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

(Cape Town, 29 October to 16 November 2001)

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

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.

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 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 48²;

(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;

(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;

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.

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.

(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.

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] [T]he categories referred to in the preceding paragraphs are:

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.

- (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.

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.

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.

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

~~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.

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.

¹¹ The final drafting of this provision will depend on the solution to be adopted in respect of Article 55.

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 52,¹² 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. 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.

¹² The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

Article 12
Relief pending final determination

1. – Subject to any declaration that it may make under Article 55,¹³ ~~a~~ 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)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.

¹³ The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

¹⁴ The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.

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) subordinations of interests referred to in sub-paragraph (a) of this paragraph;~~
notices of national interests; and
 - (e) ~~notices of national interests~~ 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;
- (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.] – 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.] – 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.

4 ~~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

¹⁵ The numbering of this reference may need to be reviewed in the light of the final form to be given to Article 27.

**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.
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.~~ 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.~~ 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.

~~5.~~ 5. – In the case of an assignment by way of security, the assigned associated rights revest in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

Article 32

31

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 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~~ 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-

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

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.

Article 46

Relationship with the [draft] UNCITRAL Convention on Assignment [in Receivables Financing] [of Receivables in International Trade]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 Article2(3).]~~⁴

CHAPTER XIV

FINAL PROVISIONS

[This Chapter is being reviewed by the Final Clauses Committee]

APPENDIX II

**THE¹⁷ 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

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.

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~~ 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 55¹⁸) 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;
- (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 holders of registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been ~~satisfied~~ 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]

– END –

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.

APPENDIX II

**THE ¹ 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:

(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

¹ 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.

(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 55²) shall apply to contracts of sale and prospective sales.

²

[The numbering of this Article will depend on the results of the deliberations of the Final Clauses Committee.](#)

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;
- (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 holders of registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been ~~satisfied~~ 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]