nations Committee on Outer Space and the Office of Outer Space Affairs in the space sector, that the meeting had also discussed whether the Committee on Outer Space Affairs should serve in an advisory capacity in relation to a project that would remain under the auspices of UNIDROIT or whether it should seek to take on a role more like that of a co-sponsor of the protocol in conjunction with UNIDROIT, and that a second meeting of the *ad hoc* consultative mechanism would be hosted by the Government of Italy in Rome in February 2002.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it attached great importance to the interpretative statement that had been made by the delegation of Jamaica regarding the non-application of the reciprocity rule which would be absolutely essential to the functioning of the Draft Convention, that it agreed with the reasoning of the Australian and Indian delegations in relation to Article 61 of the Draft Convention, that Article 61 of the Draft Convention could be deleted and that as currently drafted it had the potential to cause some legal problems, that it was aware that there were other orthodox legal views that a provision dealing with amendments to the Draft Convention should be retained in the Draft Convention, and that consideration should be given to ensuring that Article 61 of the Draft Convention would only permit amendment of the Draft Convention as it related to a protocol and in respect of the objects covered by the protocol.

The DELEGATION OF CANADA stated that its proposal had been reproduced in DCME Doc No. 68, that DCME Doc No. 68 proposed to add to Article 52 of the Draft Convention an interpretation clause that would give an interpretation of how some terms would relate to States that had several territorial units, and that a similar provision would be added to the Draft Protocol.

The CHAIRMAN stated that the two proposals contained in DCME Doc No. 68 had been the subject of wide consultation and would be adopted unless there was any opposition.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it required clarification regarding whether the Canadian proposal included technical wording changes.

The DELEGATION OF CANADA stated that there were a number of technical wording changes to its proposal in DCME Doc No. 68, that in paragraph (c) of the proposal it was proposed to delete the phrase: “unless otherwise provided in a declaration” and to replace it with: “any reference to the administrative authorities”, in the second sentence to add the phrase: “having jurisdiction in a territorial unit” after the phrase: “to the administrative authorities”, in the fourth sentence to replace “to the aircraft register” with “to the aircraft register in force”, and in the final sentence to refer to the “Registry Authority having jurisdiction” and to replace “have been extended” with “apply”.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported the Canadian proposals contained in DCME Doc No. 68 with the technical wording changes that had been proposed. It stated that it was in favour of the retention of Article 61 of the Draft Convention, that some delegations had expressed concerns about the possible impact of Article 61 of the Draft Convention on the provisions of a particular protocol, that it considered that those concerns were adequately dealt with by the Draft Convention but that it might be possible to suggest some additional language to address these concerns and to clarify that changes would be able to be made to a protocol only by the Contracting States to that protocol, and that it had circulated DCME Doc No. 64 relating to the official commentary and would introduce that document at the appropriate stage of the discussions.

The DELEGATION OF CHINA stated that it supported the Canadian proposals contained in DCME Doc No. 68 with the technical wording changes that had been proposed, that with the addition of the new paragraph there would be a total of five paragraphs in Article 52 of the Draft Convention, and that the same five paragraphs should be reproduced in the Draft Protocol with relevant amendments.

The DELEGATION OF THE UNITED ARAB EMIRATES stated that Article 61(2) of the Draft Convention should provide that the Supervisory Authority would be responsible for convening Review Conferences of Contracting States as the functions of the Supervisory Authority would be considered at such Conferences.

The DELEGATION OF NIGERIA stated that, in relation to paragraph 1.6 of the addendum to DCME Doc No. 57, there had been majority support during the discussions in the Commission of Article 60 of the Draft Convention for Alternative B and that Alternative B had been referred to the Drafting Committee for refinement, that the Drafting Committee had proposed that Alternative A be retained with some modification, and that it required clarification regarding how that decision had been taken.

The CHAIRMAN stated that during the discussion in the Commission of Article 55 there had been support for both Alternative A and Alternative B of Article 55 of the Draft Convention, that the issue had been referred to the Final Clauses Committee for further consideration and consultations, that those consultations were continuing, which was why paragraph 1.6 of the addendum to DCME Doc No. 57 did not include a final recommendation, and that the issue would be further considered by the Drafting Committee and included in the final report of the Drafting Committee.

The DELEGATION OF FRANCE stated that it supported the comments of the United Arab Emirates, that, if the Depositary was given the opportunity to convene a Review Conference to examine the performance of the Supervisory Authority, this would give the impression that the Depositary would be supervising the Supervisory Authority, and that Article 61(2) of the Draft Convention should be amended to reflect this.

The DELEGATION OF EGYPT stated that it had originally raised the issue of which body should be responsible for preparing the work for a Review Conference, that the Supervisory Authority would be the International Civil Aviation Organization, that when the International Civil Aviation Organization convened Conferences it did so by circulating a letter of invitation to all Contracting States, and that as UNIDROIT would be the Depositary it would be logical for it to make the preparations in relation to the convening of Review Conferences.

The DELEGATION OF INDIA stated that the issue regarding the intersection between a civil provision in the Draft Protocol and in the Draft Convention had been addressed by the agreement to redraft Article 61 of the Draft Convention so that an amendment to the Draft Convention that affected only one particular protocol would not affect other protocols, that if this could be carefully worded it would be best to retain an amendment provision in the Draft Convention, that it would be possible to amend Article 61 of the Draft Convention by adding the phrase: “in consultation with the Supervisory Authority” in order to confer the desired status on the International Civil Aviation Organization, and that it agreed with Egypt that the function of convening a Review Conference should remain with the Depositary because such function could not be given to the Supervisory Authority.

The DELEGATION OF SOUTH AFRICA stated that it agreed with the comments of Nigeria regarding Article 55 of the Draft Convention, that DCME Doc No. 25 clearly indicated the strong preference of the African States for Alternative B, and that it was unfair that the Final Clauses Committee would propose the deletion of Alternative B of Article 55 of the Draft Convention without offering some explanation to the African States.

The CHAIRMAN stated that the Chairman of the Final Clauses Committee would provide clarification, and that the wording of paragraph 1.6 of the addendum to DCME Doc No. 57 was passive and did not express a conclusion.

The DELEGATION OF AUSTRALIA stated that it had sought clarification regarding the operation of the proposed amendment procedure for the Draft Convention, that the suggestions that had been made during the discussions were moving in the right direction, that it had been concerned about the utility of including an amendment provision in the Draft Convention if there were not at least two protocols, that it had also been concerned about the prospect of an amendment being made to the Draft Convention in circumstances where that amendment had been supported by only a very small minority of members of one of the protocols, that these concerns would be satisfied if Article 61(3) of the Draft Convention had no operative effect until there were at least two protocols and if amendments to the Draft Convention were required to be supported by a two-thirds majority of the members of each protocol in force, and that these comments were subject to the explanation to be provided by the Chairman of the Final Clauses Committee.

The DELEGATION OF JAMAICA stated that Canada had proposed that the provision in the Draft Convention relating to territorial units should be repeated in the Draft Protocol and that an additional interpretative clause relating to territorial units should be inserted, and that it had been proposed that Article XXIX of the Draft Protocol incorporate by reference the provisions of Article 52 of the Draft Convention but that, if it were considered necessary, it would be possible to repeat the provisions in the Draft Protocol. It stated that Canada had proposed that an additional paragraph be added to Article 52 of the Draft Convention, and that there had been no objections to this proposal. It stated that Egypt had raised the issue of whether Article 61(1) of the Draft Convention should be amended to provide for the possibility of reports being prepared at other than yearly intervals, and that this issue had been addressed by the agreement that Article 61(1) of the Draft Convention be amended to refer to the Depositary preparing yearly reports “or at such other times as circumstances may require”. It stated that an issue had been raised regarding who would be responsible for convening Review Conferences, that Egypt and other delegations had suggested that the responsibility for convening Review Conferences should rest with the Depositary, that there had been concerns expressed that this approach would create the impression that the Depositary had an oversight function in relation to the Supervisory Authority, that the Draft Protocol provided for the convening of Review Conferences by the Depositary in consultation with the Supervisory Authority, that India had suggested that the same formula be used in the Draft Convention, that it agreed with that suggestion, and that in addition Article 61(2)(c) should be amended with the addition of the phrase: “taking into account the report submitted by the Supervisory Authority” to clarify that it was the function of the Supervisory Authority to have oversight of the Registrar. It stated that, in relation to proposed Article 61(3) of the Draft Convention, an issue had been raised about whether it should also refer to acceptance, approval and accession, that it considered that the traditional language should be used and therefore that there should be a reference to acceptance and approval, and that it considered that accession normally occurred after entry into force and would therefore not be appropriate for inclusion in proposed Article 61(3) of the Draft Convention. It stated that an issue had been raised about whether an amendment to the Draft Convention would apply only in relation to those protocols where there was the relevant two-thirds majority of the parties to those protocols in support of the amendment, that there had also been a suggestion that there would be no need to amend the Draft Convention and that all that would be required would be to amend the relevant protocol, that this suggestion had been difficult to understand because the Draft Convention would not be able to predict what would be the situation in relation to its future operations, that the Diplomatic Conference did not have the wisdom to see into the future and take account of all possibilities, that the *Vienna Convention on the Law of Treaties* provided for the possibility of amendment of treaties, that it would not be possible to eliminate the possibility of making amendments to the Draft Convention in the future, that it would be possible to confine the application of amendments to the Draft Convention to those protocols in

respect of which a specified majority of its Contracting States agreed with the amendment, that amendments would only come into force in respect of those Contracting States that had acceded to or approved the amendment, that any Contracting State that did not agree with an amendment to the Draft Convention would be able to avoid its effect by not ratifying the amendment, that this effect would be achieved by the phrase: “in respect of States” in proposed Article 61(3) of the Draft Convention which clarified that it would only be those States that had ratified an amendment which would be bound in their mutual relations by the amendment, that, if it were to be considered necessary that there be further clarification, it would be possible to consider specific wording for that, that it was important to remember that the Draft Convention and Draft Protocol were to be interpreted as a single instrument, and that all Contracting States to a protocol would be eligible to participate in a Review Conference at which amendments to the Draft Convention were decided. It stated that the United Kingdom had noted that the use of the phrase: “unless otherwise provided” in Article 48(3) of the Draft Convention was not necessary because there was nowhere in the Draft Convention where it was “otherwise provided” and that it would be preferable to use the phrase: “where the context so requires”, and that this proposal had been supported by Sweden. It stated that an issue had been raised regarding Article 55 of the Draft Convention dealing with declarations regarding relief pending final determination, that when it had introduced that provision it had indicated that it would need to be modified to take account of the decision of the Commission to adopt the proposals in DCME Doc No. 52, and that the Final Clauses Committee had not taken a view about the precise nature of the modification that would be required. It stated that Nigeria had raised a question in relation to the transitional provisions in Article 60 of the Draft Convention, that Nigeria had stated that there had been support for Alternative B in Article 60 of the Draft Convention during the discussions in the Commission, that paragraph 1.6 of the addendum to DCME Doc No. 57 merely reflected the discussion that had taken place in the Final Clauses Committee, that those discussions had included the suggestion that Alternative A in Article 60 of the Draft Convention could be retained with modification but that there had been no consensus on the issue, that the Final Clauses Committee had decided that it would be preferable to refer the issue back to the Commission for a decision, and that the issue remained open.

The CHAIRMAN requested the Chairman of the Final Clauses Committee to reiterate the drafting proposals in relation to Article 61(2) and (3) of the Draft Convention.

The DELEGATION OF JAMAICA stated that it was proposed to amend Article 61(2) of the Draft Convention by adding the phrase: “by the Depositary in consultation with the Supervisory Authority” immediately after the phrase: “shall be convened” with a mirror provision to be added to the Draft Protocol, that it was proposed to amend Article 61(2)(c) of the Draft Convention so that it would read: “the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the report submitted by the Supervisory Authority”, and that it was proposed that Article 61(3) of the Draft Convention be amended to add the phrase: “accepted or approved” after the word “ratified”.

The CHAIRMAN stated that Article 52 of the Draft Convention would be amended by the addition of the paragraph set out in DCME Doc No. 68, that sub-paragraph (c) of the paragraph set out in DCME Doc No. 68 would be amended by deleting the phrase: “unless otherwise provided in a declaration”, by adding the phrase: “having jurisdiction” after the phrase: “administrative authorities”, by adding the phrase: “in force” after the phrase: “aircraft register”, and by amending the final clause to read: “aircraft register in force or to the registry authority having jurisdiction in the territorial unit or units to which the Convention and the Protocol apply”, that Article 52(4) of the Draft Convention would be renumbered to become Article 52(5) of the Draft Convention, and that the same changes would be reflected in the Draft Protocol. The Chairman stated that Article 61(1) of the Draft Convention would be amended to read: “The Depositary shall prepare reports yearly or at such other times as the circumstances may require for the States Parties as to the manner in which the international regime established in this Convention has operated in practice”, that the chapeau to Article 61(2) would be amended to read: “At the request of not less than twenty-five per cent of the

States Parties, Review Conferences of States Parties shall be convened by the Depositary in consultation with the Supervisory Authority from time to time to consider”, that Article 61(3) of the Draft Convention would be amended to include the phrase: “accepted or approved” after the word “ratified”, that Article 61(3) would also be amended to clarify that any amendments to the Draft Convention would only have effect in relation to the relevant protocol, and that interested delegations would be invited to undertake consultations to develop appropriate wording for such an amendment. The Chairman stated that Article 48(3) of the Draft Convention would be amended by replacing the phrase: “unless otherwise provided” with the phrase: “where the context so requires”, and that a corresponding amendment would be made to the Draft Protocol. The Chairman stated that, in relation to the jurisdiction issue, the Commission had approved the wording as set out in DCME Doc No. 52.

The DELEGATION OF SPAIN stated that it wanted to draw attention to paragraph 1.6 of the addendum to DCME Doc No. 57, that it would like to have the possibility of choosing between Alternatives A and B, that it supported Alternative A because of the need to preserve legal security and pre-existing rights, and that the Spanish translation of the phrase: “unless a Contracting State declares otherwise” had omitted the translation of the word “otherwise”.

The CHAIRMAN stated that the translation issue that had been raised by Spain would be taken into account by the Secretariats, and that the issue raised in paragraph 1.6 of the addendum to DCME Doc No. 57 would be discussed in the Drafting Committee and included in the report of the Drafting Committee.

The DELEGATION OF INDIA stated that an additional sentence should be added to Article 61(1) of the Draft Convention to read: “While preparing such reports, the Depositary shall take into account the reports prepared by the Supervisory Authority regarding the functioning of the international registration system”, that this additional sentence would put the relationship between the Depositary and the Supervisory Authority in the proper perspective, and that it agreed with the proposal to redraft Article 61(2) of the Draft Convention.

The CHAIRMAN stated that there had been no objections to the Indian proposal to add an additional sentence to Article 61(1) of the Draft Convention.

The DELEGATION OF AUSTRALIA stated that it agreed with the Indian proposal, and that the Indian proposal would require an amendment to Article XXXIV of the Draft Protocol which referred to reports being prepared by the Depositary and not by the Supervisory Authority.

The CHAIRMAN stated that the report of the Final Clauses Committee had been adopted subject to the issues that remained outstanding, that one issue that remained outstanding was the number of ratifications that would be required for the entry into force of the Draft Protocol, that there had been a lengthy discussion of this issue in the Commission, that at the conclusion of that discussion it had been clear that many delegations would be satisfied if the number of ratifications required was between six and ten, that the Final Clauses Committee had suggested that the number of ratifications required should be three but had included a reservation to reflect the fact that there had not been consensus, that in order to facilitate the discussion it would be proposed that the number of ratifications required for the entry into force of the Draft Protocol should be eight, and that delegations would be invited to comment on whether that number would be acceptable.

The DELEGATION OF SWITZERLAND stated that it supported the proposal that the number of ratifications required for the entry into force of the Draft Protocol be eight.

The DELEGATION OF SAUDI ARABIA stated that it supported the proposal that the number of ratifications required for the entry into force of the Draft Protocol be eight.

The DELEGATION OF INDIA stated that it supported the proposal that the number of ratifications required for the entry into force of the Draft Protocol be eight.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that its position was that the number of ratifications required for the entry into force of the Draft Protocol should be three and that it should not exceed five, that in the spirit of compromise it was prepared to accept the number of eight, and that for every additional ratification required there would be an additional delay and that for many countries this would delay the possibility of the economic benefits of the Draft Convention.

The DELEGATION OF EGYPT stated that it supported the proposal that the number of ratifications required for the entry into force of the Draft Protocol be eight.

The CHAIRMAN stated that it had been agreed that the number of ratifications required for the entry into force of the Draft Protocol be eight. The Chairman stated that one of the other outstanding issues was the internal transactions issue, that that issue would be considered by the Drafting Committee and would be dealt with in the Drafting Committee report, that another outstanding issue was the transitional provisions issue which would be discussed during a subsequent session, and that the other outstanding issue was the relationship between the Draft Convention and Draft Protocol and other conventions, including the *UNCITRAL Convention on Assignment of Receivables in International Trade*, that there had been informal consultations on that issue, and that the Secretary General (UNIDROIT) would be invited to comment on those informal consultations.

The SECRETARY GENERAL (UNIDROIT) stated that the United States of America had noted the difficulty of the Draft Convention dealing with its relationship with a convention that had not yet entered into force and had suggested that the issue be dealt with in an annex to the Draft Convention, that DCME Doc No. 70 contained a proposal by the United States of America and the Secretariats of UNIDROIT and the International Civil Aviation Organization, that the first paragraph of the proposal provided that the Draft Convention would prevail over the *UNCITRAL Convention on Assignment of Receivables in International Trade* as it related to the assignment of receivables which were associated rights related to international interests in aircraft objects, railway rolling stock and space assets, that a number of delegations had suggested that the use of an annex would not be an ideal solution in light of the fact that the *UNCITRAL Convention* was likely to be adopted in the very near future, and that it had therefore been proposed that the annex include a second paragraph dealing with the situation when the *UNCITRAL Convention* entered into force and which provided that the first paragraph would be inserted into the Draft Convention as Article 45*bis* upon the entry into force of the *UNCITRAL Convention*.

The CHAIRMAN stated that the proposal contained in DCME Doc No. 70 represented an innovative approach that would accommodate the legal and technical concerns that had been raised, that the proposal would be accepted in principle but that delegations would have the opportunity to provide comments on the proposal after they had had the opportunity to study the written text of the proposal. The Chairman stated that DCME Doc No. 67 contained the conclusions of the EUROCONTROL informal consultation group, and that DCME Doc No. 67 would be introduced by South Africa.

The DELEGATION OF SOUTH AFRICA stated that the EUROCONTROL informal consultation group had had four meetings, that it had reached a compromise solution which sought to clarify the issues that had been raised in Belgium's proposal by stating that, if the applicable law permitted the collection of fees in a Contracting State for aviation charges, the Contracting State would be able to make a declaration to that effect, that it had been agreed that non-Contracting States would not be permitted to make such a declaration, that it had been proposed that the definition of "non-consensual right or interest" in Article 1(s) of the Draft Convention should be amended to read: "Non-consensual right or interest means a right or interest conferred under a declaring State's law to secure the performance of an obligation, including an obligation to a State, State entity, or an intergovernmental or private Organisation", that it had been proposed that the *travaux préparatoires* record that a declaration under Articles 38(1) or 39 (1) of the Draft Convention should, in addition to a reference to the non-consensual right or interest, include reasonable information on its nature and on the nature of the obligation whose performance it may secure, and that the delegations of Argentina, Canada,

France, Germany, Sweden, the United States of America and EUROCONTROL had participated in the deliberations of the informal working group.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it had originally had some concerns with the proposals in DCME Doc No. 51, that in the spirit of compromise it was able to accept the proposals contained in DCME Doc No. 67, that 18 delegations had been involved in the discussions, including the delegations of Australia and the Aviation Working Group which had been particularly active, and that it would be necessary to ensure that the language in Article 38 of the Draft Convention and in Article XVIII of the Draft Protocol were aligned with the change.

The DELEGATION OF SWEDEN stated that it supported the comments of the United States of America, that the proposals in DCME Doc No. 67 provided an opportunity to adopt a solution to a very delicate problem that might have raised substantial difficulties in relation to ratification, that the comment of South Africa regarding the *travaux préparatoires* reflected a point that had been generously offered by the EUROCONTROL delegation in order to provide further information on a complicated issue, and that the understanding of the informal consultation group was also that the existence of the information should not affect the validity of a declaration and that that should be recorded in the report.

The DELEGATION OF KENYA stated that it had participated in the informal consultation group, and that it supported the comments of South Africa.

The DELEGATION OF SENEGAL stated that it had participated in the informal consultation group because it was a member of another Organisation that covered the airspace in Africa and Madagascar.

The DELEGATION OF CANADA stated that it supported the proposals in DCME Doc No. 67, and that it commended South Africa's chairmanship of the informal consultation group.

The DELEGATION OF EUROCONTROL stated that it supported the proposals in DCME Doc No. 67 in the spirit of compromise, and that the Netherlands had participated in the informal consultation group.

The DELEGATION OF EGYPT stated that it supported the proposals in DCME Doc No. 67.

The CHAIRMAN stated that the proposals in DCME Doc No. 67 had been accepted. The Chairman stated that, prior to the Commission considering the draft resolutions presented in DCME Doc No. 64, DCME Doc No. 65 and DCME Doc No. 66, it would be necessary to consider two issues arising from Resolution 2 in DCME Doc No. 60 which had already been adopted, that following approaches from several delegations it would be necessary to consider amending the text of Resolution 2 in DCME Doc No. 60, that the first proposed amendment would be in the third resolving clause and would be to add the phrase: "with full authority" after the phrase: "to set up", and that the second proposed amendment would be in the fourth resolving clause and would be to replace the phrase: "the International Registry" with the phrase: "the international registry system".

The DELEGATION OF INDIA stated that it agreed with the proposal to amend the fourth resolving clause of Resolution 2 in DCME Doc No. 60 by replacing the phrase: "the International Registry" with the phrase: "the international registry system", that the phrase: "the international registry system" had been used in the chapter heading, and that it would not be necessary to amend the third resolving clause of Resolution 2 in DCME Doc No. 60 because it was very clear that the Supervisory Authority would act with full authority.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that "International Registry" would be a defined term in the Draft Convention, that the Commission should be careful about creating new terms that had different meanings, that it nevertheless did not object to the proposal to amend the fourth resolving clause of Resolution 2 in DCME Doc No. 60 by replacing the phrase: "the International Registry" with the phrase: "the international registry system", and that it agreed with

India that it would not be necessary to amend the third resolving clause of Resolution 2 in DCME Doc No. 60 but that it had no objection to that proposal.

The CHAIRMAN stated that a list of States that would nominate members to the Preparatory Commission envisaged by Resolution 2 in DCME Doc No. 60 had been prepared following extensive consultations which took into account the need for the Preparatory Commission to reflect geographical balance, that the list of States was Argentina, Brazil, Canada, China, Egypt, France, Germany, India, Ireland, Nigeria, the Russian Federation, Senegal, Singapore, Switzerland, South Africa, the United Arab Emirates and the United States of America, and that it was intended that any observer States that wanted to take part in the work of the Preparatory Commission would be entitled to do so on the basis that they would not be entitled to take part in any voting positions.

The DELEGATION OF KENYA stated that it had participated actively in the Diplomatic Conference and had made useful contributions, that Kenya had not been invited to participate in any of the informal groups that had met during the Diplomatic Conference, and that it was concerned that the list of States that would nominate members to the Preparatory Commission envisaged by Resolution 2 in DCME Doc No. 60 did not include any States from East Africa.

The CHAIRMAN stated that the concern of Kenya had been noted, that no delegations had been excluded from any informal working group, and that the active and constructive participation of Kenya during the Diplomatic Conference had been noted. The Chairman stated that the United States of America would be invited to present the draft resolution that was included in DCME Doc No. 64 and to present DCME Doc No. 66.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it would be withdrawing DCME Doc No. 66 from consideration, and that the substance of DCME Doc No. 66 had been subsumed by the draft proposal that had been adopted in relation to Article 61 of the Draft Convention and the corresponding provisions in the Draft Protocol. It stated that DCME Doc No. 64 had been submitted in the interests of all delegations, that at every meeting since the intergovernmental negotiating process had commenced there had been discussion of the need to prepare an official commentary to accompany the Draft Convention, that the need for legislative guidance and interpretative guidance in relation to the Draft Convention had been discussed with delegations and with the air transportation industry, that a considerable amount of work would be involved in the preparation of the official commentary, that it proposed that the Chairman of the Drafting Group would produce the official commentary in close collaboration with the Chairman, the Chairman of the Final Clauses Committee and the Secretariats, and that a draft of the official commentary should be circulated to enable comments to be submitted before it was finalised.

The DELEGATION OF THE UNITED KINGDOM stated that the Chairman of the Drafting Committee would be very pleased to prepare the official commentary in consultation with those who had been mentioned by the United States of America.

The AVIATION WORKING GROUP stated that it supported the United States of America's proposal, that during the meetings of the Drafting Committee there had been four or five matters which it had been stated would need to be noted in the commentary, and that the commentary would be very helpful to the user community.

The DELEGATION OF FRANCE stated that it supported the proposal of the United States of America, that the proposal was an excellent initiative, that it was happy that the preparation of the commentary would be entrusted to the Chairman of the Drafting Committee, and that the official commentary would need to be made available in all the official languages of the Draft Convention and Draft Protocol.

The DELEGATION OF GERMANY stated that it supported the proposal of the United States of America, and that it appreciated the acceptance by the Chairman of the Drafting Committee of the responsibility for preparing the commentary.

The DELEGATION OF CANADA stated that it supported the proposal of the United States of America, and that it supported the comment of France that the commentary would need to be produced in all the official languages of the International Civil Aviation Organization.

The CHAIRMAN stated that the Secretariat of the International Civil Aviation Organization had noted that it was intended that the official commentary would be provided in all official languages but that the time constraint might cause problems, that the resolution would be adopted apart from the time limits of 90 days for the circulation of the first draft and 180 days for comments on the draft, and that these time limits might need to be amended depending on the resources that were available from the Secretariats.

The DELEGATION OF BAHRAIN stated that it supported the proposal of the United States of America, and that the official commentary should be called “The Explanatory Notes of the Convention and Protocol”, as that title had been previously agreed.

The CHAIRMAN stated that it was not clear whether the issue raised by Bahrain was merely a translation point, that the discussion of DCME Doc No. 64 was closed, and that the resolution proposed by DCME Doc No. 64 would be adopted pending revisitation of the time limits contained in DCME Doc No. 64 and depending upon the resources available for translation. The Chairman stated that South Africa would be invited to present DCME Doc No. 65.

The DELEGATION OF SOUTH AFRICA stated that it had been approached by a number of delegations which had suggested that South Africa should be the host State for the International Registry, that it had referred these suggestions to the South African Government and had been advised that the South African Government would have no objection to being the host State for the International Registry, that DCME Doc No. 65 had been prepared by the African States and contained a draft resolution inviting the South African Government to host the International Registry, that it would be a great honour for South Africa to host the International Registry, that it did not want to be seen as being divisive in light of the number of compromises that had been made, that the draft resolution contained in DCME Doc No. 65 did not accurately convey the discussions that had taken place amongst various delegations in the sense that it included an invitation to the South African Government to be the host State for the International Registry, that it was unfortunate that the draft resolution had been drafted in that way, that it would be happy for DCME Doc No. 65 to be withdrawn from consideration, that, if at a future stage the Contracting States and members of the International Civil Aviation Organization wanted South Africa to be considered as the host State for the International Registry, South Africa would be willing to make its facilities available, and that, as the consideration of the draft resolution at that time would be divisive and would spoil the spirit of the compromises that had been made, it would prefer that the draft resolution be withdrawn from consideration.

The CHAIRMAN stated that South Africa’s cooperative spirit had been appreciated, that all delegations had been happy to hear that South Africa would be interested in hosting the International Registry, that it would be preferable to have as many candidates as possible for the hosting of the International Registry, and that the Commission had adopted a fair, balanced selection system in relation to the International Registry.

The DELEGATION OF SINGAPORE stated that it welcomed the interest that South Africa had shown in being considered as a host for the International Registry.

The CHAIRMAN stated that DCME Doc No. 65 had been withdrawn from further consideration. The Chairman stated that the Commission would recommence its discussions of the report of the Drafting Committee contained in DCME Doc No. 61.

The DELEGATION OF THE UNITED KINGDOM stated that the Drafting Committee had held its final meeting that afternoon and that the final report of the Drafting Committee would be available the following day, and that the Commission had completed discussion of the parts of the draft report of the Drafting Committee that dealt with the first five chapters of the Draft Convention. It stated that, in relation to Chapter VI of the Draft Convention, the Drafting Committee had proposed an amendment to Article 26(2) of the Draft Convention to refer to the Supervisory Authority as specified in the Draft Protocol, and that Article 26(4) would be superseded by a new paragraph. It stated that there were some issues in Article 28(3) and (6) of the Draft Convention that would be dealt with in the final report of the Drafting Committee. It stated that, in relation to Chapter IX dealing with assignments, the Drafting Committee had proposed that Article 30 of the Draft Convention commence with associated rights and then deal with the fact that they would carry the international interest as that would conform with what happened in most legal systems, that Article 30(1) of the Draft Convention would state the general proposition that, unless the parties otherwise agreed, an assignment of the associated rights would carry with it the related international interest and all the interests in priorities, that the parties would for example be able to agree to transfer the associated rights in isolation from the international interest but that, if they did not so agree, one would automatically follow the other, and that Article 30(2) of the Draft Convention would provide for partial assignment of associated rights as between one assignee and another or as between the assignor and a partial assignee. It stated that Article 31(1) of the Draft Convention would set out the formal requirements, including the requirement that an assignment by way of security would have to enable the obligation's security to be determined but not to have to state the sum or maximum sum secured, that Article 31(2) of the Draft Convention would indicate that it would not be possible to make an assignment of an international interest by way of security unless some or all the related associated rights were also assigned, that the rationale for this was that it would be pointless to assign an international interest without associated rights also being assigned as nothing would be secured by that assignment, and that Article 31(3) of the Draft Convention would clarify that the Draft Convention would not apply to an assignment of associated rights detached from the related international interest. It stated that the purpose of Article 35 of the Draft Convention would be relevant to the situation where there was an assignee of associated rights and a related international interest and the security agreement securing the loan obligations gave security not only over the object that was the subject matter of the transaction but also secured all future obligations, including loans, that had no relationship to the object, that there would be a question as to what would happen if there was then another loan agreement that made no reference to the existence of the security in reliance on the fact that the security had already been provided under the earlier agreement and that there had then been a second assignment of that loan agreement to an assignee who looked at the agreement and did not see any reference to the fact that it was secured on the object and had no reason to suspect that it was connected with the object or the International Registry, that the effect of Article 35(1)(a) of the Draft Convention would be that, if the loan agreement was a non-purchase money loan agreement and did not state that the associated rights were secured by or associated with the object, the assignee of those rights who was registered in the International Registry would not have priority and priority would be determined by the applicable law, that this was because the second assignee of those rights would not have any way of knowing that there was an international interest giving somebody else priority if the loan agreement did not state that it was secured by an earlier agreement, that the second qualification on the priority of the first assignee was to ensure that it was limited to what might be called "purchase money rights" either in the same object or in another object, that such "purchase money rights" would include rights to payment or performance relating to sums advanced for the purchase of the object or relating to sums advanced and utilised for the purchase of another object in which the assignor held an interest if everything was registered as well as all the rentals and other obligations arising from a

transaction of such a kind, and that the effect was that the Draft Convention would not invade the area of receivables financing generally and as between an assignee of a loan which was a general receivables financing loan and another general receivables financier that would be determined by the applicable law and by the UNCITRAL Convention where it was applicable. It stated that it was proposed that Article 37(2) of the Draft Convention include a subordination provision to match Article 28(4) of the Draft Convention, that the effect would be that there would be able to be a subordination agreement but that an assignee of a subordinated interest would not be bound by an agreement to subordinate it unless the subordination had been registered, and that somebody who took an assignment of an interest that was an apparently senior interest and did not know it had been subordinated by agreement because the subordination agreement had not been entered on the International Registry would not be bound by the subordination and would be entitled to treat the assigned interest as a senior interest.

The CHAIRMAN stated that Article 26(4) and (5) of the Draft Convention, Article 27(3) and (6) of the Draft Convention and Article 28 of the Draft Convention were pending and would be discussed in conjunction with the final report of the Drafting Committee.

The DELEGATION OF ETHIOPIA stated that it required clarification regarding Chapter IX of the Draft Convention, that it would be the right of the holder of an international interest to make an assignment of that interest and the debtor would be bound by the terms of the assignment as specified in Article 32 of the Draft Convention, that when the debtor tried to fulfil its obligations to the assignee there might be unforeseeable expenses on the part of the debtor, and that it required clarification regarding who would be responsible for bearing those expenses.

The CHAIRMAN stated that Article 32 of the Draft Convention contained text in square brackets which indicated that some issues were yet to be resolved.

The DELEGATION OF SINGAPORE stated that it required clarification regarding Articles 29 and 30 of the Draft Convention, that, in relation to Article 29 of the Draft Convention, Singapore had submitted DCME Doc No. 46, that in the spirit of compromise it would not insist on the full implementation of the suggested draft wording of the proposed Article 29(*ibis*) that was set out in DCME Doc No. 46, that it continued to have the concerns that were set out in paragraphs 1 to 4 of DCME Doc No. 46 which had received some support when Article 29 of the Draft Convention was discussed in the Commission, that at least one other delegation had expressed its concern about Article 29 of the Draft Convention being silent on the treatment of non-registrable non-consensual rights and interests in insolvency proceedings and particularly cross-border insolvency proceedings, that this issue had not been addressed in the Drafting Committee's revised draft of Article 29 of the Draft Convention, and that it required clarification regarding how its concerns would be addressed. It stated that it required clarification regarding the phrase: "except as otherwise agreed by the Parties" in Article 30(1) of the Draft Convention, that the word "parties" was a generic term and there was no particular reference to whether the debtor would be involved in the process, that in the Singapore legal system most security interests carried an equity of redemption which meant that a debtor that had given up a security interest pursuant to a security agreement would have an interest in equity in being able to redeem that interest, that the Drafting Committee had had difficulty incorporating the concept of freedom of contract and had included the phrase: "except as otherwise agreed by the parties", and that this approach might give rise to the problem that, if a security interest that had been created to the detriment of the debtor was allowed to be fragmented with some part of the security interest being given to some assignees and the other part to other assignees, this could give rise to the problem that it could affect the debtor directly.

The DELEGATION OF JAPAN stated that, in relation to Article 32(1)(c) of the Draft Convention, there were many brackets, that Article 32(1)(c) of the Draft Convention should be deleted and that it had set out this view in paragraph 2 of DCME Doc No. 33, that the first bracketed phrase in Article 32(1)(c) of the Draft Convention created a requirement for a formal assignment as a

prerequisite to the debtor's payment even though there was a formal requirement of assignment in the case of aircraft, that this formal requirement was specific only to aircraft matters and should not be generalised to all kinds of object, that the second bracketed phrase in Article 32(1)(c) of the Draft Convention was inappropriate because it provided that a debtor's duty would depend on the chronological order of the notices of assignment but the priority between competing assignees would depend upon registration, that Article 32(2) of the Draft Convention provided that payment or performance would be effective if made in accordance with Article 32(1) of the Draft Convention, that if Article 32(1)(c) of the Draft Convention was deleted a debtor who had been given notice of assignment that identified the associated rights would be able easily to discharge it by payment in accordance with that notice, and that the deletion of Article 32(1)(c) of the Draft Convention would therefore increase the possibility of debtor discharge and protect a debtor's rights. It stated that, in relation to the comments of Singapore regarding Article 30 of the Draft Convention, there had been informal consultations relating to that Article, that one of the issues discussed during those consultations was which of the phrases: "to the extent agreed by the parties to the assignment" or: "except as otherwise agreed by the parties" should be used, that one position that had been taken was that the latter phrase was absolutely necessary because in many transactions the assignor and assignee agreed as to which part of the associated rights should be assigned and which parts of the international interest would or would not follow the associated rights, that Article 30(1) of the Draft Convention accommodated this position, that the other position was that any assignment agreed between the assignor and assignee should not have any effect on the debtor's position because it would be necessary to protect the debtor from the unexpected results which might be caused by complicated assignments and which had been noted by Singapore, that Article 30 of the Draft Convention therefore required clarification as to the effect that any agreement between an assignor and an assignee would have on the debtor's position regarding an international interest, that Article 30(2) of the Draft Convention seemed to accommodate that intention but was too vague to convey the meaning of the Japanese proposition and made Article 30 of the Draft Convention conceptually very difficult, and that the Drafting Committee should reconsider the wording of Article 30(2) of the Draft Convention.

The CHAIRMAN stated that it would not be possible to refer additional issues to the Drafting Committee as the Drafting Committee had ceased to exist and would be delivering its final report on the following day, that there was a proposal to delete Article 32(1)(c) of the Draft Convention, that provided delegations were happy with the explanation to be given by the Chairman of the Drafting Committee it appeared that there would be acceptance of that proposal, and that the Chairman of the Drafting Committee would be invited to comment on the issues that had been raised.

The DELEGATION OF THE UNITED KINGDOM stated that Ethiopia had sought clarification regarding what would happen if a partial assignment imposed a burden on the debtor, that assignments would generally be dealt with in the relevant agreement, that, if this was not the case, the Draft Convention had no provisions and would not affect the terms of the obligations of the debtor, that in some legal systems extra expenses might be created if the debt was divided but the Draft Convention did not deal with who would be responsible for any additional expense, and that the issue of additional expense would normally be dealt with by the agreement. It stated that Singapore had sought clarification regarding insolvency with particular reference to non-consensual rights or interests, and that this issue was not dealt with in Article 29 of the Draft Convention but did feature in Article 38 of the Draft Convention which provided that a Contracting State would be able to make a declaration that the categories of interest that the law of that State provided would have priority over an interest in the object equivalent to that which an international interest would have over a registered international interest whether inside or outside the insolvency of the debtor. It stated that Singapore had referred to the issue of the equity of redemption or the right of a debtor to redeem the debt, that Article 30(5) of the Draft Convention dealt with assignments by way of security and provided that the assigned associated rights would revert in the assignor to the extent that they were still subsisting

when the obligations secured by the assignment had been discharged, and that this reflected the equity of redemption for assignments by way of security in a manner that would be familiar under Singapore law and common law systems in general. It stated that Japan had raised the question of whether Article 32(1)(c) of the Draft Convention should be deleted, and that this was a policy question that it would not be appropriate for the Chairman of the Drafting Committee to comment upon.

The CHAIRMAN stated that there had been a proposal to delete Article 32(1)(c) of the Draft Convention and that unless there were any opposing views it would be deleted, that a number of delegations would be likely to have concerns with the deletion of Article 32(1)(c), and that it would be necessary to continue the discussion of that issue at the next meeting of the Commission.

The DELEGATION OF CANADA stated that although there were a number of options for dealing with Article 32(1)(c) of the Draft Convention, it did not favour deletion of that Article.

The CHAIRMAN stated that the United States of America appeared to agree with Canada's position, that it would be necessary to continue the discussion of Article 32(1)(c) of the Draft Convention at the next meeting of the Commission, and that apart from that issue the text had been approved.

The meeting rose at 21:10

COMMISSION OF THE WHOLE – FIFTEENTH MEETING

Wednesday, 14 November 2001, at 9:30

President: Professor Medard Rutoijo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 12 – ADOPTION OF THE FINAL ACT OF THE CONFERENCE AND OF ANY INSTRUMENTS, RECOMMENDATIONS AND RESOLUTIONS RESULTING FROM ITS WORK

The CHAIRMAN stated that, in relation to the list of States that would nominate members to the Preparatory Commission envisaged by Resolution 2 in DCME Doc No. 60, there had been some questions raised about whether the list was appropriate in terms of geographical representation, that following reconsideration of the list and further consultations it would be proposed that representatives of three regions be added to the Preparatory Commission, that from the Caribbean Cuba would be invited to nominate a member, that from Australasia Tonga would be invited to nominate a member, and that from East Africa Kenya would be invited to nominate a member.

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.) AGENDA ITEM 9 – CONSIDERATION OF THE DRAFT PROTOCOL (CONT.)

The Chairman stated that there were two issues outstanding from the text that had already been discussed, that the first issue concerned Article 61(3) of the Draft Convention in relation to the amendment of the Draft Convention, that the second issue concerned Article 32(1)(c) of the Draft Convention in relation to debtor consent in the situation of assignments, and that both of these issues had been the subject of informal consultations.

The DELEGATION OF CANADA stated that it had objected to the Japanese proposal that Article 32(1)(c) of the Draft Convention be deleted, that it no longer maintained that objection, that the issue was dealt with in the Draft Protocol, that Article XV of the Draft Protocol indicated that the consent of the debtor would be required and that this reflected the option in the second bracketed

phrase in Article 32(1)(c) of the Draft Convention, that Article XV of the Draft Protocol should not add an additional paragraph to Article 32(1)(c) of the Draft Convention but should instead be rephrased to say that Article 32(1)(c) of the Draft Convention would be replaced by Article XV of the Draft Protocol, that there had been substantial changes made to the chapter of the Draft Convention dealing with assignments but the definition of “assignment” had not been amended, and that the definition of “assignment” in Article 1(b) of the Draft Convention should be amended by replacing the phrase: “rights in the international interest” with the phrase: “associated rights”.

The CHAIRMAN stated that there should be some concern about making last-minute amendments because of the difficulty of ensuring that consistency of the texts was retained, and that the expertise of the Drafting Committee would be necessary to ensure that last-minute amendments did not disturb that consistency.

The DELEGATION OF JAPAN stated that it was grateful that Canada had supported its proposal, that the requirements of Article 32(1)(c) of the Draft Convention had not been discussed in relation to the proposed rail protocol or the proposed space protocol, that it would be preferable for the Draft Convention to retain as much flexibility as possible, that the second bracketed phrase in Article 32(1)(c) of the Draft Convention appeared to protect the debtor in the case of the debtor’s receipt of more than one notice but in fact it only provided that the debtor would not have to pay the assignee who sent the second notice and was silent on the question of which assignee the debtor would have to pay, that this meant that the debtor would have to pay the first assignee or the assignee that was required by the applicable law to be paid, and that this result would be exactly the same as if Article 32(1)(c) was deleted.

The CHAIRMAN stated that it had been understood that Japan could support the deletion of Article 32(1)(c) of the Draft Convention, that the issue would be revisited if necessary during the discussion of Article XV of the Draft Protocol, that Canada had proposed a drafting amendment to the definition of “assignment” in Article 1(b) of the Draft Convention which would be accepted unless there were any objections, and that the Chairman of the Drafting Committee would be invited to comment on these issues and to introduce DCME Doc No. 71 which was the final report of the Drafting Committee.

The DELEGATION OF THE UNITED KINGDOM stated that DCME Doc No. 71 did not include the changes that had been agreed by the Commission during the discussion of DCME Doc No. 61, that it would not discuss the proposed changes that had already been discussed and approved by the Commission, that the texts of the Draft Convention and Draft Protocol that were appended to DCME Doc No. 71 were marked with amendments that contrasted with DCME Doc No. 3 and DCME Doc No. 4 and not with any document that had been subsequently produced, that there were some policy issues within the mandate of the Final Clauses Committee that had been referred to the Drafting Committee, that there had been a discussion in the Commission regarding Alternatives A and B in Article 60 of the Draft Convention, that there had been a division of opinion on that issue within the Final Clauses Committee, that the view had been taken that Alternative A would be modified to give Contracting States the option to decide after any period of time so that it would not be necessary to wait ten years, that the Drafting Committee had been invited to draft the results of that decision, that the Drafting Committee draft was more flexible than the original Alternative B because a Contracting State would not need to wait more than ten years, that the drafting proposals appeared in DCME Doc No. 71 by way of footnotes, and that the cross-references in DCME Doc No. 71 had not been changed and would need to be reviewed. It stated that, in relation to the title of the Draft Convention, it had been agreed that the word “The” would be deleted if it was found not to be normal in other conventions, that the Drafting Committee had examined a number of conventions and none of those conventions used the definite Article “the”, and that the Drafting Committee had therefore recommended that the word “The” be deleted from the title of the Draft Convention. It stated that it agreed with the proposal of Canada to amend the definition of “assignment” in Article 1(b) of the

Draft Convention, and that it would also be useful to add a phrase such as: “with or without a transfer of the related international interest” in order to clarify that an assignment would typically be related to an international interest. It stated that the definitions in Article 1(n), (r) and (t) of the Draft Convention were linked and were related to internal transactions, that it was intended that a Contracting State would be able to make a declaration to exclude the operation of the Draft Convention except for the registration and priority provisions and some Articles in Chapter III of the Draft Convention in relation to transactions where all elements were located in one Contracting State, that the basis of this approach was that it would only be possible for a Contracting State to make a declaration if it had a national registration system through which notices of national interest could be transmitted to the International Registry, and that the drafting change that had been made would clarify that a Contracting State would only be able to make a declaration excluding internal transactions if it had a national registration system in place and therefore had the machinery for transmitting notices of national interest. It stated that, following the discussion in the Commission regarding the Belgian proposal regarding EUROCONTROL, it was possible that it would be necessary to amend the definition of “non-consensual right or interest” in Article 1(s) of the Draft Convention, and that Article 1(v) of the Draft Convention might need to be modified further in light of decisions to be taken in relation to Article 55 of the Draft Convention which would be renumbered as Article 60 of the Draft Convention. It stated that Article 2(3) of the Draft Convention continued to include the phrase: “without prejudice to Article 50” in square brackets, that Article 50 of the Draft Convention provided for additional protocols, that there was a question whether the phrase in square brackets was necessary, and that the phrase had been inserted simply to flag the possibility of future protocols. It stated that Article 4(1) of the Draft Convention included a footnote which suggested that the definition of “debtor” should not be extended to Article 42 of the Draft Convention, that the definition of “debtor” in Article 4 of the Draft Convention was designed to apply to Article 3 of the Draft Convention and to give the widest possible scope to the Draft Convention by allowing any one of six different places in which the debtor might be situated as a ground for attracting the scope of the Draft Convention, that it had been considered that to extend the definition to other purposes and in particular to Article 42(2) of the Draft Convention could give rise to serious problems, that there was also an issue about the application of the definition to the new Article 60 of the Draft Convention, and that it had therefore been proposed that the definition of “debtor” in Article 4 of the Draft Convention should be restricted in its application to Article 3(1) of the Draft Convention.

The CHAIRMAN stated that the Commission had already decided that the definition of “debtor” in Article 4(1) of the Draft Convention would be confined in its application to Article 3(1) of the Draft Convention, that the proposed definition of “non-consensual right or interest” had been presented in DCME Doc No. 67 and had been adopted, that it would be preferable not to make any drafting changes but that, if there were inconsistencies, the Chairman of the Drafting Committee would be mandated to make any necessary adjustments provided they did not affect the substance, and that delegations would be invited to comment on the issue of internal transactions and on the definition of “assignment” in Article 1(b) of the Draft Convention.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that the final technical examination of the Draft Convention should include the preamble because there had been agreement that the word “enshrine” would be replaced but that change had not been reflected in DCME Doc No. 71, and that the official commentary that would accompany the Draft Convention should clarify that Contracting States would be permitted by declaration to identify territorial registries that would be different from their national registry.

The CHAIRMAN stated that the Commission had previously agreed to amend the preamble to the Draft Convention by replacing the word “enshrined” with “enunciated”, that this amendment would be incorporated into the final version of the Draft Convention, that the Commission had agreed to amend the definition of “assignment” in Article 1(b) of the Draft Convention so that it would read: “ ‘Assignment’ means a contract which whether by way of security or otherwise confers on the

assignee associated rights with or without the related international interests”, that the phrase: “without prejudice to Article 50” would be deleted from Article 2(3) of the Draft Convention, that the Drafting Committee had not proposed any amendments to Chapters III or IV of the Draft Convention, and that the Chairman of the Drafting Committee would be invited to introduce the amendments that had been proposed for Chapter V of the Draft Convention.

The DELEGATION OF THE UNITED KINGDOM stated that the Drafting Committee had proposed that Article 17(1)(a) of the Draft Convention be amended to clarify that what a protocol needed to specify was the requirements for effecting a registration and that those requirements would need to include provision for electronic transmission of any consent from any person whose consent would be required under Article 19 of the Draft Convention.

The CHAIRMAN stated that the amendment to Article 17(1)(a) of the Draft Convention had already been approved by the Commission.

The DELEGATION OF THE UNITED KINGDOM stated that Article 27(4) of the Draft Convention had originally been drafted so that assets, documents, data bases and archives of the International Registry were not protected from seizure by somebody who was pursuing a claim against the Registrar, that this had not been intended, that the intention had been to ensure that somebody who was pursuing a claim against the Registrar would be able to have access to the necessary information and documents, that the Drafting Committee had therefore proposed that the qualifying words in the first four lines of Article 27(4) of the Draft Convention be deleted so that there would be a straightforward immunity of the International Registry’s assets from seizure, that the Drafting Committee had proposed a new Article 27(5) which would provide that a claimant would be entitled to access information and documents necessary to enable it to pursue its claim, and that the Drafting Committee had proposed that Article 27(6) of the Draft Convention be amended to include the phrase: “inviolability and” in order to be consistent with Article 27(4) of the Draft Convention.

The CHAIRMAN stated that the proposals in relation to Article 27(4) and (5) of the Draft Convention were in line with what had been discussed in the Commission.

The DELEGATION OF FRANCE stated that it had concerns regarding the drafting of Article 18(1) of the Draft Convention, that during the discussions of that Article in the Commission it had expressed concern that the wording was ambiguous and that it would be preferable to return to the previous version of the Article, and that it required clarification about this issue.

The DELEGATION OF THE UNITED KINGDOM stated that there had been a discussion in the Commission about amending the opening words of Article 18(1) of the Draft Convention, that it was an oversight that this amendment had not been drafted, that the necessary amendments would be made without affecting the legal effect of the Article, and that the English language version of the Article was clear but that it might be necessary to make changes to the texts in other languages.

The CHAIRMAN stated that the Chairman of the Drafting Committee would consider the appropriate wording for Article 18(1) of the Draft Convention in consultation with the Secretariats and the French delegation, and that subject to this Chapter VI of the Draft Convention had been adopted.

The DELEGATION OF THE UNITED KINGDOM stated that Chapter VII of the Draft Convention dealt with the important question of the liability of the Registrar, that an informal consultation group had been established to consider this issue and had reached an agreement on a proposal for how liability should be dealt with, that this proposal had been incorporated into DCME Doc No. 71, that the Drafting Committee had proposed that Article 27(1) should clarify the general principle of the Registrar’s liability and the general principle that that liability would be strict liability and would not be dependent on showing want of care, that the Registrar’s liability would be limited to compensatory damages for losses directly resulting from an error or omission of the Registrar or from a malfunction of the system, that the Registrar’s liability would be qualified by a force majeure exception in cases

where a malfunction was caused by an event of an inevitable and irresistible nature which could not be prevented by using the best practices in current use in the field, including those practices related to back-up systems and security and networking, that one or two delegates who participated in the Drafting Committee discussions had questioned whether the phrase: “inevitable and irresistible” was appropriate and whether it might be more appropriate to include something similar to Article 7.1.1 of the UNIDROIT *Principles of International Commercial Contracts* which reflected Article 79(1) of the *United Nations Convention on Contracts for the International Sale of Goods*, and that the Drafting Committee had considered this idea but had ultimately decided that the phrase: “inevitable and irresistible” should be retained. It stated that the Drafting Committee had proposed that Article 27(1*bis*) should provide that the Registrar would not be liable for factual inaccuracy of registration information which the Registrar had received because the Registrar would have no control over the accuracy of that information nor of the accuracy of information that the Registrar transmitted in the form in which it had been received, that the Registrar should not be liable for acts for which the Registrar and its officers were not responsible and arising prior to the receipt of information, and that one example would be that a failure in systems established at a designated entry point would not be the responsibility of the Registrar. It stated that the Drafting Committee had not proposed changes to Article 27(1*ter*), that the Drafting Committee had proposed that Article 27(2) would provide that the Registrar would be required to procure insurance or financial guarantee to the extent determined by the Supervisory Authority in accordance with the Draft Protocol, and that the Draft Protocol would make provision for that requirement.

The CHAIRMAN stated that the Drafting Committee had made a good attempt to find compromise solutions based on the discussions in the Commission.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it agreed that the Drafting Committee had presented good compromise solutions, that the title of Article 27 of the Draft Convention should be changed from “Liability and Insurance” to “Liability and Financial Assurances”, and that this would reflect the idea present in Article 27(2) of the Draft Convention that there were a number of financial assurance instruments in addition to insurance.

The DELEGATION OF FRANCE stated that it agreed with the substance of Article 27 of the Draft Convention, that there were problems with the French translation of Article 27 of the Draft Convention and in particular in relation to Article 27(1*bis*) of the Draft Convention, and that it would not be possible to sign the French version of the Draft Convention at the conclusion of the Diplomatic Conference unless the translation issues were addressed.

The CHAIRMAN stated that the procedure that had been used throughout the Conference for addressing translation issues had worked well, and that concerns regarding translations would be addressed by the two Secretariats.

The DELEGATION OF INDIA stated that it supported the United States of America’s proposal to amend the title of Chapter VII of the Draft Convention, and that the use of “*bis*” and “*ter*” in the numbering of articles would cause confusion and should be avoided.

The CHAIRMAN stated that the United States of America’s proposal that the title of Chapter VII be changed to “Liability and Financial Assurance” would be adopted unless there were any objections, and that the use of “*bis*” and “*ter*” in the numbering of articles would disappear in the final version of the Draft Convention to be adopted at the conclusion of the Diplomatic Conference.

The DELEGATION OF ARGENTINA stated that it accepted the proposal that the Secretariats have a mandate to correct grammatical errors in the texts prior to the conclusion of the Diplomatic Conference, that in the translations of the Draft Convention into other languages there were problems that went beyond grammatical errors, that the translations of the Draft Convention into other languages had substantive differences, that French-speaking and Arabic-speaking delegations had

indicated that there were problems with the translations into those languages, that the Spanish-speaking delegations would endeavour to meet to identify the problems prior to the conclusion of the Diplomatic Conference, and that it required clarification as to whether there would be a procedure for making corrections to the translations of the Draft Convention after the conclusion of the Diplomatic Conference.

The CHAIRMAN stated that the Secretariats would endeavour to address all translation issues prior to the conclusion of the Diplomatic Conference, that it would be appreciated if all delegations could assist in this task by identifying translation issues, and that the President had indicated his intention to provide for a period of time after the conclusion of the Diplomatic Conference for linguistic changes to be made in the texts and for comments to be made on the instruments.

The DELEGATION OF ARGENTINA stated that it was concerned that the translation issues it had identified related not only to grammatical and language issues but also to issues of substance, that it was difficult to see how there would be sufficient time to address those issues prior to the conclusion of the Diplomatic Conference, and that the Commission had been working solely in English and each time a translation issue had been identified the response had been that the translation issues would be examined subsequently.

The CHAIRMAN stated that the intention had always been that language translation errors that were conveyed to the Secretariats would be addressed, and that it was hoped that the language groups would work to identify the parts of the text that raised issues and to bring them to the attention of the Secretariats.

The DELEGATION OF CANADA stated that it supported the comments of France and Argentina, that the issues that had been identified in the translations of the Draft Convention involved more than mere translation issues, that each of the language versions of the Draft Convention would hold the same weight, that it would be difficult to correct all the difficulties involved in all the language versions because the Commission had been concentrating on the English text, that it required clarification about the process that would be followed in order to remedy all the difficulties which were more than mere grammatical or translation issues, that one example was that the word “interest” in the English text had been translated in the French text as “*garantie*” and in the Spanish text as “*garantias*” but that it was obvious that in the English text the word “interest” was more encompassing and went much further, that this would lead to contradictory results according to whether the English, French or Spanish texts were used, that this would be particularly relevant in relation to articles dealing with priority, that another example could be found in Article 28 of the Draft Convention, that in the English version of Article 28 of the Draft Convention the phrase: “interest in or right over” was used in Article 28(3*bis*) whereas Article 28(3) did not include the word “right”, that it would be difficult to translate that distinction into the French version of the text and it would take quite some time to do that, that it would be essential that versions other than the English version received the necessary attention to ensure that those using non-English versions of the text arrived at the same conclusions as those using the English version of the text.

The CHAIRMAN stated that the problem raised by Canada had been identified, that it had been recognised that some terms in the English version of the Draft Convention had not been effectively translated, that the Secretariats would be working to ensure that these issues were addressed, that in light of the large amount of work remaining to be addressed in the Commission it would be preferable for the various language groups to meet to identify problems and to advise the Secretariats, and that every effort would be made to ensure that all the authentic versions of the Draft Convention were the same.

The DELEGATION OF THE UNITED ARAB EMIRATES stated that it had a concern regarding Article 27(1*bis*) of the Draft Convention to the extent that it provided that the Registrar would not be liable for acts or circumstances for which the Registrar and its officers and employees were “not

responsible arising prior to” receipt of registration information, that it was unclear whether acts that arose after receipt of registration information but for which the Registrar was not responsible would give rise to liability or whether acts which the Registrar was responsible for but which arose prior to the receipt of information would give rise to liability, and that the word “and” should be added after the phrase: “not responsible” in Article 27(1*bis*) of the Draft Convention.

The DELEGATION OF SOUTH AFRICA stated that there was a contradiction between Article 27(1) of the Draft Convention and Article 27(1*bis*) of the Draft Convention, that Article 27(1) of the Draft Convention provided that the Registrar would be liable for damages arising as a result of an error or omission but Article 27(1*bis*) of the Draft Convention provided that the Registrar was not similarly liable for an error or omission, that the Registrar would have to deal with information received in good faith and if it did not act in good faith it should be held liable, and that the phrase: “in good faith” should be added after the word “Registrar” where it appeared in Article 27(1*bis*) of the Draft Convention.

The DELEGATION OF SPAIN stated that the language issues that needed to be addressed went beyond questions of translation and concerned the interpretation of the Draft Convention, that if those issues were not addressed it would not be possible to sign the Draft Convention at the conclusion of the Diplomatic Conference, that there were serious omissions in some of the language versions which would lead to confusion, that it shared the concern of Argentina that there would not be sufficient time to correct all these issues prior to the conclusion of the Diplomatic Conference, and that it required clarification about the process to be followed if not all the language issues were able to be corrected prior to the conclusion of the Diplomatic Conference.

The CHAIRMAN stated that the SECRETARY GENERAL (ICAO) would provide further clarification regarding the translation process.

The SECRETARY GENERAL (ICAO) stated that the concerns regarding the translation process had been noted, that the translation services had been producing documents in six languages within short timeframes overnight and it was understandable that there could be some imperfections in some documents, that in order to produce authentic texts it would be necessary to take care of all shortcomings that delegations identified, that there would be a number of procedures for taking care of shortcomings, that prior to 16 November 2001 all delegations that had identified shortcomings would be requested to advise the translation services and provide annotations, that after the adoption of the texts the President would announce that the Secretariats would have the authority of the President to make changes affecting linguistic issues, and that the issues that had been raised really concerned the issue of the precision with which the English-language version of the texts could be properly translated into the other official languages.

The DELEGATION OF SUDAN stated that registration for the purposes of Article 15(1) and (4) of the Draft Convention should be available in the official languages when this was requested.

The SECRETARY GENERAL (UNIDROIT) stated that DCME-IP/4 was relevant to the issue raised by Sudan, that DCME-IP/4 contained a draft set of regulations which identified the language issue, that the language issue would be considered during further processes for the development of the International Registry, and that this would occur outside of the development of the text of the Draft Convention.

The DELEGATION OF JAMAICA stated that Article 27(1*ter*) of the Draft Convention related to the possibility of reducing compensation to a person who caused damage or contributed to the damage, that it was having difficulty understanding how damage could be caused by a person who was seeking compensation, that the Commission had discussed the issue of contributory negligence which had been expressed in the Draft Convention in permissive terms because some legal systems did not recognise contributory negligence, that although the liability of the Registrar was strict it would in

fact be for damage suffered by a person directly resulting from an act or omission of the Registrar, that if the damage was caused by a person who was seeking compensation it would be difficult to understand how that person could be eligible for compensation, and that it proposed that the word “caused” be deleted from Article 27(1*ter*) of the Draft Convention.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that linguistic issues were common occurrences at Diplomatic Conferences, that the practice that had been employed in the Organization of American States was for the Secretariat to circulate texts for comment and linguistic correction and then to recirculate the texts in final form, and that this practice had worked very effectively.

The DELEGATION OF THE UNITED KINGDOM stated that it agreed with the United States of America’s proposal that the title of Article 27 of the Draft Convention be changed from “Liability and Insurance” to “Liability and Financial Assurances”, that it agreed with the proposal of the United Arab Emirates to amend Article 27(1*bis*) of the Draft Convention by adding the word “and” after the phrase: “not responsible”, that it considered that Article 27(1) and (2) of the Draft Convention were not inconsistent because Article 27(1) of the Draft Convention would deal with errors and omissions of the Registrar and Article 27(2) of the Draft Convention would deal with factual accuracy or inaccuracy of information coming in from other sources and transmitted by the Registrar, that there would be an entirely electronic system that would not involve human intervention of any kind, that computers would receive and check data transmitted for registration and there would be no scope for human intervention or examination of information received by the International Registry, that the Registrar would also have no control over what was transmitted by the International Registry in the form in which it was received, that to incorporate the concept of good faith would be inconsistent with the automatic and electronic nature of the system, that, in relation to the issue raised by Jamaica, the Draft Convention provided that compensation would be able to be reduced to the extent that the person who suffered the damage caused or contributed to that damage, that it might be said that the phrase: “to the extent that” in Article 27(1*ter*) of the Draft Convention made the phrase: “contributed to” redundant but it would do no harm to retain that phrase, and that there would be a possibility of something slipping through the net if the words “caused or” were removed.

The CHAIRMAN stated that the title of Chapter VII of the Draft Convention would be changed to “Liability and financial assurance”, and that Article 27(1*bis*) of the Draft Convention would be amended by adding the word “and” after the phrase: “not responsible”.

The DELEGATION OF THE UNITED KINGDOM stated that there were no difficulties with Chapters VIII, IX, X and XI of the Draft Convention.

The DELEGATION OF FRANCE stated that, if Article 32(1)(c) of the Draft Convention were to disappear, it would be necessary to amend Article XV of the Draft Protocol to change the reference to sub-paragraph (d) to a reference to sub-paragraph (c), and that it agreed with the comment of Jamaica that the word “caused” should be deleted from Article 27(1*ter*) of the Draft Convention.

The CHAIRMAN stated that those delegations that supported the amendment of Article 27(1*ter*) of the Draft Convention should present compromise wording for consideration by the Commission.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that the Commission had adopted the language in DCME Doc No. 67 regarding the EUROCONTROL issue, that Article 27(1*ter*) of the Draft Convention contained a footnote that indicated that it would be necessary to align Article 27(1*ter*) of the Draft Convention with DCME Doc No. 67, that there had been informal consultations with the members of the Drafting Committee and that an informal drafting proposal would address the alignment of Article 27(1*ter*) of the Draft Convention with DCME Doc No. 67.

The DELEGATION OF JAPAN stated that it would distribute a written proposal for minor changes to Article 30(1) and (2) of the Draft Convention which would address the concerns that had been raised by Singapore.

The CHAIRMAN stated that Singapore had indicated its willingness to agree to the compromise that had been reached.

The DELEGATION OF SINGAPORE stated that the Chairman had misunderstood its position, and that its view had not changed.

The CHAIRMAN stated that Japan, Singapore and other interested delegations should undertake informal consultations in order to reach a compromise position as quickly as possible.

The DELEGATION OF GERMANY stated that it had a serious concern with Article 28(3*bis*) of the Draft Convention as proposed by the Drafting Committee in DCME Doc No. 71, that proposed Article 28(3*bis*) of the Draft Convention would not be sufficient to protect the possessor of an object that had fulfilled all its obligations as lessee, that a lessee airline would have quiet possession of an aircraft only if its lessor had registered its interest in time, that the airline would not be able to protect itself because the registration would need the consent of the lessor, that, if there was a lease and sub-lease of an aircraft and the sub-lessee fulfilled its obligations but the lessee defaulted, the sub-lessee would not be protected if there was no international interest of the sub-lessee registered, that this would be a dramatic curtailment of the protection of airlines compared with the current situation in some legal systems, that this was why some airlines strongly opposed the provision, that in light of the difficult situation of many airlines it was questionable whether it would be appropriate to cut their protections, that in order properly to protect airlines any person who possessed an object pursuant to a contract and who was not in default should have their possession protected against any holder of an interest registered after the conclusion of that contract, and that Article 28(3*bis*) of the Draft Convention should be amended by adding the phrase: “subject to an interest prior to this acquisition”.

The DELEGATION OF AUSTRALIA stated that it supported the comments of Japan, and that there was scope to clarify Article 30 of the Draft Convention to address the concerns that had been raised by Singapore.

The DELEGATION OF LEBANON stated that the title of Chapter IX of the Draft Convention gave the impression that it would deal with the assignment of associated rights and the assignment of international securities and of subrogation rights, that it only dealt with the assignment of associated rights and international interests and rights of subrogation, that it did not deal with the assignment of international securities as it had previously done, and that the title of Chapter IX of the Draft Convention should be amended by adding the phrase: “and relating to”.

The CHAIRMAN invited Lebanon to consult with the Chairman of the Drafting Committee regarding the appropriate wording for the title of Chapter IX of the Draft Convention.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it was also speaking on behalf of the International Air Transport Association, that it did not agree with the proposal of Germany, that Article 28(3*bis*) of the Draft Convention as proposed by the Drafting Committee in DCME Doc No. 71 had been carefully negotiated and represented a substantial consensus which reflected a fair balance, that a lessee would be able to protect its position by deferring entering into a transaction until the lessor and lessee had consented, that Article XV*bis* of the Aircraft Protocol stated that when matters were arranged contractually the lessee would have quiet enjoyment, that this would be a considerable advance in most legal systems around the world, that it believed that the few airlines that continued to have difficulties would find it to be an enormous step forward after further analysis, that proposed Article 28(3*bis*) of the Draft Convention would facilitate credit for airlines, and that the German proposal would permit interests that were not registered in the International

Registry which would be contrary to the fundamental principles of the International Registry and the Draft Convention.

The DELEGATION OF THE UNITED ARAB EMIRATES stated that it shared the concerns that had been expressed by Germany and supported the German proposal.

The DELEGATION OF SPAIN stated that it supported the German proposal.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it agreed with the comments of the Aviation Working Group, that Article 28(3*bis*) of the Draft Convention had been supported by every delegation in the Drafting Committee except Germany, that it represented a careful compromise to balance and bring into symmetry the right of quiet possession with priorities, that a lessee would simply need to ensure that its lease was registered in the International Registry before going forward, that this would protect the lessee and would also protect other potential lessees and sub-lessees who would not be misled by the secret interest, that the German proposal would not work as it would require a wholesale reconfiguration of Article 28(3*bis*) which would fly against the principles of public notice in the International Registry and the basic priority rules, that it urged the Commission to accept the compromise that had been reached in the Drafting Committee for priority and quiet enjoyment and to accept the principle of publicity that proposed Article 28(3*bis*) of the Draft Convention represented.

The DELEGATION OF SOUTH AFRICA stated that during the discussions in the Drafting Committee concerning Article 28(3*bis*) of the Draft Convention the African States had made a special plea regarding the issue of quiet possession of various classes of possessors, that it had become apparent that protection would only be able to be afforded if the right in question had been entered in the International Registry, that it had hoped that the Drafting Committee would be able to find a solution to that limitation but that this had not been possible, that it believed that the whole principle of the Draft Convention was based on registration of interests, that if an interest could not be registered it would give rise to a problem because to extend the protection of the Draft Convention as proposed by Germany to unregistered interests would be contrary to the principle of registration, that the African States believed that something could have been worked out but that any solution would need to be based on the fact that interests would need to be registered, that if an interest could be protected without registration there would be no protection for creditors, that it strongly agreed with the views that had been expressed by the Aviation Working Group which echoed the principles of the Draft Convention, that, while the Commission sought to afford protection to both the creditor and the debtor, it should acknowledge that the basis of the Draft Convention was the international registration system, and that it would not be possible to allow a situation whereby an interest was afforded protection without being registered.

The DELEGATION OF THE NETHERLANDS stated that it fully supported Article 28(3*bis*) of the Draft Convention as proposed by the Drafting Committee in DCME Doc No. 71, and that it agreed with the comments of the Aviation Working Group, South Africa and the United States of America.

The DELEGATION OF ARGENTINA stated that it supported the comments of South Africa on behalf of the African States and the positions of the Aviation Working Group, the Netherlands and the United States of America.

The CHAIRMAN stated that three delegations had supported an amendment to Article 28(3*bis*) of the Draft Convention as proposed by the Drafting Committee in DCME Doc No. 71, that a number of delegations that had previously been opposed to the Article were now prepared to accept the compromise wording proposed in Article 28(3*bis*) of the Draft Convention, that it would be preferable not to disturb the compromise that had been developed by the Drafting Committee, that, as there were no further requests for interventions, it would be taken that Germany and the other two

delegations would not maintain their concerns, that Article 28(3*bis*) of the Draft Convention as proposed by the Drafting Committee in DCME Doc No. 71 would be approved.

The DELEGATION OF TURKEY stated that it supported the explanation and position of the Aviation Working Group as well as the delegations of the Netherlands, South Africa and the United States of America.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported the proposed change to Article 30(2) of the Draft Convention that had been proposed by Japan in DCME Doc No. 73, that it understood that, if the proposed change to Article 30(2) of the Draft Convention was adopted, Japan would withdraw its proposal to modify Article 30(1) of the Draft Convention, that it had discussed with Japan the need for a few technical wording changes to their proposal to amend Article 30(2) of the Draft Convention which would retain the first sentence in square brackets, that it fully supported the substance and principle being proposed, and that the Chairman of the Drafting Committee would be able to undertake any minor technical drafting changes that would be required.

The DELEGATION OF JAPAN stated that its proposals were set out in DCME Doc No. 73, that it proposed to delete the chapeau phrase from Article 30(1) of the Draft Convention, that the sentence in square brackets in Article 30(2) of its proposal was not necessary because every jurisdiction provided that basic principle and that, if a debtor and creditor specifically prohibited a partial assignment of associated rights in a contract, the sentence could be interpreted to supersede such an agreement, that it would be flexible in the spirit of compromise and could accept the sentence being retained, and that it acknowledged that the second sentence in Article 30(2) of its proposal would require some minor technical drafting changes.

The DELEGATION OF SINGAPORE stated that it agreed with the Japanese proposals in DCME Doc No. 73 and that those proposals would address the concerns that it had raised.

The CHAIRMAN stated that it had been agreed that, in accordance with the Japanese proposal, one sentence would be added to Article 30(2) of the Draft Convention subject to any absolutely necessary drafting amendments still to be made.

The DELEGATION OF FRANCE stated that it required clarification regarding the precise text of the proposed sentence to be added to Article 30(2) of the Draft Convention.

The CHAIRMAN stated that the sentence to be added to Article 30(2) of the Draft Convention would read: “The assignor and assignee may agree as to their respective rights concerning the related international interest transferred under the preceding paragraph, provided, however, that such agreement may not have any effects on the debtor unless so agreed by the debtor”, and that this would be reformulated by way of drafting insofar as was necessary. The Chairman stated that the remaining issues included Article 61, which was the subject of informal consultations, and Article 27(1*ter*), and that it would then be possible to discuss Chapter XII and Chapter XIII of the Draft Convention.

The DELEGATION OF THE UNITED KINGDOM stated that in DCME Doc No. 71 the Drafting Committee had proposed to amend Article 41(1) of the Draft Convention to make it clearer because there had been concerns about the phrases: “chosen by the parties as having exclusive jurisdiction” and “unless otherwise agreed between the parties”, that Article 41(2) of the Draft Convention represented the results of the EU Group compromise, that Article 42(2) of the Draft Convention had simply been rearranged to correct an error in the original formulation which had referred to the enforcement of such relief limited to the territory of the forum as governing both courts on the territory on which the debtor was situated and courts of a Contracting State chosen by the parties, that Article 43(3) of the Draft Convention had been amended by adding the phrase: “or make orders against the Registrar”, that an example of when such orders might be made was that in the course of proceedings against the Registrar there might be procedural orders of one kind or another, that Article 44*bis* also involved the EU Group compromise, and that footnote 18 was a proposal for what would be Article 60.

The DELEGATION OF EGYPT stated that it required clarification regarding whether DCME Doc No. 70 would be discussed.

The CHAIRMAN stated that DCME Doc No. 70 would be discussed following the current discussion.

The DELEGATION OF THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW stated that it had a number of observations in relation to Article 42 of the Draft Convention, that the English version of Article 42(1) of the Draft Convention used the term “may exercise jurisdiction” while the French version was clearer because it stated that courts “have jurisdiction”, that the use of the terms “may have” or “may exercise jurisdiction” could lead to uncertainties because a court might think that its jurisdiction was conditioned by national law, that the French version should be adopted and the Article should say “may actually have jurisdiction to grant relief”, and that it was clear under all laws that once a court had jurisdiction it could actually decline jurisdiction because the request was outside the framework of the Article or it could refuse to grant the interim measures that were requested because it considered that they did not meet the conditions set out in Article 12 of the Draft Convention. It stated that, in relation to the rearrangement of Article 42(2) of the Draft Convention, paragraph (a) stated that the jurisdiction might be exercised by the courts chosen by the parties, that if the debtor was not situated in the jurisdiction of that court the provision would not be practical because it would mean that the court would render an interim measure that would be *in personam* and the creditor would need to seek recognition and enforcement of the interim measure in a court of a Contracting State where the debtor was situated, and that this would take a lot of time and would not meet the concerns of creditors of getting speedy relief. It stated that paragraphs (a) and (b) in Article 42(2) of the Draft Convention had been previously drafted so that they could be used in conjunction, that it hoped that the word “or” would be read in its conjunctive form, that if this was not the case it would mean that if the party went to the court chosen by the parties it would not be able to go to the courts specified in paragraph (b), that the debtor in an international context could be situated in several different countries and the use of the word “or” could preclude the necessary degree of flexibility, and that this issue could be addressed in the official commentary with an indication that “or” was sometimes used in the conjunctive form.

The DELEGATION OF THE UNITED KINGDOM stated that it agreed that it would be preferable for the phrase: “have jurisdiction” to be used in Article 42(1) of the Draft Convention, that the second point raised by the Hague Conference on Private International Law related to a practical problem, that the text of Article 42(2) of the Draft Convention reflected what had been agreed but that it was correct that if a debtor was not in the courts of the jurisdiction chosen by the parties that would be a fact that would need to be addressed, that this was true of any *in personam* orders that were sought where the parties had chosen a given forum and the debtor was not there, that the reformulation was not intended to change the substance but that it was possible that an additional word would clarify the situation, that the intention was that both limbs of Article 42(2) of the Draft Convention would be operative so that the courts would have jurisdiction if they had been chosen by the parties and alternatively if the debtor was situated in the territory, that if it were considered necessary the word “either” could be incorporated, and that it would be possible to include an explanatory comment in the official commentary.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it had no objection to the first proposal of the Hague Conference on Private International Law, that in informal consultations about the proposal it had been explained that substituting the word “have” for the word “may” in Article 42(1) of the Draft Convention would not divest a court of its otherwise applicable grounds upon which to refuse jurisdiction in certain limited circumstances, that, in relation to the second proposal of the Hague Conference on Private International Law, it agreed with the United Kingdom that the concern of the Hague Conference on Private International Law was a common problem in everyday financing practice, that financing contracts relating to aircraft virtually always involved

agreements of the parties as to their ability to submit to jurisdiction, and that the third proposal could be accommodated to clarify the issue by using the phrase: “and/or” to clarify that it was either an alternative or a conjunctive reading.

The CHAIRMAN stated that a proposal would normally need to be printed and supported by at least two delegations in order to be accepted, that in light of the time constraints it would be possible to proceed based on the proposals that had been made, that it appeared sensible to amend Article 42(2) of the Draft Convention to clarify that a court would have jurisdiction and that it would then be for the court to decide whether it would exercise that jurisdiction, and that there would be no difficulty in adding the words “and/or” in Article 42(2) of the Draft Convention.

The DELEGATION OF GHANA stated that “and/or” would not be an acceptable form of drafting, that the phrase: “and or or” should be used, and that a “/” should not be used.

The CHAIRMAN stated that the drafting issues would be determined by the Chairman of the Drafting Committee on the basis that either Article 42(2) of the Draft Convention would be amended or a comment would be included in the official commentary, and that the intention was to clarify that paragraphs (a) and (b) in Article 42(2) of the Draft Convention would be complementary bases for jurisdiction.

The DELEGATION OF CANADA stated that it supported the proposal to amend Article 42(1) of the Draft Convention, that it agreed with Ghana it would not be appropriate to use the phrase: “and/or” in Article 42(2) of the Draft Convention, and that it agreed that the Chairman of the Drafting Committee should determine the appropriate drafting solution.

The DELEGATION OF THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW stated that the phrase: “may exercise jurisdiction” appeared in Article 42(1) and (3) of the Draft Convention and that the word “may” appeared in Article 42(2) of the Draft Convention, and that its comments were directed to all three of these provisions.

The CHAIRMAN stated that the proposal of the Hague Conference on Private International Law had been supported and that the Chairman of the Drafting Committee would examine the best way to implement the proposal. The Chairman stated that the Commission would discuss DCME Doc No. 70 which related to Chapter XIII and which was the product of an extensive consultation process.

The DELEGATION OF EGYPT stated that the first paragraph of the proposal contained in DCME Doc No. 70 applied only to aircraft, railway rolling stock and space assets, that in the future it would be possible for the Draft Convention to apply to other categories of mobile equipment, that the first paragraph should be amended to cover mobile equipment that was the subject of any future protocol, that it was concerned about the form of the proposal, that it would be unprecedented for a convention to include an Article whose numbering included “*bis*”, that it would be preferable to avoid this problem by referring to the subject-matter of the United Nations Commission on International Trade Law convention rather than to the convention itself, and that the Draft Convention should include a provision that stated that the Draft Convention prevailed over any convention on assignment of receivables in international trade.

The CHAIRMAN stated that the proposal contained in DCME Doc No. 70 was the result of a compromise and that the comments of Egypt went to the core of the compromise.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it did not support the comments of Egypt, that the proposal contained in DCME Doc No. 70 was a result crafted from deliberations and that it reflected exactly the carefully negotiated understanding with the United Nations Commission on International Trade Law as to how the interests of both bodies and both conventions would be divided, that it could not under any circumstances support a change in that carefully negotiated arrangement, that it could not support the inclusion in the Draft Convention of

very general language that the Draft Convention would prevail, that this option had been previously considered but had been rejected because of the very considerable uncertainties that it would create in a financing convention, and that in a financing convention it was necessary to confine very carefully and exactly any statement made regarding other conventions.

The CHAIRMAN stated that although Egypt had concerns with the proposal contained in DCME Doc No. 70, it would be able to accept the proposal. The Chairman stated that the Commission would next discuss the proposed amendments to the Draft Protocol before returning to the transitional provisions of the Draft Convention.

The DELEGATION OF GERMANY stated that there was an outstanding issue regarding Article 50 of the Draft Convention.

The CHAIRMAN stated that the Drafting Committee had suggested that the issue regarding Article 50 of the Draft Convention be dealt with by way of amending certain definitions.

The DELEGATION OF THE UNITED KINGDOM stated that the effect of the amendments to the definition would be that, where a Contracting State excluded the application of the Draft Convention to internal transactions, it would not be open to a party to an internal transaction to register an international interest but only to register a national interest, that in order for that to happen there would need to be some registration machinery available in the country concerned and that this was why the reference to national registration systems had been moved from the definition of “notice of national interest” to the definition of “internal transaction”, that a Contracting State would only be able to make a declaration excluding internal transactions if it did have the registration machinery in place by which a notice of a national interest could be transmitted to the International Registry, that notwithstanding the exclusion of internal transactions certain provisions of the Draft Convention would apply, including the priority rules governing registration and certain provisions of Chapter III of the Draft Convention dealing with relations between the parties, and that the purpose was to ensure that a notice of national interest could only relate to a transaction when all the elements were situated in one Contracting State and that Contracting State had the necessary registration machinery available through which to transmit a notice of a national interest.

The CHAIRMAN stated that Article 50 of the Draft Convention as presented in the first part of DCME Doc No. 57 would remain unaltered, in addition to the formulations of definitions which appeared in Article 1 of the Draft Convention.

The DELEGATION OF GERMANY stated that the issue referred to by the United Kingdom was not the same issue that it had referred to, that footnote 3 in Appendix I to DCME Doc No. 71 included a recommendation of the Drafting Committee that a new paragraph 3 be inserted into Article 48 of the Draft Convention, that Article 48 of the Draft Convention was now Article 50 of the Draft Convention, and that the Commission had not examined that proposal.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it supported the recommendation of the Drafting Committee contained in footnote 3 in Appendix I to DCME Doc No. 71, and that it required clarification that the substantive Article dealing with internal transactions would refer to the application of internal transactions and not to national interests.

The CHAIRMAN stated that there had been no objections to the recommendation of the Drafting Committee contained in footnote 3 in Appendix I to DCME Doc No. 71, and that that recommendation would be accepted.

The DELEGATION OF THE UNITED KINGDOM stated that it would present the amendments to the Draft Protocol that had been recommended by the Drafting Committee in Appendix II to DCME Doc No. 71, that there had been a proposal to amend the final preambular statement by adding the phrase: “and of the importance of taking into account the provisions of that Convention in the

implementation of this Protocol”, that the Drafting Committee had considered that such an amendment might have unintended legal implications because it might suggest that in interpreting the Draft Convention it would be necessary to have regard to the *Chicago Convention on International Civil Aviation*, that this was not what had been intended, and that the Drafting Committee had therefore concluded that it would be sufficient to say: “mindful of the principles and objectives of the Chicago Convention”. It stated that Article VIII of the Draft Protocol as presented in Appendix II to DCME Doc No. 71 should begin with a statement that the Article applied only where a Contracting State had made a declaration under Article XXXVIII(1) of the Draft Protocol, and that the Drafting Committee agreed that that formulation should be used for every substantive provision that was subject to a declaration. It stated that the original text of Article IX(3) of the Draft Protocol had indicated that, if there was a provision in the agreement as to what was to be treated as commercially reasonable, then that provision would be conclusive, and that this provision had been objected to and had been replaced by a new Article which broadened the application of Article 7(3) of the Draft Convention to make it applicable to charges, conditional sales and leases and to provide that a remedy would be deemed to be exercised in a commercially reasonable manner where it was in conformity with the provisions of the agreement except where such provisions were manifestly unreasonable. It stated that the Drafting Committee had recommended in Appendix II to DCME Doc No. 71 that there be a new Article IX(5) of the Draft Protocol which would be subject to applicable safety laws and which would state the conditions in which the International Registry authorities would have to honour requests for deregistration and export, and that the Drafting Committee had recommended in Appendix II to DCME Doc No. 71 that there be a new Article IX(6) of the Draft Protocol which would match the provisions of Chapter III of the Draft Convention and would provide that, if the remedies of deregistration and export were to be exercised other than pursuant to a court order, that notice would need to be given of the intention to do so to all the relevant interested parties. It stated that the Drafting Committee had recommended in Appendix II to DCME Doc No. 71 that there be a new Article X(7) of the Draft Protocol to clarify that Article X(2) and (6) of the Draft Protocol would be subject to applicable aviation safety laws and regulations. It stated that the Drafting Committee had recommended in Appendix II to DCME Doc No. 71 that Alternative A and Alternative B in Article XI of the Draft Protocol be amended by adding the phrase: “other than a default constituted by the opening of insolvency proceedings” because one of the defaults that would not be able to be cured would be a default that arose in the case of insolvency.

The CHAIRMAN stated that the discussion of Appendix II to DCME Doc No. 71 would continue following the lunch break.

The meeting rose at 13:00

COMMISSION OF THE WHOLE – SIXTEENTH MEETING

Wednesday, 14 November 2001, at 14:00

President: Professor Medard Rutoijo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.)

AGENDA ITEM 9 – CONSIDERATION OF THE DRAFT PROTOCOL (CONT.)

The CHAIRMAN stated that the discussion of Appendix II to DCME Doc No. 71 would continue and would be followed by a discussion of Article 60 of the Draft Convention.

The DELEGATION OF THE UNITED KINGDOM stated that the Drafting Committee had recommended in Appendix II to DCME Doc No. 71 that Article X(3)(e) of the Draft Protocol be amended to include a requirement that the parties would need specifically to agree on the sale and application of proceeds of a sale. It stated that it had earlier stated that each Article that was subject to a declaration would be covered by a provision in the substantive Article, and that it had omitted to say that this would depend upon whether the Article was an opt-in or opt-out article. It stated that the Drafting Committee had recommended in Appendix II to DCME Doc No. 71 that Article XIV(2) of the Draft Protocol be amended to remove the reference to the word “pass” and to replace it with the phrase: “not be affected by” because the word “pass” was not appropriate in the case of removals. It stated that the Drafting Committee had recommended in Appendix II to DCME Doc No. 71 that Article XIV(3) of the Draft Protocol be amended because it had omitted helicopters, and that it should read “Article 28(6) of the Convention applies to an item other than an object installed on an airframe, aircraft engine, or helicopter”, and that Article 28(6) of the Draft Convention provided that the Draft Convention did not determine certain rights of a person in an item held prior to its installation on an object. It stated that Article XV of the Draft Protocol was linked to the discussion about Article 32(1)(c) of the Draft Convention, that in the amendments to Article XV recommended by the Drafting Committee in Appendix II to DCME Doc No. 71 the reference should be to Article 32(1) of the Draft Convention and not to Article 32(2) of the Draft Convention, and that Article 32(1)(c) of the Draft Convention had been deleted and that had left a requirement of consent in writing by the debtor because the requirement of consent had disappeared from the Draft Convention. It stated that Article XV^{bis} was an important Article which combined for the Draft Protocol the elements that were originally in Article 14^{bis} of the Draft Convention as proposed by the African States, and that the Drafting Committee had recommended in Appendix II to DCME Doc No. 71 that Article XV(1^{bis}) of the Draft Protocol should lay down the general principle that, if the debtor was not in default, it would be entitled to quiet possession and use of the object in accordance with the agreement and it would be entitled to do so as against the creditor and as against an interest not registered and as against a senior creditor that had agreed to subordinate its interest. It stated that the Drafting Committee had recommended in Appendix II to DCME Doc No. 71 that Article XVI of the Draft Protocol provide that the Supervisory Authority would be identified by way of a resolution adopted by the Diplomatic Conference and that it provide a process for identifying another Supervisory Authority if the designated body was not willing or able to act, that the Drafting Committee had proposed that Article XVI(2^{bis}) of the Draft Protocol provide that, if the Supervisory Authority already enjoyed immunity under its Host State Agreement or a provision of the Convention under which it was constituted, it would continue to enjoy that immunity, that the Drafting Committee had proposed that there be a Commission of Experts to assist the Supervisory Authority in the discharge of its functions and which would be drawn from among the signatory and Contracting States, that Article XVII of the Draft Convention related to the designation of entry points for the transmission of information, and that, in relation to aircraft engines, a designation would be able to permit but not to compel the use of an entry point. It stated that the Drafting Committee had recommended in Appendix II to DCME Doc No. 71 that Article XIX of the Draft Protocol be amended to refer to “working days” instead of “calendar days”, that the Drafting Committee had recommended that Articles XIX(5) of the Draft Protocol, which would deal with the way in which the amount of the insurance or financial guarantee which had to be provided would be fixed, should include the phrase: “shall in respect of each event be not less than the maximum value of an aircraft object as determined by the Supervisory Authority”, that this amendment was part of the compromise package that had been worked on by the informal group chaired by Sweden, and that the Drafting Committee had recommended that Article XIX(6) of the Draft Protocol be clarified to indicate that nothing would preclude the Registrar from procuring insurance or financial guarantees covering events for which the Registrar itself would not be liable under the Draft Convention.

The DELEGATION OF JAMAICA stated that it should be made clear that Article 82 of the *Chicago Convention on International Civil Aviation* provided that the provisions of the Chicago Convention

applied to and superseded any other existing international instruments and that the State Parties to the Chicago Convention undertook not to enter into any agreements that were inconsistent with the Chicago Convention, that it had been proposed that Article XVI(2*bis*) of the Draft Protocol provide that the Supervisory Authority and its officers and employees would enjoy such immunity from legal and administrative process as was provided for under the rules applicable to them, that it was not clear whether the rules applicable to them would be rules that were applicable to them in their capacity as Supervisory Authority, that it was possible that there would be no rules applicable to them in their capacity as Supervisory Authority, and that it would be preferable for Article XVI(2*bis*) of the Draft Protocol to use the phrase: “as is provided under the rules applicable to them as an international entity or otherwise”.

The CHAIRMAN stated that the Jamaican proposal would clarify the intention of Article XVI(2*bis*) of the Draft Protocol.

The DELEGATION OF TURKEY stated that it required clarification as to why aircraft engines would be excluded from the scope of Article XVIII(2).

The DELEGATION OF EGYPT stated that during the discussions about the Draft Convention’s insolvency provisions it had raised concerns about the way that the concept of bankruptcy was referred to, that the same solution to that issue should be adopted in relation to the Draft Protocol, and that Article I(1)(m)(i) of the Draft Protocol should refer to “insolvency proceedings, liquidation or any other collective judicial administrative measures”.

The CHAIRMAN stated that Article I(1) of the Draft Protocol provided that the terms used in the Draft Protocol would have the same meaning as in the Draft Convention, that the concept of “insolvency proceeding” was already defined in the Draft Convention, and that it would not be necessary to amend Article I(1) of the Draft Protocol.

The DELEGATION OF EGYPT stated that if the definition of “insolvency proceeding” was repeated in the Draft Protocol it would make its meaning clear, that Article I(1) provided a very general principle, and that a specific definition of “insolvency proceedings” in the Draft Protocol would solve the problem.

The DELEGATION OF THE IVORY COAST stated that the phrase: “in the absence of default” in Article XV*bis* of the Draft Convention should be replaced by “except in case of a default” because “in the absence of default” meant that something was missing, and that if something was missing it would be possible to do something else, whereas if there was a lack the debtor would not be able to benefit from the rights it would be entitled to.

The DELEGATION OF SUDAN stated that there was a major mistake in the Arabic translation of Article XIX(5) of the Draft Protocol, that the phrase: “shall not be less” had been translated as “shall never reach”, and that this error undermined the entire paragraph.

The CHAIRMAN stated that everything possible would be done to ensure that the six language versions of the Draft Convention and the Draft Protocol were compatible.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that the word “but” should be inserted into the final line of Article XIV(1) of the Draft Protocol, that this proposal had been submitted to the Drafting Committee without objection, that if that amendment was not made, Article XVI(1) would purport to subordinate to a previously registered interest only a buyer under a registered contract, that there was no priority rule for a buyer where the contract was not registered, and that it would be important to subordinate all buyers’ interests to a previously registered interest.

The DELEGATION OF GREECE stated that it did not agree with the Egyptian proposal regarding Article I of the Draft Protocol, that, in light of the fact that there was a definition of “insolvency

proceedings” in Article 1 of the Draft Convention, a definition in the Draft Protocol would create the impression that it was intended to have a different meaning.

The DELEGATION OF GERMANY stated that the proposal of the United States of America would involve a very substantial change and that it would be necessary to consider that proposal carefully, that the proposal seemed to recommend that there be a priority rule for non-registered sales, and that the United States of America had objected to a German proposal to extend the priority rule in Article 28 of the Draft Convention to non-registered leases because they would not be registered.

The DELEGATION OF INDIA stated that it agreed with the comments of Germany, that the proposal of the United States of America would pose a drafting problem because the existing version of Article XVI(1) was a complete sentence, and that the United States of America’s proposal should be presented in the form of a new sentence.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it understood that the United States of America’s proposal was that if a buyer did not register its interest under Article XIV(1) of the Draft Protocol it would not have priority, that it appeared that the rule would only apply to registered contracts and that by implication that meant that an unregistered buyer would have special rights, and that it required clarification from the United States of America regarding its proposal.

The DELEGATION OF CANADA stated that it required clarification in relation to the United States of America’s proposal regarding whether the term “unregistered interest” in Article XIV of the Draft Protocol would include not only an interest in the sense of a security interest or a security right but also an unregistered property right or the ownership right of a purchaser under an unregistered sale.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that the understanding of Canada was correct, that it was possible that the language of its proposal would require examination, that the proposal was intended to do nothing more than to bring Article XIV(1) of the Draft Protocol into conformity with Article 28(3) of the Draft Convention, that the only reason that Article XIV(1) was in the Draft Protocol to provide for the priority or subordination of a buyer was because it would be possible to register a contract of sale under the Draft Protocol, that under the Draft Convention it would not be possible to register a contract of sale, that under Article 28(3) of the Draft Convention it was clear that a buyer would take its interest subject to an interest registered at the time that the buyer bought the interest, that the proposal would not give priority to an unregistered interest, that the proposal would simply clarify that a buyer would buy and take its interest subject to an earlier registered interest, that the problem with Article XIV(1) of the Draft Protocol was that it would only deal with buyers who registered their interest so that the final clause of that Article referred back to the buyer under a registered contract and would subordinate a buyer that had registered its sale, that Article XIV(1) of the Draft Protocol was silent in relation to the case where the buyer did not register its interest and that because it replaced Article 28(3) of the Draft Convention there was no residual rule, that Article XIV(1) of the Draft Protocol had omitted the priority rule that a registered or unregistered buyer would take their interest subject to a previously registered interest, and that this was the principle that had been accepted throughout the development of the Draft Convention.

The DELEGATION OF THE UNITED KINGDOM stated that it was not aware that the *Chicago Convention on International Civil Aviation* contained provisions which overrode other conventions, that the intention had been that the Chicago Convention would not be resorted to as a dictionary for certain types of phrases that would then be carried over in interpreting the Draft Convention, that, in relation to the issue raised by Egypt, it shared the view of Greece that when there was a series of definitions in the Draft Convention it would not be desirable to repeat them in the Draft Protocol, and that the issue raised by Sudan was a translation issue. It stated that the proposal of the United States of America in relation to Article XIV(1) of the Draft Protocol was consistent with the priority rules in Article 28 of the Draft Convention, that the proposal would simply be clarifying that a buyer would

be subordinate either if it was a registered buyer but had not registered ahead of another registered interest holder or if it had not registered at all, and that the proposal was wholly in line with the principle embodied in Article 28(1) of the Draft Convention.

The CHAIRMAN stated that the proposal of the Ivory Coast regarding Article XV*bis* of the Draft Protocol would have the effect of reversing the meaning of that Article and that it would be difficult to introduce such an amendment.

The DELEGATION OF EGYPT stated that it continued to have concerns about the absence of a definition of “insolvency proceeding” in the Draft Protocol, that it was an established rule that the Draft Protocol would be able to deviate from the provisions of the Draft Convention itself, that it would be important that there be a definition to ensure that readers understood that references in the Draft Protocol to insolvency included the concept of bankruptcy, and that it was simply a drafting issue.

The CHAIRMAN stated that concerns had been raised regarding the proposal by Egypt.

The DELEGATION OF JAMAICA stated that it had suggested an amendment to Article XVI(2*bis*) of the Draft Protocol in order to make it clear that the immunity referred to would not necessarily be relative, and that it would be necessary to include some additional words to refer to the immunity applicable to the Supervisory Authority and its officers and employees as an international entity.

The CHAIRMAN stated that there had been no objection to the Jamaican proposal and that it would be adopted.

The DELEGATION OF SAUDI ARABIA stated that it supported the Egyptian proposal.

The DELEGATION OF CANADA stated that it supported the United States of America’s proposal to add a phrase to Article XIV of the Draft Protocol, and that the proposal would make express what it had always considered to be implicit in the Article.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it agreed with Canada that the United States of America’s proposal would make express what was implicit in Article XIV of the Draft Protocol, that it supported the United States of America’s proposal, that in order to address the concern that had been raised by Egypt it might be possible for Article I(1) of the Draft Protocol to include a specific cross-reference to the definitions section of the Draft Convention, that the reason why aircraft engines would be excluded from the scope of Article XVIII(2) was that under the *Chicago Convention on International Civil Aviation* aircraft engines did not have specific nationality so it would be inappropriate and unfair to allow one country to require filings through its civil aviation authorities when engines might move around on a regular basis, that it might be convenient for filings for engines to be made in the same place, and that this was why it would be left to Contracting States to say whether or not they would like to have engines’ filings permissively made through the same civil aviation authorities.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that the Jamaican proposal regarding Article XVI(2*bis*) of the Draft Protocol should be re-examined from a drafting perspective, that the proposal would restrict the immunities that might be available to the Supervisory Authority and its officers and employees, that immunities were currently available to a number of people who would be expected to be involved with the Supervisory Authority, that those immunities would come not from their role with the Supervisory Authority but by virtue of their position either as members of missions to the International Civil Aviation Organization or as members of the Secretariat of the International Civil Aviation Organization or as officers of the International Civil Aviation Organization, that under relevant international instruments and the constituent documents of the International Civil Aviation Organization and its host country agreement they would be entitled to certain immunities, that these immunities would be both organisational and personal and would differ,

that if Article XVI(2*bis*) of the Draft Protocol was limited to those immunities that were derived from their activity with regard to the Supervisory Authority as an international entity, it would not encompass the personal immunities and it might encompass a lesser scope for organisational immunities, that this would be conceptually possible but it might discourage some people within the International Civil Aviation Organization system from being willing to be involved, and that the proposal should be reconsidered.

The DELEGATION OF JAMAICA stated that the United States of America had identified the objective that its proposal was intended to address, that the proposal sought to provide for the immunity that was provided under the rules applicable to the entity as an international entity and not as Supervisory Authority, that the intention behind the proposal was that the present construction of Article XVI(2*bis*) would suggest that the rules applicable would be the rules applicable as Supervisory Authority, that the phrase: “as an international entity or otherwise” was intended to address this, that it shared the concern of the United States of America, and that the intention of the proposal was to address that concern.

The CHAIRMAN stated that the United States of America had indicated its acceptance of the explanation by Jamaica of its proposal, and that the proposal would be adopted.

The DELEGATION OF INDIA stated that it required clarification about the precise wording of the United States of America’s proposal to amend Article XIV of the Draft Protocol.

The CHAIRMAN stated that it appeared that both India and Germany were happy with the explanation that had been given by the United States of America about the objective of its proposal, that the precise wording of the proposal would be considered, that Article I(1) of the Draft Protocol would be amended to meet the concern expressed by Egypt to add a reference to Article 1 of the Draft Convention and to make it clear in the report that insolvency proceedings were to be understood to include bankruptcy, that there would be a slight amendment to Article VIII of the Draft Protocol to make it clear that it was subject to declaration, that a similar amendment would be made to other Articles that were subject to declaration, that the final line of Article XIV(1) of the Draft Protocol would be amended with the addition of the phrase: “but a buyer takes its interest” immediately before the phrase: “subject to a previously registered interest”, that the phrase: “or helicopter” would be added to Article XIV(3) of the Draft Protocol, that Article XV of the Draft Protocol would be amended to take account of the amendment made in Article 30(2) of the Draft Convention, and that Article XVI(2*bis*) of the Draft Convention would be amended by the addition of the phrase: “as an international entity or otherwise”.

The DELEGATION OF THE UNITED KINGDOM stated that cross-references between the texts of the Draft Convention and the Draft Protocol should be avoided if possible, that it understood the Egyptian concern to avoid inconsistencies between the Draft Convention and the Draft Protocol, that every reference to insolvency in the Draft Protocol had been changed to “insolvency proceedings”, and that it would undertake informal consultations with the Egyptian delegation.

The CHAIRMAN stated that Article 1 of the Draft Protocol would not contain a cross-reference to the definitions in Article 1 of the Draft Convention and that there would be an explanation in the official commentary.

The DELEGATION OF GERMANY stated that it was concerned that the drafting of Article XIV(1) of the Draft Protocol would require an amendment to correct the syntax, that the Article commenced with the phrase: “a buyer under a registered contract of sale takes its interest free” and that the last line of the Article included the phrase: “but a buyer takes its interest ...”, that the intention was to remove the restriction in relation to registered contracts of sale, that a possible solution would be to delete the phrase: “a buyer under a registered contract of sale takes its interest free” and to replace it

with the phrase: “a buyer takes its interest free from an interest subsequently registered”, and that the square brackets in Article XVI of the Draft Protocol should be removed.

The CHAIRMAN stated that all square brackets and footnotes would be deleted, and that the German delegation should consult with other interested delegations to produce a proposal for the phrasing of Article XIV(1) of the Draft Protocol.

The DELEGATION OF GHANA stated that it agreed with the comments of Germany regarding Article XIV(1) of the Draft Protocol.

The DELEGATION OF INDIA stated that it agreed with the comments of Germany regarding Article XIV(1) of the Draft Protocol, and that it could not appreciate why a buyer that had not registered its interest would be allowed to have some say regarding other interests.

The DELEGATION OF ARGENTINA stated that it required clarification regarding Article XIV of the Draft Protocol, that it appeared to provide that the ownership of an aircraft engine would be connected with the ownership of an airframe and that Article 28(6) of the Draft Convention would not apply, and that the previous version of the text said the opposite.

The DELEGATION OF THE UNITED KINGDOM stated that Article XIV(2) of the Draft Protocol was intended to clarify that ownership in an aircraft engine would not be affected by its installation on or removal from an aircraft and that ownership would remain with the person who owned the engine prior to its installation.

The DELEGATION OF ARGENTINA stated that the comments of the United Kingdom did not explain why Article 28(6) of the Draft Convention did not apply so as to permit the separate registration of the aircraft engine.

The DELEGATION OF THE UNITED KINGDOM stated that Argentina had questioned why Article XIV(3) of the Draft Protocol was necessary in light of Article 28(6) of the Draft Convention, and that this question should be examined as it was possible that there had been some duplication between the Draft Convention and the Draft Protocol.

The DELEGATION OF GERMANY stated that Article 28(6) of the Draft Convention would normally apply to items but that the definitions section of the Draft Protocol included a definition of “airframe”, that the definition of “airframe” was very wide, that it was necessary to be very clear that Article 28(6) of the Draft Convention would not be superseded by the wide definition of “airframe”, and that Article XIV(3) of the Draft Protocol was necessary to clarify that point.

The DELEGATION OF ARGENTINA stated that it required clarification regarding what would happen with aircraft engines if Article 28 of the Draft Convention did not apply.

The CHAIRMAN stated that there would be informal consultations in order to provide clarification regarding the issues that had been raised by Argentina. The Chairman stated that the Chairman of the Drafting Group would develop wording for Article XIV(1) of the Draft Convention because there was not sufficient time to conduct informal consultations to develop a proposal prior to the conclusion of the meeting of the Commission.

The DELEGATION OF EGYPT stated that the issue it had raised should also be referred to the Chairman of the Drafting Group.

The DELEGATION OF INDIA stated that the informal consultation group that examined Article 61 of the Draft Convention had prepared a paper for presentation to the Commission.

The CHAIRMAN stated that there were three outstanding issues that needed to be discussed, that the first issue related to Article 55 of the Draft Convention which had become Article 60 of the Draft Convention and which figured in footnote 18 in DCME Doc No. 71, that the second issue related to

Article 61 of the Draft Convention, that the third issue related to the wording of the liability provision in Article 27 of the Draft Convention, and that the delegation of Jamaica would be invited to make a presentation in relation to the work of the informal consultation group on Article 61 of the Draft Convention.

The DELEGATION OF JAMAICA stated that it would present the outstanding issues in relation to the final clauses, that the Commission had earlier agreed that the Draft Convention would be amended to include a new Article 50(3) of the Draft Convention and a new definition of “internal transactions”, and that these amendments were set out in DCME Doc No. 71. It stated that, in relation to Article 51(6) of the Draft Convention, the Commission had adopted the proposal in DCME Doc No. 70 relating to the annex, and that a consequential change would also be made to that Article. It stated that the issue related to Article 60 of the Draft Convention was referred to at page 26 of Appendix I to DCME Doc No. 71, that a new text for the provision dealing with pre-existing rights and interests had been adopted by the Commission, that the text of what was Article 55 of the Draft Convention and would be Article 60 of the Draft Convention was set out at page 26 of Appendix I to DCME Doc No. 71, that there had previously been two provisions in the form of Alternative A and Alternative B, that one of these alternatives would not have applied to any pre-existing right or interest which would retain the priority it enjoyed before the entry into force of the Draft Convention, that the other alternative would provide for a transitional period of ten years before a pre-existing right or interest lost its priority, that the proposal in Appendix I to DCME Doc No. 71 would enable a Contracting State to make a declaration at any time that the Draft Convention would not apply to a pre-existing right or interest which would retain the priority it enjoyed under the applicable law before the effective date of the Draft Convention, that the proposal in Appendix I to DCME Doc No. 71 also defined the applicable date in relation to the debtor as being the latter of either the date on which the Contracting State in which the debtor was situated became a Contracting State or the date of entry into force, that the proposal in Appendix I to DCME Doc No. 71 also defined the situation of a Contracting State and stipulated that a Contracting State that made a declaration would be able to specify a date that was later than the effective date after which the Draft Protocol would apply to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in a Contracting State different from the Contracting State in which the debtor was then deemed to be situated pursuant to the definition of the situation of a debtor, that the fundamental difference was that instead of absolute choices to be made between Alternative A and Alternative B, a Contracting State would have a choice to determine whether or not it would make a declaration and if it did not make a declaration, then the Draft Convention would not apply to a pre-existing right or interest which would retain the priority it enjoyed under the applicable law before the effective date, that a Contracting State would be able to make a declaration to allow for the application of the Draft Convention in relation to a pre-existing right or interest, and that such a declaration would also be able to specify a date that was later than the effective date after which the Draft Protocol would apply.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it fully supported the proposal set out in footnote 18 in Appendix I to DCME Doc No. 71, that it had been the delegation of Pakistan that had originally conceived the proposal regarding declarations in relation to pre-existing rights or interests, and that it had a number of minor technical comments regarding the proposal which it would provide to the Chairman of the Drafting Committee.

The DELEGATION OF SOUTH AFRICA stated that it was speaking on behalf of the African States, and that it supported the proposal set out in footnote 18 in Appendix I to DCME Doc No. 71.

The DELEGATION OF THE UNITED ARAB EMIRATES stated that, in view of the adoption of the proposal set out in footnote 18 in Appendix I to DCME Doc No. 71, it would be necessary to make a consequential amendment to Article 56 of the Draft Convention and to Article XXIX of the Draft Protocol.

The DELEGATION OF NIGERIA stated that it had fully supported Alternative B but now accepted the proposal set out in footnote 18 in Appendix I to DCME Doc No. 71.

The DELEGATION OF CANADA stated that it supported the proposal set out in footnote 18 in Appendix I to DCME Doc No. 71, and that it would like to thank the delegation of Pakistan for making the suggestion that had helped the compromise to be reached.

The DELEGATION OF THE AVIATION WORKING GROUP stated that it supported the proposal set out in footnote 18 in Appendix I to DCME Doc No. 71, that it required clarification regarding whether the reference to “priority under this Convention” might be in the wrong place, and that the Canadian delegation should be requested to reconfirm what it had stated in the meetings of the Final Clauses Committee that the intention of the third paragraph of the proposal set out in footnote 18 in Appendix I to DCME Doc No. 71 was that it be limited to transactions in respect of where the debtor was situated and limited to priority.

The DELEGATION OF CANADA stated that it had been agreed during the Final Clauses Committee meetings that the intention of the third paragraph of the proposal set out in footnote 18 in Appendix I to DCME Doc No. 71 was that it be limited to transactions in respect of where the debtor was situated and limited to priority.

The CHAIRMAN stated that the proposal set out in footnote 18 in Appendix I to DCME Doc No. 71 had been adopted with minor technical changes that were yet to be carried out, and that the Delegation of Jamaica would be invited to comment on proposals to amend Article 27(1*ter*) of the Draft Convention.

The DELEGATION OF JAMAICA stated that the reference to the phrase: “caused or contributed to by” was related to the circumstances in which “it is to the extent that it is caused or contributed to by”, that the circumstance that the phrase was addressing was the situation where the event which caused the liability was not wholly caused but only partially caused because the phrase: “to the extent” obviously qualified the phrase: “caused or contributed to by”, and that if this understanding was agreed it would not be necessary to make a proposal.

The CHAIRMAN stated that the final outstanding issue related to Article 61(3) of the Draft Convention and was addressed in an informal drafting proposal.

The DELEGATION OF JAPAN stated that Article 55(1) of the Draft Convention, which had since been adopted as Article 60(1) of the Draft Convention, included the phrase: “declared by the Contracting State at any time”, and that Articles 57 and 58 of the Draft Convention provided for subsequent declarations and withdrawal of declarations but should not apply to declarations made under Article 60(1) of the Draft Convention.

The DELEGATION OF CANADA stated that it agreed with the comments of Japan.

The CHAIRMAN stated that it had been agreed that Articles 57 and 58 of the Draft Convention should not apply to declarations made under Article 55(1) of the Draft Convention, and that the Chairman of the Drafting Committee would make the necessary amendments to Article 60(1) of the Draft Convention. The Chairman invited the delegation of Jamaica to present the informal drafting proposal.

The DELEGATION OF JAMAICA stated that the informal consultation group that had examined Article 61(3) of the Draft Convention and Article XXXV(3) of the Draft Protocol comprised Australia, Brazil, India and Jamaica, that during the discussion of Article 61(3) of the Draft Convention in the Commission concerns had been expressed about the procedure to be used for the adoption of amendments to the Draft Convention and the Draft Protocol in order to ensure that there was the participation of those who would be affected by the amendments, that the proposal provided the basic rule that amendments would be approved by at least a two-thirds majority of the Contracting

States participating in the Conference, that amendments would then enter into force when approved and ratified in accordance with the Draft Convention's and Draft Protocol's provisions on entry into force, that the basic rule would be subject to Article 61(4) of the Draft Convention which would be relevant where the amendment to the Draft Convention was intended to apply to more than one category of equipment and which would provide that the two-thirds majority should apply to the participating Contracting States in respect of each protocol, that it would not be necessary to include a corresponding provision in the Draft Protocol because in respect of the Draft Protocol it would be the actual Contracting States of the Draft Protocol that would be participating in the amendment, and that the proposal would give some guarantees by providing that, where more than one protocol was affected by an amendment, it would be necessary to obtain the required majority of the Contracting States to that protocol for the amendment to apply to that protocol.

The DELEGATION OF THE RAIL WORKING GROUP stated that it had concerns with proposed Article 61(4) of the Draft Convention because that Article would enable the Contracting States to the Draft Convention to overrule the ideas of the majority of States that had signed the preliminary draft Rail Protocol.

The DELEGATION OF AUSTRALIA stated that it had been involved in the informal consultation group that examined Article 61(3) of the Draft Convention, that it supported the proposals, that the concern that had been raised by the Rail Working Group was exactly the concern that was intended to be addressed by proposed Article 61(4) of the Draft Convention, and that the proposals provided that it would only be in the circumstance where an individual two-third majority of each separate protocol had approved the amendment to the Draft Convention that the amendment could enter into force in respect of the Contracting States to that protocol.

The DELEGATION OF GERMANY stated that the proposals provided for three Contracting States to ratify an amendment to the Draft Convention in order for it to enter into force but required eight ratifications in relation to an amendment to the Draft Protocol, and that it required clarification because it appeared that it would be possible that the Draft Convention would not be in line with the Draft Protocol.

The DELEGATION OF JAMAICA stated that the proposals recognised that amendments to the Draft Convention would come into force in accordance with the provisions of Article 49 of the Draft Convention, that an amendment to the Draft Convention would only come into force as regards the Draft Protocol from the date on which that amendment applied to the Draft Protocol because it would be applying the same rules for entry into force as for amendments, and that the fact that there was a requirement of eight ratifications for the Draft Protocol and three ratifications for the Draft Convention would not raise any difficulties because the Draft Convention would only enter into force in respect of a category of object to which a protocol applied and from the date of entry into force of that protocol.

The DELEGATION OF INDIA stated that the differential in numbers in the proposals regarding entry into force of amendments had simply been taken from the provisions in the Draft Convention and Draft Protocol relating to amendments.

The CHAIRMAN stated that there had been no support for a reconsideration of proposed Article 61(4) of the Draft Convention, and that the proposals had been adopted. The Chairman stated that the meeting of the Commission had concluded, and expressed his thanks to the Government of South Africa, UNIDROIT and the International Civil Aviation Organization for providing facilities and support of the highest standards, to all delegations that took part in the discussions in a constructive manner, the Secretariats of UNIDROIT and the International Civil Aviation Organization, and the interpreters both in Cape Town and in Montreal.

The DELEGATION OF INDIA stated that it sincerely appreciated the manner in which the Chairman had conducted the meetings of the Commission, that the Chairman had had a very difficult task and had carried it out smoothly and with the necessary patience, and that the Chairman's role in facilitating sub-groups and informal consultations had been the main instrument which had led to the conclusion of the meetings of the Commission in a very satisfactory manner.

The CHAIRMAN stated that the issue of the location of the International Registry had not been resolved, that it was proposed that he would make a statement on the consensus view of the Commission which would be recorded for the purposes of the Preparatory Commission, that the principle should be that the Registrar be located in a Contracting State, that there had been concerns that this principle might mean that there would not be sufficient States eligible to bid to host the International Registry and that it might be appropriate to enable States that had signed the Draft Convention also to be eligible to bid to host the International Registry, that, if the State chosen to host the International Registry was not a Contracting State at the time that the Draft Convention and the Draft Protocol entered into force, interim arrangements would need to be put into place to ensure that the effects of the Draft Convention and the Draft Protocol in relation to the Registrar and its functions and liabilities were not undermined, that it would be for the Preparatory Commission to decide on the appropriate procedure, and that these principles would be recorded and provided to the Preparatory Commission.

The DELEGATION OF JAPAN stated that it supported the comments of India, and that the Chairman's elegant and generous chairing had created an atmosphere where delegates whose mother tongue was not one of the six official languages of the International Civil Aviation Organization could easily intervene and make valuable contributions.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported the consensus approach to the issue of the location of the International Registry that the Chairman had outlined, that there should also be a requirement that a Signatory State would undertake to become a Contracting State within one year if it was chosen to host the International Registry, and that it joined other delegations in congratulating the Chairman on his efforts in facilitating the completion of complex but important negotiations.

The DELEGATION OF SAUDI ARABIA stated that it was speaking on behalf of the Arab States, and that it thanked the Chairman and all participants in the meetings for the outstanding success of the meetings.

The DELEGATION OF SWEDEN stated that it was speaking on behalf of the Member States of the European Union, Switzerland, and the European Commission, and that it was deeply grateful to the Chairman for his work during the Conference.

The CHAIRMAN stated that the meetings of the Commission had concluded.

The meeting rose at 16:45

PLENUM – FIFTH MEETING

Wednesday, 14 November 2001, at 16:45

President: Professor Medard Rutoijo Rwelamira (South Africa)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

The PRESIDENT stated that Item 7 of DCME Doc No. 1 would be considered, that this would be followed by Item 12 of DCME Doc No. 1 and then by Item 11 of DCME Doc No. 1, and that he would be making some comments on Item 10 of DCME Doc No. 1.

**AGENDA ITEM 7 – EXAMINATION OF THE REPORT OF THE
CREDENTIALS COMMITTEE**

The PRESIDENT invited the Chairperson of the Credentials Committee to present the report of the Credentials Committee.

The DELEGATION OF GHANA stated that it would be presenting DCME Doc No. 72 which was the report of the Credentials Committee, and that the Credentials Committee comprised representatives of the delegations of Costa Rica, Ghana, Oman, Singapore and Spain. It stated that the Committee had recommended to the Conference that in conformity with Rule 4 of the Rules of Procedure all delegations registered be permitted to participate in the Conference pending receipt of their credentials in due and proper form, that the Conference had accepted that recommendation, that the Committee held its final meeting on 14 November 2001 and examined the credentials received up to that date, and that paragraph 5.1 of DCME Doc No. 72 listed the delegations of 56 States whose credentials had been found to be in due and proper form. It stated that the credentials of three delegations had not been submitted in original form but only as facsimiles, that the original credentials of Namibia had since been received in due and proper form and that the name of Namibia would be reflected in the Final Act, that the Committee had considered that Rule 2 of the Rules of Procedure required that credentials be submitted in the original form and that this had also been explicitly stated in the Joint Secretariats' invitation and reiterated during the deliberations of the Conference, and that the Committee would accordingly recommend that only credentials made available in original and due and proper form by 11:00 on 16 November 2001 be accepted. It stated that the 11 observer delegations listed in paragraph 5.3 of DCME Doc No. 72 had presented credentials in due and proper form. It stated that the Committee had taken note that as of 14 November 2001, delegations of 25 States had deposited their full powers to sign the Draft Convention and Draft Protocol and that the list of those States had been provided in paragraph 6 of DCME Doc No. 72. It stated that the Committee had considered only those credentials and full powers that had been submitted prior to its final meeting at 9:00 on 14 November 2001, and that in order to allow proper consideration of credentials that might still arrive prior to the signing of the Final Act on 16 November 2001, it was proposed that the Chairman of the Committee be given authority to deal with any newly-submitted credentials and full powers in consultation with the Joint Secretariats.

The PRESIDENT thanked the Chairman of the Credentials Committee and the members of the Committee for their report, and stated that, as there had been no objection to the report, DCME Doc No. 72 had been adopted.

**AGENDA ITEM 12 – ADOPTION OF THE FINAL ACT OF THE CONFERENCE
AND OF ANY INSTRUMENTS, RECOMMENDATIONS AND RESOLUTIONS
RESULTING FROM ITS WORK**

The President stated that the next issue that would be considered would be Item 12 of DCME Doc No. 1 which related to the adoption of the Final Act, including any instruments, recommendations and resolutions resulting from the work of the Commission of the Whole, that a draft Final Act had been circulated in DCME Doc No. 60 (Revised), and that the Chairman of the Commission of the Whole would be invited to present that paper.

The DELEGATION OF FINLAND stated that the Commission of the Whole had had 16 sessions, that the draft Final Act had been debated during those sessions, that five recommended draft resolutions had been adopted by the Commission, and that those resolutions were contained in DCME Doc No. 60 (Revised), that DCME Doc No. 60 (Revised) detailed all the work that had been discussed and decided by the Commission, and that draft Resolution No. 2 on page 6 of DCME Doc No. 60 (Revised) would need to be amended to insert the list of States that the

Commission had decided would take part in the work of the Preparatory Commission on the understanding that all interested States would be able to take part in the work of the Preparatory Commission as observers.

The PRESIDENT thanked the Chairman for the report contained in DCME Doc No. 60 (Revised), and requested the Conference to endorse the proposals of the Chairman that the list of States that the Commission had decided would take part in the work of the Preparatory Commission be inserted into draft Resolution No. 2 on page 6 of DCME Doc No. 60 (Revised) and that the Conference adopt DCME Doc No. 60 (Revised).

The CHAIRMAN stated that draft Resolution No. 5 in DCME Doc No. 60 (Revised) referred to time limits in the second and third resolving clauses which had been left open pending discussions on the resources of the two Secretariats and the timing within which they would be in a position to provide proper translations into all official languages, that there had been further consultations regarding what would be the appropriate time limit for the commentary to be circulated and for the comments on the draft commentary to be received, that the time limits of 90 days in the second resolving clause and 180 days in the third resolving clause should be amended to provide that the time limits would be “as soon as practicable”, that the second resolving clause should be amended to say “request that such draft be circulated by the two Secretariats to all negotiating States and participating observers as soon as practicable after the conclusion of the Conference inviting comments thereon”, and that the third resolving clause should be amended to say “to request that a revised final version of the official commentary be transmitted by the two Secretariats to all negotiating States and participating observers as soon as practicable after the conclusion of the Conference”.

The PRESIDENT stated that the Conference would adopt the amendments to draft Resolution No. 5 in DCME Doc No. 60 (Revised) that had been suggested by the Chairman. The President stated that the Commission had requested the President to indicate whether he would be favourably disposed to providing a period within which linguistic changes that did not affect the substance of the text would be made and subsequently effected by the Secretariats, that he had favourably considered that request, and that he would suggest that a period of 90 days from the conclusion of the Conference be allowed for delegations to be able to indicate suggestions to the text and to deal with issues of precision relating to translation. The President stated that when the issue of a consolidated text had been raised during the Fourth Plenary Session, it had been agreed that it would not be possible to have a consolidated text prepared before the conclusion of the Diplomatic Conference, that there had been general agreement at that time that the responsibility for preparing the consolidated text would lie with the two Secretariats and that a time would be designated within which the consolidated text would be finalised and made available to delegations in all official languages, that he would suggest that a period of 90 days be allowed for the Secretariats to conclude the translations and effect the various amendments that had been suggested, that this would be done under the supervision of the President, and that at the end of the 90-day period the Secretariats would be able to issue a final text that included all the changes, including the new changes.

The DELEGATION OF SPAIN stated that the differences between the various language versions of the texts went beyond linguistic issues and included technical issues, that bracketed text should be included in the Final Act to indicate that the texts of the Draft Convention and Draft Protocol would be subject to verification by the States that had signed them within a period of 90 days, that this would have the advantage of providing a reasonable timeframe for the delegations that had technical and linguistic problems, and that this approach would substantially improve the texts.

The DELEGATION OF EGYPT stated that it required clarification regarding whether the finalisation of the English text would also require 90 days, and that the finalisation of the Arabic text would depend upon the finalisation of the English text.

The PRESIDENT stated that the 90-day period would apply to all language versions of the text, and that it was possible that there would be some areas where linguistic changes would be required to the English text but that these would be relatively few, since the English text had been worked on during the Conference.

The DELEGATION OF EGYPT stated that the President's proposal would allow 90 days to finalise all texts, including the English text, and that, if the Arabic text was translated from the current English text, this would cause confusion if new amendments were introduced into the English text.

The SECRETARY GENERAL (ICAO) stated that the process to be adopted was a matter for the Conference to determine, that the practice of the International Civil Aviation Organization was that it was usual for at least one text to be signed on the day of signature, and that the linguistic changes to be introduced within the 90-day period would be made against that text.

The DELEGATION OF SAUDI ARABIA stated that it shared the concerns that had been expressed by Spain and Egypt, and that it would be important to ensure that sufficient time was allocated to revise the legal texts.

The PRESIDENT stated that, if the time period for dealing with linguistic changes was to be extended, it would be useful for delegations to indicate by how much time the period should be extended.

The DELEGATION OF FRANCE stated that it supported the Spanish proposal, that all language versions of the texts should be equal, and that it would not support any approach that gave the impression that one of the language versions of the texts would prevail over other versions.

The PRESIDENT stated that his understanding of the Egyptian intervention was not that one language would have any priority over the other but that for the purposes of translation into Arabic it would be necessary to have a base text.

The DELEGATION OF INDIA stated that it was concerned that the discussion was leading to a situation in which there would be a possibility that there would not be any text that could be treated as the final text on the day that the Draft Convention was opened for signature, that it agreed with the Secretary General (ICAO) that at least one text should be ready to enable delegations to sign on the final day of the Conference, and that it was not a question of one language having precedence over another but that it would be most convenient to tidy up the English text fully at the time of signature so that linguistic adjustments made thereafter would be limited to other languages.

The DELEGATION OF ARGENTINA stated that it supported the comments of Spain, France and India, that delegations had made a tremendous effort to work on the English-language versions of the texts during the Conference, and that the English-speaking delegations should consider finalising the English-language versions of the text so that the 90-day period could be used for verifying the conformity of the texts in other languages with the English-language versions.

The DELEGATION OF CUBA stated that it had presented its full powers in order to be able to sign the Final Act and the final texts of the Draft Convention and Draft Protocol but could do so only if those texts were in the Spanish language, that if the texts were not available in the Spanish language it would be unable to sign them, that it hoped that those with experience in the negotiation of international treaties would be in a position to suggest some solutions, that its previous experience had been in relation to the 1999 *Convention for the Unification of Certain Rules for International Carriage by Air* in respect of which an authentic Spanish text had been available for signature on the final day of the Diplomatic Conference, that it was not able to deviate from the norms of its country that it could only sign authentic texts in Spanish, and that it sought guidance and information regarding possible solutions to the problem.

The DELEGATION OF EGYPT stated that the six official language versions of the texts would have equivalent authority in international law, that a 90-day period for checking language texts would be sufficient, and that it understood the necessity of having a text in one of the official languages completed by the end of the Conference in order to enable the other language versions to be checked against it.

The DELEGATION OF CHINA stated that it agreed with the proposals for the six language versions of the texts to be authenticated after the Conference, that the English-language versions of the texts should be worked on in the first month following the Conference with the other five language versions to be worked on during the following three months, that the Conference should make it very clear that although signature could proceed on the final day of the Conference, the final adoption of the six language versions would occur after they had been amended, and that if that approach was not adopted it would, like Cuba, have difficulty signing the Final Act.

The DELEGATION OF IVORY COAST stated that a decision should be made either to ensure that texts in all languages were authentic upon signature of the Final Act or to allow a period of 90 days to make them authentic, that it would not be appropriate for the texts to be signed and subsequently amended, and that it supported the comments of Spain.

The DELEGATION OF FRANCE stated that any solution that did not recognise the equality of the various language versions of the texts would be unacceptable, that the texts had been negotiated over a long period and that until 1999 the texts had not been negotiated in English versions, and that it would be willing to find practical arrangements but that it would be out of the question for only one linguistic version to be available for signature on the final day of the Conference.

The PRESIDENT stated that the logic behind the suggestion that he had made had not been to amend the texts, that the substance of the texts to be adopted by the Conference would not change, that there had been concerns expressed by some delegations that the different language versions did not precisely capture the English-language concepts and this had been generally recognised as a problem, that it had been recognised that this problem could not be fixed within the time available before the conclusion of the Conference, and that the amendments to be made would not change the essence of the content of the text but would provide a precise translation from the English text. The President stated that the approach to be adopted already existed, that, in relation to the Diplomatic Conference on the International Criminal Court, the basic statute had been signed in Rome on 17 July 1998 but there had been recognition that there would need to be some linguistic changes and a period of six months had been provided for delegations to be able to indicate linguistic changes, and that this was a normal practice because it would not be possible to make all the linguistic changes necessary to fix the various language versions within the time available to the Conference. The President stated that there was general support for the Spanish proposal that the Final Act should indicate that the text to be signed by the Signatory States would be subjected to linguistic verification within a period of 90 days, that the delegation of Egypt had questioned whether 90 days would be sufficient for the linguistic groups that required a base document, and that it would be possible to be flexible on the time to be allowed to delegations to finalise the linguistic changes and to permit a period of 120 days from the date of signature.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it agreed with the President's proposed solution, which was based on a substantial amount of international practice and precedent, that the time limits proposed by the President should be reconsidered, that it considered that 90 days was already a long time period because the texts that would need conformity were already substantially correct, that an unnecessarily long period of time should not be added on to the process unless it was critical because that would cause delays in implementation, and that time was of the essence in the implementation of the Draft Convention for the air transportation industry.

The PRESIDENT stated that his suggestion for a 120-day time period was merely a proposal.

The DELEGATION OF JAMAICA stated that it would be unacceptable for the various language versions of the texts to have different status and all language versions needed to be equally authentic, that Article 10 of the *Vienna Convention on the Law of Treaties* provided that the authenticity of texts would be able to be dealt with by such procedure as was provided for in the text or as agreed upon by the States that participated in drawing up the text, that it would be possible to achieve a text that was equally authentic by first providing in the Final Act that within a period of 90 days the Secretariat would be empowered to make linguistic changes so as to ensure that the texts were in conformity with each other, that the attestation clause could provide that the texts were done in various languages and upon verification as to conformity all texts would be equally authentic, that this would mean that the authenticity of the texts would be assured by a procedure that was mandated by the texts themselves and which was in conformity with Article 10 of the Vienna Convention, and that it would be important for each of the texts to become equally authentic at the same moment.

The DELEGATION OF SUDAN stated that the final texts should be prepared in all six official languages, and that it would be acceptable for the texts to be signed with reference to the English texts provided that they were accompanied by the other language versions of the texts.

The DELEGATION OF THE RUSSIAN FEDERATION stated that it supported the proposal that there be a 90-day period for linguistic checking of the texts, that it would be important not to rush the translation and linguistic checking, that it had found that using multiple language versions to check the equivalence of Russian translations had been very useful, that all language versions should be of equivalent status even though English language texts had been used at the Conference, and that it supported the Jamaican proposal regarding authenticity of the texts.

The DELEGATION OF THE UNITED KINGDOM stated that it would be unacceptable for the texts to differ in their status, and that it supported the Jamaican proposal that the Final Act provide for the Secretariats to be empowered to make linguistic changes.

The DELEGATION OF CANADA stated that it agreed with France that no one language version of the texts should have greater importance than the other versions, that the texts had been under development for a long period and throughout that time the English and French versions had had an equivalent value, that it agreed with the Jamaican proposal because it was necessary to have a period during which the documents could be aligned, that it agreed with the United Kingdom that it would not be possible to accept authentic texts that were different, that it was not a question of translation but of aligning equal texts, and that 90 days would be sufficient for that process.

The DELEGATION OF GHANA stated that the authenticity of the document was clearly stated in the last paragraph of DCME Doc No. 60, and that it was unfortunate that the issue was being belaboured because the issues could be easily resolved.

The PRESIDENT stated that the issue under consideration was the point at which other language versions became authentic.

The DELEGATION OF SOUTH AFRICA stated that it supported the Jamaican proposal.

The DELEGATION OF THE CZECH REPUBLIC stated that it agreed with Argentina and Jamaica.

The DELEGATION OF CUBA stated that it agreed with Canada and supported the Jamaican proposal.

The DELEGATION OF EGYPT stated that it had affirmed that all languages should be dealt with on an equal footing, and that the text in all languages should be authentic.

The DELEGATION OF LEBANON stated that it supported the Jamaican proposal, that if the English language version was to be the basis for preparing the other language versions, the time period for the

English-language version should be 30 days and after that the period of 90 days should apply in relation to the other languages.

The DELEGATION OF FRANCE stated that it supported the Jamaican proposal.

The DELEGATION OF SPAIN stated that it supported the French comment that all language versions should be on an equal footing, that it would not be able to sign anything that was not written in Spanish, that the Jamaican proposal would lead to a practical solution, and that it proposed that there be a statement in square brackets to indicate that the two Secretariats would work together in a positive and constructive fashion to coordinate the different texts.

The DELEGATION OF AUSTRALIA stated that it supported the Jamaican proposal, that the discussion was about the question of the authenticity of the translations from the English working text into other languages, that it was not clear how the issue of authenticity would arise in relation to the English text and why a 90-day period would be needed to check the authenticity of the English text because the discussions at the Conference had been designed to ensure the authenticity of at least the English text, that delegations whose first or second language was not English had shown considerable accommodation working from English documents, and that it was not clear why the English text should be put through a process of authenticity.

The PRESIDENT stated that it was possible that there might be grammatical or linguistic corrections that needed to be made in the English text, that this was not a question of authenticity, that the Secretariats had given their assurance that the English text would be in an acceptable form by the following day so that the problem envisaged in relation to the English text might not be as acute as had been thought, and that Spain had proposed that a statement be inserted into the Final Act but that the precise wording of that statement had not been made clear.

The DELEGATION OF SPAIN stated that it proposed that the following sentence be inserted into the Final Act: “The text of this Convention or Protocol is subject to checking by the States that sign this Final Act within 90 days following the date of the said signature”.

The PRESIDENT stated that there had been another proposal made by Jamaica and that it had found overwhelming support, that the proposal had responded to the concerns of some delegations that all languages should be treated on the same footing, that under the proposal a clause would be inserted into either the Draft Convention or the Final Act to address the question of authenticity, that it would be possible to proceed on the final day of the Conference with texts in all official languages but with the authenticity of those texts to depend on verification by the various States within 90 days, that the texts would not be authentic until the period of 90 days had elapsed, that this would have the effect of giving all the texts the same equal footing and would also accommodate the concerns of Spain, that Spain had raised the question of whether the text should be in brackets, and that Spain would be requested to provide clarification on that issue.

The DELEGATION OF SPAIN stated that brackets would not be required.

The PRESIDENT stated that the delegation of Jamaica would be requested to develop a formulation for text to be included in the Final Act.

The DELEGATION OF EGYPT stated that the text of the Draft Convention itself addressed the issue of authenticity in the phrase: “Done in Cape Town on the 16th day of November 2001 on a single original of which the English, Arabic, Chinese, French, Russian and Spanish texts are equally authentic”, that it would not be possible to say more than this, and that the inclusion of a resolution addressing authenticity would weaken the provision in the Draft Convention and throw doubts on the meaning of the provision. It stated that the Spanish proposal did not address its concerns because that proposal referred to the “text of this Convention or Protocol” and it would be necessary to rely upon a text that was ready, that the Secretariats had mentioned that an English text would be ready for

signature, that all language versions would be equal but for practical purposes it would be prepared to use whichever language version was ready as the basis for translations, that it wanted to address the problem in a pragmatic way, and that the Arabic text should be translated from the text to be adopted on the final day of the Conference.

The PRESIDENT stated that he had indicated that the delegation of Jamaica had been asked to develop a formulation for text to be included in the Final Act, and that the Egyptian concerns could be further explored after that text had been presented. The President stated that all delegations had agreed that all language versions would be equally authentic, that the concern had been whether they would be equally authentic at the same time, and that it was this issue that the Jamaican proposal had addressed.

The DELEGATION OF GHANA stated that the discussions in the Commission had focussed primarily on the English language version of the text, that in light of the time constraints it would be necessary to concentrate on the English language versions of the texts for the purpose of having a final authentic text ready for signature, and that the other language versions could be aligned with the English language text during the subsequent period of 90 days.

The PRESIDENT stated that there was a general consensus that one language version should not be elevated over others, and that there had been overwhelming support for the Jamaican proposal.

AGENDA ITEM 11 – EXAMINATION OF THE REPORT OF THE COMMISSION OF THE WHOLE

The PRESIDENT stated that the next item to be dealt with would be Item 11 of DCME Doc No. 1 which concerned the report of the Commission of the Whole, that it had not been possible to finalise a text of the full report because the discussions in the Commission had only concluded that afternoon, that the Chairman of the Commission of the Whole would present an oral report on the various instruments that had been considered by the Commission on the understanding that a text incorporating all the changes would be available in all official languages on the following day.

The DELEGATION OF FINLAND stated that the Commission had considered the Draft Convention as set out in DCME Doc No. 3 and the Draft Protocol as set out in DCME Doc No. 4, and that a number of reports had been considered, including the report of the Drafting Committee which was contained in DCME Doc No. 71, the report by the Final Clauses Committee which was contained in DCME Doc No. 57 and the addendum to DCME Doc No. 57, and a number of other working documents. The Chairman stated that the Commission had worked under considerable time constraints and that there were still some minor drafting amendments pending, that a mandate had been given to the Chairman of the Drafting Committee to examine those minor drafting amendments and to ensure that the Draft Convention and Draft Protocol and the amendments made to them were in line with each other, and that this procedure had been fully accepted by the Commission. The Chairman stated that a clean copy of the texts would be made available the following day.

The PRESIDENT stated that the consolidated text of the Draft Convention and the Draft Protocol would be available in all official languages on the following day, that it would not be possible to include all the changes that had been agreed during the discussion held immediately prior to the Plenary Session, that he proposed that the Conference adopt the two instruments as amended by the Commission, and that, as there had been no objection, the two instruments had been so adopted.

**AGENDA ITEM 12 – ADOPTION OF THE FINAL ACT OF THE CONFERENCE
AND OF ANY INSTRUMENTS, RECOMMENDATIONS AND RESOLUTIONS
RESULTING FROM ITS WORK (CONT.)**

The PRESIDENT stated that it would be necessary to return to the issue of the authenticity of the texts and requested the delegation of Jamaica to provide its suggested formulation.

The DELEGATION OF JAMAICA stated that there had been considerable concern to ensure that there was a procedure to allow for the verification of the texts to permit the linguistic changes to be made that would be required to bring the texts into conformity with each other over a period of 90 days, as well as concern to ensure that the texts that were signed would be equally authentic, that it proposed that the Final Act would contain a provision that stated: “The texts of this Convention and Protocol are subject to verification by the Joint Secretariats of the Conference under the authority of the President within a period of 90 days from the date hereof as to the linguistic changes required so as to make the texts in the different languages in conformity with each other”, that it proposed that the “in witness” clause be amended to include the phrase: “all texts being equally authentic, such authenticity to take effect upon the verification by the Joint Secretariats of the Conference under the authority of the President within 90 days hereof as to the conformity of the texts with each other”, that it had considered proposing the inclusion of the additional sentence: “Such conformed texts will be the authentic texts” but did not consider that that sentence would be necessary, and that its proposals were wholly consistent with Article 10 of the *Vienna Convention on the Law of Treaties* which provided that the text of a treaty would be established as authentic and definitive by such procedure as might be provided for in the text or agreed upon by the States participating in its drawing up.

The DELEGATION OF EGYPT stated that it agreed with the first part of the Jamaican proposal, that it did not agree with the second part of the Jamaican proposal because authenticity would come into effect whenever the Draft Convention itself came into force, that authenticity was given to the different language versions so that in case of conflict or disapproval concerning the application or interpretation of a text each version would have equal status, that it would not be appropriate to refer to authenticity prior to the entry into force of the Draft Convention, and that it would therefore not be possible to declare that the texts would be authentic 90 days after the end of the Diplomatic Conference.

The DELEGATION OF INDIA stated that it agreed with the comment of Egypt that the second part of the Jamaican proposal was not necessary, that the first part of the Jamaican proposal would be adequate to address the concerns that had been expressed by delegations, that the second part of the Jamaican proposal was addressed in the final clauses in the Draft Convention itself, that it was unnecessary to fix a date for the authenticity to occur, and that it would only be necessary to fix the linguistic differences during the 90-day period.

The DELEGATION OF FRANCE stated that the compromise proposal presented by Jamaica was balanced, subtle and equitable and expressed the view of most delegations, that it was not correct that the authenticity of the texts would occur at the moment the Draft Convention entered into force, that Article 10 of the *Vienna Convention on the Law of Treaties* provided that the text of a treaty would be deemed definitive and authoritative according to the procedures agreed by the States that participated in the treaty’s development or by the signing *ad referendum* of the text of the treaty or the Final Act, and that, if the Conference did not define an *ad hoc* procedure, the signature of the text would mean that the text was authentic.

The DELEGATION OF SPAIN stated that it supported France’s comments and the Jamaican proposal.

The DELEGATION OF ARGENTINA stated that it supported the Jamaican proposal.

The DELEGATION OF CANADA stated that it supported the Jamaican proposal.

The DELEGATION OF CHINA stated that it supported the Jamaican proposal, and that it required clarification regarding the relationship between the text being opened for signature on 16 November 2001 and the 90-day time limit.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it supported the Jamaican proposal, that it would have been able to support the original language, that it could support what India had proposed, and that a decision should be made.

The DELEGATION OF INDIA stated that it supported the Jamaican proposal, that it had stated that the second part of the Jamaican proposal was perhaps not required because the authenticity of each text would be certified in the Draft Convention itself, that it had not said that the authenticity would be from the date of ratification, and that the authenticity did not need to be separately stated because the text itself would be adopted in six languages with each language being equally authentic.

The PRESIDENT stated that it was clear that there had been overwhelming support for the Jamaican proposal, that there had been concerns about whether the same formulation should be reflected in the attestation clause to the Draft Convention and the Draft Protocol but that this would not cause any harm, and that it would be proposed that the same attestation clause be repeated in the Draft Convention. The President stated that there had been no objection to this proposal and that it had been decided to accept the proposal.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it would welcome delegations that wished to work with it after the Conference to begin to work informally together to compare views on future issues and the assistance that they might give to each other regarding early ratification, that it intended immediately to initiate the internal process to move towards ratification, and that it would be very important for that process and of immediate interest to the Congress to have some indication from other delegations whether they planned to do the same. It stated its very strong appreciation for the preparatory work that had been undertaken by several air transportation industry groups, that the Aviation Working Group and the International Air Transport Association had in particular made a significant contribution without which the discussions would not have reached the stage that they had, that the continued participation of the air transport industry would be vital to all future stages of the development and implementation of the Draft Convention and Draft Protocol, and that this participation together with the support of Government delegations would produce a new financial era for the air transportation industry.

The PRESIDENT stated that the next session of the Plenary would be held on Friday, 16 November 2001.

The meeting rose at 20:00

PLENUM – SIXTH MEETING

Friday, 16 November 2001, at 12:00

President: Professor Medard Rutoijo Rwelamira (South Africa)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 11 – EXAMINATION OF THE REPORT OF THE COMMISSION OF THE WHOLE (CONT.)

The PRESIDENT stated that on Thursday, 15 November 2001 a number of issues had been identified in relation to the text of the Draft Convention, and that in order to consider those issues it would be necessary to adjourn the Sixth Meeting of the Plenary and to convene a meeting of the Commission of the Whole.

The meeting was adjourned at 12:05

COMMISSION OF THE WHOLE – SEVENTEENTH MEETING

Friday, 16 November 2001, at 12:10

President: Professor Medard Rutoijo Rwelamira (South Africa)

Chairman: Mr Antti T. Leinonen (Finland)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 8 – CONSIDERATION OF THE DRAFT CONVENTION (CONT.)

The CHAIRMAN stated that the Commission had given the Chairman of the Drafting Group a mandate to look into any technical drafting issues that would need to be incorporated into the final documents, that this mandate had been strictly limited to technical and linguistic changes, that in carrying out this work the Chairman of the Drafting Group had found two provisions in the Draft Convention that would require amendments that were not of a purely technical nature, that it was therefore necessary to consider those amendments, and that the amendments related to Article 39(1)(a) of the Draft Convention and Article 60(3) of the Draft Convention. The Chairman stated that it was proposed that Article 39(1)(a) of the Draft Convention be amended by adding the phrase: “and which” after the phrase: “international interests” where it appeared in the third line of that Article. The Chairman stated that it was proposed to amend Article 60(3) of the Draft Convention so that it would read as follows: “A Contracting State may, in its declaration under paragraph 1, specify a date, not earlier than three years after the date on which the declaration becomes effective, on which this Convention and the Protocol will become applicable, for the purpose of determining priority, including the protection of any existing priority, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in a State referred to in subparagraph (b) of the preceding paragraph but only to the extent and in the manner specified in its declaration.”

The DELEGATION OF THE UNITED KINGDOM stated that the purpose of Article 39(1)(a) of the Draft Convention would be to allow a Contracting State to declare which categories of non-consensual right or interest would have priority over an interest equivalent to the holder of a registered international interest and to declare which of those interests that had priority under national law would also have priority over a registered international interest, that at some stage during the drafting process the phrase: “and which” had been omitted from the third line and the effect of that omission was that, if a Contracting State declared which interests under its national law had priority over an equivalent of a registered international interest, all those interests would have priority over registered international interests, that this was not the intention of the provision, and that the intention of the provision was that a Contracting State should have an option to identify which of the interests having priority under national law would have priority over registered international interests.

The CHAIRMAN stated that there had been no objection to the proposed amendment to Article 39(1)(a) of the Draft Convention, and that the proposed amendment had been adopted. The Chairman invited comments on the proposed amendment to Article 60(3) of the Draft Convention.

The DELEGATION OF KENYA stated that it supported the proposed amendment to Article 60(3) of the Draft Convention, that Article 60 of the Draft Convention was a hybrid between Alternative A and Alternative B from the original draft, that the intention had been to allow Contracting States that wished to make declarations for pre-existing rights to be registered under the new system, that the wording of the original Article 60(3) of the Draft Convention did not provide a sufficient period for creditors to be notified and register their pre-existing rights with the Registrar, and that the purpose of introducing the phrase: “not earlier than three years after the date on which the declaration becomes effective” was to allow for a sufficient period for creditors and debtors to file appropriate notifications after a particular Contracting State had made a declaration.

The CHAIRMAN stated that the text of Article 60(3) of the Draft Convention as presented in DCME Doc No. 74 was impracticable and unworkable.

The DELEGATION OF CANADA stated that it supported the comments of Kenya, that the key element was that Article 60(3) of the Draft Convention only made sense if it was restricted to priority, that the other element of the proposal was a technical clarification to deal with the theoretical possibility of an impractical transition period, and that Canada fully supported the amendments.

The DELEGATION OF JAPAN stated that it supported the proposed amendments to Article 60(3) of the Draft Convention, that it required clarification whether it would be appropriate to use the word “may” in the first sentence and whether it should be replaced by the word “shall”, and that it required clarification regarding whether pre-existing priority would be protected against Convention priority.

The CHAIRMAN stated that the word “may” in the first line of Article 60(3) of the Draft Convention was part of an already-accepted text, and that the phrase: “including the protection of any existing priority” was a necessary clarification in the text.

The DELEGATION OF JAPAN stated that the intention of the phrase should be included in the official commentary to the Draft Convention.

The CHAIRMAN stated that the intention of the phrase would be included in the official commentary to the Draft Convention. The Chairman stated that the proposed amendments had been adopted by the Commission.

The meeting rose at 12:20

PLENUM – SIXTH MEETING (Reconvened)

Friday, 16 November 2001, at 12:30

President: Professor Medard Rutoijo Rwelamira (South Africa)

Secretary General (ICAO): Mr Ludwig Weber, Director of the ICAO Legal Bureau

Secretary General (UNIDROIT): Professor Herbert Kronke, Secretary-General of UNIDROIT

AGENDA ITEM 11 – EXAMINATION OF THE REPORT OF THE COMMISSION OF THE WHOLE (CONT.)

The PRESIDENT invited the Chairman of the Commission of the Whole formally to present the decisions of the Commission of the Whole to the Plenary for adoption.

The DELEGATION OF FINLAND stated that the Commission had proposed that previously elaborated amendments to Article 39(1)(a) of the Draft Convention and to Article 60(3) of the Draft Convention be adopted by the Plenary.

The PRESIDENT stated that there was no objection to the proposed amendments, and that they would be adopted.

AGENDA ITEM 13 – SIGNATURE OF THE FINAL ACT AND OF ANY INSTRUMENTS ADOPTED BY THE CONFERENCE

The PRESIDENT stated that the Secretary General (ICAO) would explain the procedures for the signing ceremony.

The SECRETARY GENERAL (ICAO) stated that the Final Act would be able to be signed by any delegation from a State or Regional Economic Integration Organisation participating in the Conference whose credentials had been found to be in due and proper form, that the Convention and Protocol

would be able to be signed by any State delegation or regional economic integration organisation whose full powers had been found to be in due and proper form, that following the signing ceremony the President would provide an opportunity for States and regional economic integration organisations to make formal declarations relating to signature, that all such formal declarations upon signature would be recorded and form part of the official proceedings, that the written version of each such declaration should be provided to the Secretariat for inclusion in the appropriate depositary action, and that after the formal declarations had been made there would be an opportunity for delegations to make statements.

The DELEGATION OF BELGIUM stated that the European Community would have a single statement to make regarding the transfer of jurisdiction by the Member States of the European Community to other members, and that the European Community Council would also make a statement.

The PRESIDENT stated that the Secretaries General would invite delegations to sign the documents in alphabetical order.

The SECRETARIES GENERAL invited the delegations of the following States and regional economic integration organisations to sign the Final Act and, for those delegations whose full powers had been found to be in due and proper form, the Convention and Protocol: Angola, Argentina, Australia, Bahrain, Belgium, Benin, Botswana, Brazil, Burundi, Cameroon, Canada, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Egypt, Ethiopia, Finland, France, Germany, Ghana, Greece, India, Iran, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Lebanon, Lesotho, The Arab Libyan Jamahiriya, Malawi, Mexico, Namibia, the Netherlands, Nigeria, Oman, Pakistan, the Republic of Korea, the Russian Federation, Singapore, South Africa, Spain, Sudan, Sweden, Switzerland, Thailand, Tonga, Turkey, Uganda, the United Arab Emirates, the United Kingdom, the United Republic of Tanzania, the United States of America and the European Community.

The PRESIDENT stated that the signing procedure had been completed. The President invited delegations that wanted to make formal declarations in respect of signature to take the floor.

The DELEGATION OF JORDAN stated that on behalf of the Government of the Royal Hashemite Kingdom it extended its thanks to the Government of South Africa for the facilities that had been provided, that it thanked in particular His Excellency the Minister of Transportation of South Africa for his endeavours which had helped to ensure the success of the Conference, that it thanked the Secretariats of the International Civil Aviation Organization and UNIDROIT, that it thanked the members of the Secretariat and the Arabic translation sections which had provided accurate translations of the texts, that it thanked the Chairman and the Secretaries General, and that it had signed the Final Act and the Convention and Protocol because it was firmly convinced that the instruments would open new vistas in the field of international civil aviation and the buying and leasing of aircraft.

The DELEGATION OF BELGIUM stated that on behalf of the European Community it thanked the President and the Secretariats of the International Civil Aviation Organization and UNIDROIT, and that the European Community would be discussing the Convention shortly.

The DELEGATION OF CHINA stated that it thanked the Government of South Africa, the Secretariats of the International Civil Aviation Organization and UNIDROIT, the Chairman of the Commission of the Whole, the Chairman of the Credentials Committee, the Chairman of the Drafting Committee, the Chairman of the Final Clauses Committee, the staff members and other delegations for their efforts and contributions. It stated that it had signed the Convention and Protocol in the spirit of protecting the rights and interests of debtors and of promoting and facilitating financing and reduced financial costs, that in the previous ten years civil aviation in China had been developing at double-digit pace, that there had been no instance of default on the part of Chinese airlines, that the

civil aviation industry would continue to develop quickly, that Chinese airlines would continue to respect their contractual obligations, and that the civil aviation industry in China had been supported by the International Civil Aviation Organization, UNIDROIT and many governments and enterprises and it thanked all those who had helped it.

The PRESIDENT stated that any delegation wishing to make a declaration with regard to signature should do so.

The DELEGATION OF TONGA stated that it was the first time that the Kingdom of Tonga had been represented at a Diplomatic Conference at which it had signed the texts, that it had been an honour to have been invited to the Conference, that it was honoured to have been invited to be a member of the Preparatory Commission, and that it thanked the Government of South Africa for hosting the Conference and the Conference organising committee for the arrangements that had been made.

The DELEGATION OF THE ARAB LIBYAN JAMAHIRIYA stated that it thanked the Government of South Africa for hosting the Conference, that it thanked the vice-Chairmen and the Secretariats of the International Civil Aviation Organization and UNIDROIT, and that it thanked the participating delegations, the interpreters, translators, and the Arab translation section for their work.

The DELEGATION OF INDIA stated that it had signed the Final Act and intended to sign the Convention and Protocol as soon as possible, that it appreciated the work of the Secretariats of the International Civil Aviation Organization and UNIDROIT, that it thanked the interpreters, and that it thanked the Chairman of the Drafting Committee, the Chairman of the Final Clauses Committee, and the President for his work in presiding over the Conference.

The DELEGATION OF SWEDEN stated on behalf of the European Community that the signature of the Convention and Protocol by Member States of the European Community would be accompanied by a formal statement and that the text of the declaration would be intended to establish the relationships between the Contracting States and the Member States of the European Community, that it would specify that the Member States of the European Community had transferred their jurisdiction in certain matters covered by the Convention and the Protocol to the jurisdiction of the Community, that it would then fall to the competent bodies to take the necessary decisions before signing the instruments, and that the text of the declarations of the Member States of the European Community would read as follows: "Upon signature of the Convention or Protocol, this State, Member State of the European Community, declares that, in accordance with the treaty establishing the European Community, the Community has competence with respect to certain matters governed by the Convention or Protocol. The signature of the Convention or Protocol on behalf of the Community will be decided by the competent Community institutions in accordance with the provisions of the treaty."

The DELEGATION OF BAHRAIN stated that it thanked the Government of South Africa and the Minister of Transport for the excellent preparations and conduct of the Conference, and that it thanked the President of the Conference, the Chairman of the Commission of the Whole, the Secretariats of the International Civil Aviation Organization and UNIDROIT, the interpreters and the Arabic translation services.

The DELEGATION OF SPAIN stated that on behalf of all the countries in the European Union it thanked the President, that it thanked all delegations for their flexibility in enabling a formula to be adopted that would satisfy the needs of the European Community, that this would make it possible for the members of the European Community to become Contracting States to the Convention and the Protocol, and that it would cooperate in implementing the new system involving the International Registry.

The DELEGATION OF NIGERIA stated that it was speaking on behalf of the African States, that history had been made with an international treaty being named after an African city, that the African States sincerely thanked the Minister of Transport for South Africa and the Government and people of

South Africa, that the African States thanked the President, the Chairman of the Commission of the Whole, the Secretariats of the International Civil Aviation Organization and UNIDROIT, the Chairmen of the committees, the interpreters and technicians, and all delegations for the spirit of compromise that pervaded the Conference.

The DELEGATION OF PAKISTAN stated that it thanked all delegations that had accepted Pakistan's proposals, that it thanked the Chairman of the Credentials Committee for resolving the issue with Pakistan's credentials, and that it thanked the Minister of Transport for South Africa for his generosity in hosting the Conference.

The DELEGATION OF THE UNITED ARAB EMIRATES stated that it thanked the Government of South Africa for its hospitality, the South African officials for their efforts in organising the Conference, the President and Chairman of the Commission of the Whole, the Chairmen of the committees and informal working groups, and the interpreters, that it was happy to have been chosen as a member of the Preparatory Commission, and that it would make every effort possible to ensure that the objectives of the Convention would be fulfilled.

The DELEGATION OF THE UNITED STATES OF AMERICA stated that it thanked the delegations of Canada, Kenya and the other delegations that had provided a facilitative effort to resolve the final issues relating to the Convention, that it recognised the efforts of the Secretariats who had worked extremely long hours during the Conference, that it thanked the translation staff in Montreal who had assisted in producing the documentation used during the Conference, that it thanked the Government of South Africa and the South African officials for their efforts as hosts of the Conference, that it thanked the observer groups who represented industry partners for their diligent efforts over a long period of time, and that it would welcome the participation of any delegation that would like to work informally to compare issues and methods for facilitating the rapid ratification of both the Convention and Protocol.

The DELEGATION OF CANADA stated that it sincerely appreciated the hospitality of the South African Government, that Canada had played an important role in the development of the Convention since 1988 when it had suggested to the UNIDROIT Governing Council that the Convention be developed, that Canada had participated in all consultations and had expended a considerable effort to promote the development of the instruments, that it had signed the Final Act and had not signed the Convention and Protocol due only to internal constitutional reasons, that it would sign the Convention and Protocol immediately after resolving its internal issues, that it had been authorised by the Minister of Foreign Affairs to indicate in principle that the Government of Canada would support Montreal as Canada's candidate to host the International Registry, and that it joined other delegations in thanking the Secretariats and all the people who had worked to make the Conference a success.

The DELEGATION OF BRAZIL stated that it was speaking on behalf of the South American countries, that it thanked the Government of South Africa for its impeccable organisation of the Conference, that it thanked the Secretariats of the International Civil Aviation Organization and UNIDROIT for their efforts, that it thanked the Chairman of the Commission of the Whole for his fair and efficient conduct of the work of that Committee, that it thanked the Chairman of the Final Clauses Committee and the Chairman of the Drafting Committee for their work under tight time pressure, and that it hoped that the effort evident during the Conference would continue in relation to the future adoption of protocols dealing with space assets and railway rolling stock.

The DELEGATION OF SUDAN stated that it thanked the Government of South Africa and the Minister of Transport of South Africa, that it thanked the Secretariats of the International Civil Aviation Organization and UNIDROIT for their efforts over many years, that it thanked the translators and interpreters, and that it hoped that the texts would be implemented as soon as possible to the benefit of the international community and the international civil aviation community.

The DELEGATION OF EGYPT stated that it thanked the Government of South Africa for its excellent preparation of the Conference, that it thanked all participating delegations that had contributed to the discussions, that it thanked the Secretariats of the International Civil Aviation Organization and UNIDROIT for their efforts, that it thanked the translators and interpreters, and that it thanked the Minister of Transport of South Africa.

The DELEGATION OF THE RUSSIAN FEDERATION stated that it thanked the Government of South Africa for its hospitality, that it thanked the President, the organisers of the Conference, the translators and the technical staff for their hard work, that it thanked other delegations for their competent and professional work, and that it would actively participate in the enforcement of the Convention.

The MINISTER OF TRANSPORT OF SOUTH AFRICA made the following statement: “President of the Conference, Your Excellencies Ministers, Deputy Ministers, Ambassadors and High Commissioners, Chairpersons of Commissions, distinguished heads of delegations, distinguished delegates, ladies and gentlemen. Three weeks ago I stood here before you to welcome you on behalf of the Government and people of South Africa knowing then that an immense task lay ahead of you. Whilst the issues of asset-based financing in the sector of mobile equipment and the creation of a legal framework for adequate securitisation has been part of ongoing discussions in the fora of ICAO and UNIDROIT for many years, the international aviation community and other transport and communication sectors had not been able until your arrival in Cape Town to translate need and desire into practical reality. All of us were, and remain, mindful of the fact that we are dealing with mobile equipment valued at billions and billions of dollars, that relevant industries and financial institutions correctly identified the absence of adequate security and speedy remedies as a weakness resulting in the cost of finance being more onerous than would otherwise be possible. You knew, as delegations representing governments, industries and stakeholders of all kinds, what the problems were. You had to consider all the options available and to find appropriate answers acceptable to all. Those were some of the challenges that faced you three weeks ago as you arrived in Cape Town. As a South African and Capetonian, I am amazed that the Conference and delegates did not allow themselves to be distracted by the city, that is the geographical city of the Conference. With such good weather which we all enjoyed, the splendour of Table Mountain was extremely inviting. On the other side is the magnificent Cape Town waterfront which is also the embarkation point for those wishing to take a trip across the sea to Robbin Island which, as you all know, was the prison home of Nelson Mandela for more than a quarter of a century. Near Cape Town is the place where the two oceans meet, namely the Atlantic Ocean and the Indian Ocean – another temptation – and then there are the magnificent beaches, wine lands, and other attractions. As I say, I am amazed that Cape Town did not seduce you nor was it able to distract you from your work. I hope that we were not found wanting with regard to hospitality addressing your needs and the organisational arrangements. Coming back to greet you at the closing session of this Diplomatic Conference does evoke a sense of pride and gratitude. If you were faced with tremendous challenges at the commencement of the Conference, you faced up to those challenges, addressed them adequately and you have emerged with a Convention, a Protocol, and a Final Act which I hope will enjoy universal acceptance. South Africa itself, as the host country, accepted the results of the Diplomatic Conference. We have signed the Final Act, the Convention and the Protocol and we are prepared to cooperate fully so as to ensure that the legal framework created by what is now known as the Cape Town Convention is implemented. Today, at this closing session, it is with satisfaction that we can all say that the Diplomatic Conference had achieved its objectives. On behalf of the Government of the Republic of South Africa, I thank the organisers for their splendid work, I thank ICAO and UNIDROIT for the confidence placed in South Africa’s ability and capacity to organize this high-level, specialised and technical event. Thank you for giving us this wonderful opportunity. I want to express a special word of thanks to our local sponsors, Transnet, for the wonderful support which we received at all times. Our local organisers, led by the Department of Transport of the Republic of South Africa, have also done well and I express appreciation but then,

above all, I want to thank all of you, delegations from across the world, for being here and making this Conference and the event such a success.

I want to say with humility as South Africa, your host, we were very determined to ensure that the Conference was a success in every respect. Just a few weeks earlier, South Africa hosted the UN World Conference on racism, xenophobia and other forms of intolerance – also, I believe, a great success. And whilst you were meeting here in Cape Town, another important international Telecom Conference was taking place in our country. In the transport sector, a number of important events, involving international participation, are scheduled to take place over the coming period. At the end of the month, for example, there will be massive events including a Conference in East London around the issue of HIV Aids. World Aids Day, 1 December, will be packed with activities all over the country. Next year South Africa hosts the World Conference on Sustainable Development at which over 50,000 delegates and other participants are expected from all over the world. Soon we will also be staging the PIARC, the Permanent International Association of Road Congresses, World Road Congress and the World Ports Congress, the last of which was held at Montreal. If I may be allowed to say so, the South African Government, in partnership with other sectors in our society, is working very hard to make South Africa the preferred destination for people across the globe. In South Africa, and in Southern Africa as a whole, we are living through exciting times. In the post-apartheid and the post-colonial period, we seek to transform our countries to promote economic growth and development, effect land reform and social transformation which must benefit all the people of our sub-continent. In South Africa, we are very conscious of the reality that South Africa cannot develop in isolation. It is part of the Southern African region and ultimately part of Africa. Development, therefore, must embrace our whole sub-continent and ultimately, the continent of Africa. The new partnership for African development, the whole potential of an Africa entering a new dawn of development, progress and an era of peace and harmony: we do not underestimate the challenges and difficulties. But there is every prospect that Africa will overcome the current strife and turmoil which exist in some parts of our continent and that the onward march of democracy, respect for human rights, good governance and the rule of law will triumph. Indeed, we have already seen many African States adopting new constitutions, introducing democratic dispensations and putting into place mechanisms and procedures to promote good governance and the rule of law. Mr President, I say this because good governance, the rule of law, independent judiciaries and legal procedures which provide speedy remedies are crucial for the Mobile Equipment Convention and the Aviation Protocol to become meaningful and beneficial to sellers and buyers, lessors and lessees, international suppliers, industry and finance. They must have confidence not only in the international legal framework, created by this Diplomatic Conference, but by the legal regimes of various countries across the globe. At the same time, those of us that are customers must also have the confidence that fairness will prevail and that the legal framework does take care of the concerns of buyers and lessees as well. This Diplomatic Conference now concluding is a feather in the cap not only for South Africa as host country but for Africa as host continent and it was very pleasing that Africa was well represented by high-level delegations, including a number of Ministers and Deputy Ministers. Allow me to say a special word of thanks to colleagues and delegates from all parts of Africa for helping to make this an international Conference with an African flavour.

We have been spending a great deal of our time on aircraft and aircraft-related mobile equipment. I think our priorities have been correct but I am also mindful of the difficult time through which the aviation industry is moving throughout the world. Challenges face us on issues of safety and on pollution both with regard to noise and emissions. The issue of safety has assumed paramount importance and it is clear that, throughout the world, this issue cannot be neglected. At the same time, the challenge facing us is to ensure that adequate and efficient air services at reasonable cost are available for people across the globe. In Africa, we face the challenge of ensuring that we put into place air services which will enable us to travel from one part of the continent, in the most direct way possible, to another without having to do so via London or Paris. The same applies to our telecommunications services. I am sure that these are issues that will occupy the minds of African

delegations here as they go home. Aviation safety and upper air space control over the continent will have to be looked at on a continent-wide basis wherever possible to the common benefit of us all and with due respect to all countries. In this context, space equipment assumes an immediate importance. Likewise, rail equipment is important. As we develop our countries, it becomes very clear that an adequate balance between road and rail should be established wherever possible. We should make use of rail transportation again to reduce congestion and road accidents, reduce pollution and to protect the environment. In many parts of Africa, rail transport will assume greater importance than before. Thus, whilst we have successfully negotiated the Aircraft Protocol, it is clear to me that more work lies ahead to develop the other protocols as soon as possible.

So Mr President, let me say in conclusion, that it is fitting that the Conference ends in Cape Town in glorious sunshine – may it symbolise a better future, a new dawn and progress in all the areas covered by the Convention. I once again express appreciation to the Presidents of ICAO and UNIDROIT and their teams, thank you Ministers, Deputy Ministers, heads of delegations, members of delegations. From Cape Town, South Africa, I wish you *bon voyage* but before you leave on your final journeys, stay a little longer, enjoy Cape Town, enjoy South Africa and do come back. And may I, in conclusion, wish members of the Hindu faith well over the Diwali celebrations, and may I say to members of the Muslim faith: may you have Ramadan-ul-Mubarak, and to each and every one, a safe journey home, a merry Christmas and a happy New Year. Thank you.”

The PRESIDENT made the following statement: “I thank Minister Omar, the Minister of Transport of the Republic of South Africa for that statement. We are coming towards the end of our proceedings. Honourable Ministers, Ambassadors and Plenipotentiaries, distinguished leaders of delegations, distinguished delegations, colleagues, ladies and gentlemen, it is indeed a matter of great satisfaction that we have now concluded the historic Diplomatic Conference to adopt a mobile equipment convention and aircraft protocol. This Conference could not have happened at a more appropriate time. It has taken place at a time when the aviation industry is going through a difficult time, largely and partially due to the ever-increasing costs in aircraft financing. I believe that this Diplomatic Conference will be recognised as an important development in the international collective efforts to address these concerns in a manner which is equitable and fair to those seeking international financing. The instruments you adopted on Wednesday represent, in my view, a ray of hope and light in an otherwise depressed industry. We have recognised during this Conference the need to make financing of valuable mobile assets cost effective and affordable. We have recognised the immense benefit of the application of an international legal framework establishing international connectivity and improved air and rail transportation. Inevitably, these negotiations have been difficult and, at times, they have even been acrimonious. But again, this was to be expected. The Convention and the Protocol introduced radically important innovations in relations between States and financing entities, and prescribed new parameters for new restrictions. Not everything that some of us had hoped for has been included in the Convention and the Protocol. This was inevitable in such a complex exercise carried through a large number of countries with the aim of attracting the broadest possible support for the future. I nevertheless believe that both the Convention and the Protocol have qualities of cost effectiveness and fairness commensurate to the tasks that lie ahead. I recognise that you have all been working very hard, day and night and during weekends in every way you can, in order to finalise the task entrusted to you, namely the finalisation and the adoption of the Convention and the Protocol. I take this opportunity to record our sincere thanks to ICAO and UNIDROIT and, in particular, Dr Kotaite, Chairman of the Council of ICAO, Dr Weber, Secretary General of ICAO, Dr Kronke, Secretary General of UNIDROIT. These dynamic people, backed by their Secretariats and interpreters, have spent sleepless nights in planning, preparing and coordination of various activities that have made this Conference indeed a memorable one. During the last three weeks, I have been extremely fortunate in having an excellent Steering Committee, including distinguished vice-Presidents, the Chairman of the Commission of the Whole, the Chairman of the Drafting Committee and the Chairman of the Final Clauses Committee, whose assistance has been invaluable in the conduct of this Conference. I would like to single out Dr Antti Leinonen, Chairman of the Commission of the Whole, whose mastery of the subject and diplomatic skills contributed

immensely to the successful conclusion of this Conference. I would also like to commend and thank Professor Goode and Dr Ratteray who agreed to chair the Drafting Committee and the Final Clauses Committee respectively and did an excellent job of integrating the various suggestions and concerns of delegations in the final text. Various experts, especially from the aviation, railway and space sectors contributed to the success of this Conference as well. I would like to extend my thanks to all these people and all those who worked for the success of this Conference. However, the credit for the positive achievements of this Conference, I think, truly belongs to the distinguished delegates and representatives who participated in this Conference. Your spirit of cooperation and flexibility has helped the Conference to achieve its objectives. I am grateful once again to all of you for unanimously electing me as President of this historical Conference and for providing the support that made my task much simpler and more enjoyable. I hope I lived up to your expectations and justified your faith in me. I now bid a farewell to all of you and hope you will have a safe journey back to your respective countries and I have no doubt that you will continue to promote the goals and the objectives of the Convention and the Protocol. It is now my pleasure to declare the Diplomatic Conference to adopt a Mobile Equipment Convention and an Aircraft Protocol closed.”

The meeting rose at 14:00