



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



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

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## **FIRST JOINT SESSION**

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## **REPORT**

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## OPENING

1. In opening the first Plenary Session of the *Joint Session of the UNIDROIT Committee of governmental experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment and the Sub-Committee of the ICAO Legal Committee on the study of international interests in mobile equipment (aircraft equipment)*, Mr H. Kronke, Secretary-General of UNIDROIT, and Mr L. Weber, Director of the ICAO Legal Bureau, acting on behalf of the Secretary General of ICAO, reiterated the commitment of the two Organisations to the preparation of the preliminary draft Convention and preliminary draft Protocol, which would be of major importance in economic, financial and legal terms.

2. They expressed appreciation for the collaboration of the private sector in the preparation of the instruments, in the first instance of the Aviation Working Group (A.W.G.), the Rail Working Group, the Space Working Group and the International Air Transport Association (IATA). While stressing the importance of the expertise brought to the project by these Groups, they invited the observers of the private sector to respect the procedures of inter-governmental Organisations, in accordance with which relations with member States came within the exclusive purview of the inter-governmental Organisations concerned.

3. The Secretaries to the Joint Session were Mr M.J. Stanford, Principal Research Officer (UNIDROIT Secretariat) and Mr S. Espínola, Principal Legal Officer (ICAO Secretariat).

4. The Joint Session was attended by representatives of 34 States, five intergovernmental Organisations and nine international non-governmental Organisations (cf. Attachment A).

AGENDA ITEM 1: ELECTION OF THE CHAIRMAN

5. Ms E. Chiavarelli, Senior Official, Directorate-General of Civil Aviation, Ministry of Transport (Italy), was elected Chairman of the Joint Session.

6. Ms G. T. Serobe, Ministry of Transport (South Africa), was elected First Vice-Chairman of the Joint Session.

7. Mr J.A. Sánchez Cordero Davila, Public Notary (Mexico), was elected Second Vice-Chairman of the Joint Session.

AGENDA ITEM 2: ADOPTION OF THE AGENDA

8. The agenda was adopted as proposed.

AGENDA ITEM 3: ATTENDANCE OF OBSERVERS

9. It was agreed that representatives of inter-governmental Organisations and international non-governmental Organisations would be admitted to the meetings as observers. The observers from A.W.G. and IATA would be admitted to participate with advisory status in the meetings of any relevant working groups that might be set up.

AGENDA ITEM 4: ORGANISATION OF WORK

(a) BASIC FEATURES OF THE PROPOSED NEW INTERNATIONAL REGIMEN AND ITS ECONOMIC SIGNIFICANCE: A PROGRAMME OF BACKGROUND PRESENTATIONS

10. Mr Kronke and Mr Weber gave introductory presentations illustrating the basic objectives of the new international regimen and how it had developed. These introductory presentations were followed by presentations on the anticipated economic impact of the proposed new regimen with specific reference to the preliminary draft Protocol on matters specific to Aircraft Equipment (Mr L.S. Clark, General Counsel and Corporate Secretary (IATA)); on the novel structure of the proposed new international regimen, with an examination of the relationship between the proposed future Convention and each of the equipment-specific Protocols thereto (Ms C. Kessedjian, Deputy Secretary-General, Hague Conference on Private International Law); on the basic features of the preliminary draft Convention (Mr R.M. Goode (United Kingdom), Chairman of the UNIDROIT Study Group responsible for the preparation of the preliminary draft Convention); on the basic features of the preliminary draft Protocol on Matters specific to Aircraft Equipment and its relationship to the preliminary draft Convention (Mr J. Wool, Co-ordinator, A.W.G.; Chairman of the working group responsible for the preparation of the preliminary draft Protocol on Matters specific to Aircraft Equipment); on the importance of the preliminary draft Protocol on Matters specific to Space Property for the space industry and specific issues particular to space property treated therein (Mr P.D. Nsgos, Co-ordinator, Space Working Group); and on the importance of the preliminary draft Protocol on Matters specific to Railway Rolling Stock for the railway industry and specific issues particular to railway rolling stock treated therein (Mr H. Rosen, Co-ordinator, Rail Working Group). The programme of presentations continued with presentations on the options for a modern international registration system, with illustrations being given of electronic registration under the Quebec personal property registry (Ms S. Potvin Plamondon (Canada), Director of the Quebec Registry) and of U.S. experience of a paper-based system (Mr C.W. Mooney, Jr. (United States of America), Member of the UNIDROIT Study Group). The final presentation examined the key features of the international registration system provided for under the proposed new international regimen (Mr R.C.C. Cuming (Canada), Member of the UNIDROIT Study Group

and Chairman of the working group set up by the UNIDROIT Study Group to consider the legal and technical issues raised by the creation of an international registration system).

11. Following the programme of presentations, the delegate of Singapore also shared her experience in operating an electronic trade documentation system.

(b) SETTING-UP OF SUB-GROUPS, AS REQUIRED, AND OTHER MATTERS

12. It was agreed to set up a Drafting Committee. The following States were appointed to serve on this Committee: Canada, Egypt, France, Germany, Japan, Mexico, Republic of Korea, Singapore, South Africa and the United States of America. It was further agreed that the observers from the Hague Conference on Private International Law, A.W.G. and IATA would attend sessions of the Drafting Committee as advisers.

13. The Drafting Committee elected Mr K.F. Kreuzer (Germany) and Mr G. Lauzon (Canada) Chairman and Vice-Chairman respectively.

14. It was decided to establish a Registration Working Group (R.W.G.). The following States were appointed as its members: Canada, Egypt, Finland, France, Ireland, Japan, Mexico, Singapore, South Africa and the USA. It was further agreed that the observers from A.W.G. and IATA would attend sessions of the R.W.G. as advisers.

15. The R.W.G. elected Mr Cuming and Ms Serobe as Chairman and Vice-Chairman respectively.

16. It was agreed to appoint Mr Goode, who had been Chairman of the UNIDROIT Study Group and of the Steering and Revisions Committee, as *Rapporteur* to the Joint Session so as to assist delegates by illustrating the decisions taken by these two bodies and the reasons which had led to their adoption.

AGENDA ITEM 5: CONSIDERATION OF THE PRELIMINARY DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT (UNIDROIT 1998, STUDY LXXII – DOC. 42) / PRELIMINARY DRAFT [UNIDROIT] CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT (ICAO REF. LSC/ME-WP/3) (hereinafter referred to as the *preliminary draft Convention*)

GENERAL DISCUSSION

17. A number of delegations stressed the economic importance of this project for the aviation industry in particular and its possible repercussions not only for the industries concerned but also for the economies of developing countries and countries with economies in transition in particular. It was however noted that maritime interests in a number of countries did not show particular interest in the project.

18. A number of delegations representing countries with Civil law legal systems expressed their concern at an approach which they saw as excessively inspired by the Common law legal tradition. A result of this approach was that in many instances the preliminary draft Convention as it stood was incompatible with their legal systems. A greater equilibrium had to be attained between the Common law and Civil law traditions.

19. Other delegations stressed the need to prepare instruments that were economically viable and useful, even if a lesser degree of compromise was obtained from the legal point of view.

20. In relation to the structure of the instruments, Ms C. Chinkin (Professor of Public International Law, London School of Economics) presented a discussion paper on the legal relationship between the preliminary draft Convention and its equipment-specific protocols, in particular as regards the implications for public international law (Study LXXII – Doc. 47 and ICAO Ref. LSC/ME-WP/12). She also explained the thinking behind the decision to establish a dual Convention/Protocol system.

21. Questions were raised by a number of delegations as regards the advisability of maintaining the present structure of a basic Convention with Protocols, and a suggestion was made to adopt the system of the 1944 Chicago Convention on International Civil Aviation (hereinafter referred to as the *Chicago Convention*) with a Convention with annexes on the understanding that the annexes would form an integral part of the basic Convention and be obligatory in character.

22. The German delegation submitted for discussion a consolidated text of the preliminary draft Convention and the preliminary draft Protocol in a single instrument (UNIDROIT CGE / Int.Int./WP/9 and ICAO Ref. LSC/ME-WP/20), *inter alia* on the ground that there was no guarantee that other preliminary draft Protocols would emerge. The Secretary-General of UNIDROIT pointed out that the Intergovernmental Organisation for International Carriage by Rail (O.T.I.F.) had already agreed to co-ordinate the intergovernmental consultation procedure in respect of the preliminary draft Protocol on Matters specific to Railway Rolling Stock and that this preliminary draft Protocol, as also that on Space Property, were at an advanced stage of preparation. Attention was also drawn to the letter from the Director General of O.T.I.F. urging the maintenance of the dual structure (UNIDROIT CGE /Int.Int./WP/8 and ICAO Ref. LSC/ME-WP/19).

23. It was agreed that it was premature to decide whether or not to adopt an approach different from the present one as regards the structure of the preliminary draft Convention and its equipment-specific protocols. It was therefore agreed that the structure of the instruments and related questions would be dealt with once the text of the instruments had been examined by the Joint Session. It was decided that the texts of the preliminary draft Convention and preliminary draft Protocol should be examined separately. The delegation which had proposed consolidation of the preliminary draft Convention and the preliminary draft Protocol announced that it was reserving its position.

24. The importance of examining the connection between national registry systems and the proposed international registry was stressed.

25. One observer saw the texts before the Joint Session as representing a remarkable achievement, which would in due course be most useful for the countries where his Organisation operated. For the time being, the basic structure for secured financing in those countries was still being developed on the basis of the Model Law on Secured Transactions prepared by the European Bank for Reconstruction and Development (E.B.R.D.).

26. One observer pointed out that the preliminary draft Convention contained conflicts and civil procedure rules and that its rules on these subjects were not always accurate. It was suggested that these issues might be examined in the course of the proceedings.

## CONSIDERATION OF THE TEXT OF THE PRELIMINARY DRAFT CONVENTION

### GENERAL DISCUSSION

27. It was decided that, for ease of consultation, titles should be drafted for the articles of the preliminary draft Convention and a table of contents added at its beginning.

28. One delegation proposed and it was decided that the Drafting Committee should draft a preamble to the preliminary draft Convention.

29. It was agreed to consider the text article by article.

## CHAPTER 1: SPHERE OF APPLICATION AND GENERAL PROVISIONS

### ARTICLE 1

30. A number of delegations queried some of the definitions contained in Article 1 («agreement», «applicable law», «assignment», «associated rights», «court», «prospective assignment», «prospective international interest», «prospective sale», «security agreement», «surety» and «writing»). It was decided that the Drafting Committee should re-examine these definitions and clarify the concepts involved.

### ARTICLE 2

31. It was decided that the Drafting Committee should give greater clarity to the reference to «applicable law» in Art. 2(3), as a number of delegations had observed that this reference raised numerous problems.

### ARTICLE 3

32. It was suggested that the list of categories contained in Art. 3 should be deleted as it raised a number of problems. It was however felt that the concept contained in Art. 3(i) was important and should be retained in any reformulation of the provision that the Drafting Committee might propose. It was therefore suggested that the Drafting Committee should examine the possibility of deleting the list and modifying the remaining text so as to include within Art. 2 the chapeau of Art. 3 and the concept contained in Art.3(i).

### ARTICLE 4

33. The question of the relationship between the nationality register and the State-authorized asset register was raised. Furthermore it was suggested that non-national registries with other functions should be included under this article.

34. It was decided that the Drafting Committee should consider a formulation that would solve the question of the duality in para. (b). The scope of application of the article should however not be extended too much. It should also consider the problems raised by the rendering of the English term «registered» by the French term «immatriculé» as it was uncertain whether the concepts corresponded exactly. It was also decided that the Drafting Committee should examine the concept of «close connection». The inter-relationship between Arts. 4 and U should also be considered.

### ARTICLE 5

35. A proposal to replace the word «party» by «obligor» was accepted.

36. It was decided that the Drafting Committee should consider the question of the determination of the place of incorporation of the obligor in the case of federal States. It should furthermore consider the possibility of adding a reference to the official headquarters of a company.



## ARTICLE 6

37. The present text of Art. 6 was accepted, one delegation however expressing its reservations.

## ARTICLE 7

38. It was decided to delete Art. 7(2).

39. It was decided that final approval of Art. 7(3) should be deferred until the Drafting Committee had better defined what was to be understood by the references to the «applicable law».

## CHAPTER II: CONSTITUTION OF AN INTERNATIONAL INTEREST

## ARTICLE 8

40. It was suggested that the Drafting Committee consider adding the word «and» at the end of each paragraph to indicate that the conditions were cumulative.

41. It was decided that the Drafting Committee should better define the meaning of the word «power» in para. (b). Furthermore, it was decided that a decision as to whether or not the text presently in square brackets in para. (d) should be retained should be deferred until the Drafting Committee had proposed a new definition of «security agreement». The Drafting Committee should also consider how to ensure that outright transfers of property were covered by the definition of «security agreement».

## CHAPTER III: DEFAULT REMEDIES

## ARTICLE 9

42. One delegation indicated that it would have great difficulty in accepting Art. 9 and the other articles of Chapter III, as the transposing of these provisions into national law would raise considerable difficulties.

43. One observer raised the question of the relationship between Art. 9(1) and Arts. 42 and 43.

44. It was decided that the Drafting Committee should review the question of self-help remedies and consider the advisability of introducing the concepts of «good faith» and «public order» in Art. 9. In reconsidering Art. 9, the Drafting Committee should take the provisions of Art. 15 into account. More specifically, the Drafting Committee should consider whether Art. 9(6)(d) could be considered to cover the content of Art. 9(6)(c).

45. In relation to Art. 9(2), the Drafting Committee should consider whether the concept of «good faith» should be inserted instead of that of «a commercially reasonable manner». In relation to Art. 9(3), the possibility that the Registrar be provided with a duty to inform all holders of international interests when a new national interest was created should be considered.

## ARTICLE 10

46. In order to settle the question of the mandatory or non-mandatory character of Art. 10(1), it was agreed that the Drafting Committee should consider splitting the provision into two parts. The part dealing with court orders would be mandatory in character.

#### ARTICLE 11

47. It was agreed that the Drafting Committee should reconsider the present wording of the provision, so as to ensure that it dealt with the concerns expressed by some delegations regarding, firstly, whether the terms and conditions for the termination of the leasing agreement or the title reservation agreement were left to the terms of the agreement or to the applicable law and, secondly, whether there must be default before a court order could be sought.

#### ARTICLE 12

48. It was decided that the present wording of Art. 12 should be retained for the time being. The Plenary Session would take a final decision on this article once the Drafting Committee had specified what would constitute a substantial default and had considered alternative formulations of paragraph 1.

#### ARTICLE 13

49. There was general agreement on the content of Art. 13. It was however pointed out that there was a need to reformulate the reference to «procedural law», so as to take into consideration the fact that in some legal systems rules of procedure did not constitute a separate branch of law.

#### ARTICLE 14

50. There was general agreement on the content of Art. 14. It was suggested that the Drafting Committee should consider inserting a reference to Art. 6.

#### ARTICLE 15

51. It was decided that the Drafting Committee should consider the relationship between Art. 15 and Art. 9, on the one hand, and between Art. 15 and Art. Z, on the other.

52. It was also decided that the Drafting Committee should consider the relationship between Art. 15(1)(a) and (e), as some delegations felt that sub-para. (e) might be covered by the wording in sub-para. (a). It was further suggested that the sale of an object as an interim measure as specified in sub-para. (c) should be associated with a guarantee.

53. Lastly, it was agreed that the reference to «applicable law» should be considered in the light of the discussions in the Drafting Committee on this matter.

### CHAPTER IV: THE INTERNATIONAL REGISTRATION SYSTEM

#### GENERAL DISCUSSION

54. Mr Weber introduced a document prepared by the ICAO Secretariat on the «Establishment of an International Registry for the Registration of International Interests in Aircraft Objects» (UNIDROIT CGE / Int.Int./WP/3 and ICAO Ref. LSC/ME-WP/9), which considered in particular the issues requiring consideration and the costs involved in the setting up of an International Registry. In this document the ICAO Secretariat also proposed that the Joint Session establish a working group of governmental experts to deal specifically with institutional, legal, operational and other relevant issues regarding the establishment and operation of the International Registry (Registration Working Group).

55. The proposal to establish a R.W.G. was accepted by the Joint Session in Plenary (cf. §14, *supra*).

56. Mr Wool introduced a paper containing a «Summary and Issues Note relating to the International Registry System contemplated by the Preliminary Draft Unidroit Convention on International Interests in Mobile Equipment as applied to aircraft equipment by virtue of the Preliminary Draft Protocol on matters specific to Aircraft Equipment» (UNIDROIT CGE / Int.Int./WP/4 and ICAO Ref. LSC/ME-WP/13).

#### ARTICLE 16

57. A number of delegations queried the need to create a new International Registry and suggested that existing registries might fulfil the role assigned to the proposed new International Registry. It was however pointed out that the proposed centralised International Registry represented the core of the preliminary draft Convention. One delegation indicated that, as regards national aircraft registries, there were at present no national registries that would be capable of handling the types of interest that were being considered in the two proposed instruments. The costs of adapting existing registries would be prohibitive, whereas the experience of the country of that delegation indicated that the operational costs of an international registry such as the one proposed would be very low.

#### ARTICLE 17

58. It was suggested that the unitary or binary character of the system adopted for the Registry should not be specified in the Convention. The different Protocols should be free to adopt the system best suited to the needs of the equipment they dealt with. It was recalled that administrative questions relating to the operation and organisation of the Registry would be laid down in regulations, which would also ensure the transparency of its operation and organisation.

### CHAPTER V: MODALITIES OF REGISTRATION

#### ARTICLES 18 - 19

59. No observations were made on Arts. 18 – 19, a matter on which the R.W.G. was working (cf. Attachment C).

#### ARTICLE 20

60. The question of the relationship between Art. 20 and the priority rules was raised, in particular as regards the moment in time when registration was to become effective. It was recalled that the working hypothesis was an electronic registration system in which registration would become effective as soon as it had been completed.

#### ARTICLE 21

61. It was agreed that the Drafting Committee should reconsider the formulation of Art. 21(2) and (3) so as to clarify their meaning.

62. It was agreed that Arts. 21(4), 24 and 26(1) should be considered in the context of the discussions on Art. 39.

#### ARTICLES 22 - 23

63. No observations were made on Arts. 22 – 23 (cf. Attachment C).

ARTICLE 24

64. It was agreed that Arts. 21(4), 24 and 26(1) should be considered in the context of the discussions on Art. 39.

ARTICLE 25

65. No observations were made on Art. 25 (cf. Attachment C).

ARTICLE 26

66. It was agreed that Arts. 21(4), 24 and 26(1) should be considered in the context of the discussions on Art. 39.

[CHAPTER VI: LIABILITIES AND IMMUNITIES OF THE INTERNATIONAL REGISTRY]

ARTICLE 27

67. It was suggested that the concept of «error» in Art. 27(1) should be better defined, as it was susceptible to different interpretations in different legal systems.

68. As regards the immunity of the International Registry, it was proposed that Art. 27(3)(b) be extended to cover also Art. 27(4). Furthermore, a number of delegations recalled that the provisions regulating the immunity of inter-governmental Organisations were traditionally laid down in agreements with the States on whose territory they were situated. They therefore questioned the need to deal with this issue in the proposed Convention.

CHAPTER [VII]: EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES

ARTICLE 28

69. One delegation indicated that it would have great difficulty in accepting Art. 28(2) and (3), as the transposition of these provisions into national law would raise considerable difficulties.

70. A number of delegations raised the question of the relationship between Art. 28 and Arts. 16(1), 39 and 40.

71. It was recalled that registration was not a guarantee that the interest was valid (cf. Art. 8). Registration was a necessary condition for the protection of rights against third parties.

ARTICLE 29

72. Some delegations drew the attention of the Joint Session to the fact that their internal insolvency law had recently been the subject of substantial reform and that their Governments would therefore not be prepared to accept provisions relating to insolvency that would render a further reform of their internal law necessary.

73. It was decided that the Drafting Committee should consider the advisability of defining the term «bankruptcy» in the preliminary draft Convention. It should also consider whether a number of issues

presently dealt with in the preliminary draft Protocol, in particular insolvency, should instead be dealt with in the preliminary draft Convention. There was general agreement that the provisions of the preliminary draft Convention dealing with bankruptcy should be generally looked at in the light of the 1995 European Union Convention on Insolvency Proceedings, the 1990 European Convention on certain International Aspects of Bankruptcy and the UNCITRAL Model Law on Cross-Border Insolvency.

74. In consideration of a possible overlapping between the preliminary draft Convention and the UNCITRAL draft Convention on Assignment in Receivables Financing, to which the attention of the Joint Session had been drawn by a number of delegations as well as by the observer from UNCITRAL, it was decided that an informal working group should be set up to examine this problem.

## CHAPTER [VIII]: ASSIGNMENT OF INTERNATIONAL INTERESTS AND RIGHTS OF SUBROGATION

### GENERAL DISCUSSION

75. A number of delegations raised doubts as to the utility of Chapter VIII as a whole. It was pointed out that it might give rise to difficulties with both national legislation and international Conventions. It was however also pointed out that Chapter VIII was necessary, because in the case of an assignment of an interest it was necessary to be able to determine who the present holder was, that is, whose name would appear on the Registry in respect of that asset.

### ARTICLE 30

76. It was suggested that the Drafting Committee should consider adding the word «and» at the end of each sub-para. of Art 30(2) to indicate that the conditions were cumulative.

77. It was agreed that the formulation of Art. 30 should be brought into line with that of Art. 8.

### ARTICLE 31

78. It was suggested that the Drafting Committee should consider deleting the last part of Art. 31(2)(b) («at the time of receipt of a notice of the assignment under Article 33»), which it was feared might interfere with the draft UNCITRAL Convention on Assignment in Receivables Financing.

79. It was suggested that Art. 31(2) should require an assignment to be clearly subject to any restrictions or contractual rights in favour of the obligor that were contained in the financial documents between the obligor and assignor.

### ARTICLE 32

80. It was pointed out that the term «grantor» in Art. 32 should read «chargor».

81. The question of the utility of Art. 32 was raised, in view of the fact that, with the exception of Art. 22, Chapter V specifically provided for assignments. It was agreed that the Drafting Committee should examine this question.

### ARTICLE 33

82. It was decided that the Drafting Committee should reconsider the formulation of Art. 33(1)(c), in particular as regards the reference to «[actual] knowledge».

ARTICLE 34

83. One delegation raised the question whether, under para. (d), if there was default on the part of the assignor but not of the obligor of the first interest, the default remedy would apply not only to the rights that had been assigned but to the object itself. It was decided that the Drafting Committee should look into this matter.

ARTICLES 35 - 36

84. These articles were approved without discussion.

ARTICLE 37

85. It was suggested that this article should be reviewed with reference to general insolvency law.

ARTICLE 38

86. A number of delegations pointed out that this article expressed concepts that were contrary to their national legislation. It was therefore agreed that the issues dealt with should be studied in greater depth.

87. It was decided that the Drafting Committee should look at the entire Chapter VIII and that the Joint Session should reconsider all the issues raised in relation thereto at its second session.

[CHAPTER [IX]: NON-CONSENSUAL RIGHTS AND INTERESTS]

ARTICLE 39

88. It was noted that both Arts. 39 and 40 raised important policy questions which required further discussion.

ARTICLE 40

89. A number of delegations raised the problem of declarations made by States indicating the non-consensual interests to which they wished to see priority status granted. There was some support for the idea of it being made clear in Article 40 that non-consensual interests under that article created in the future might also be the subject of such declarations. This might be done either by ensuring that the list of non-consensual interests was formulated in sufficiently broad terms or by providing that declarations were capable of modification.

90. It was moreover suggested by one delegation that Article 40 should provide that non-consensual interests under that article created in the future should always take priority over international interests irrespective of their time of registration. It was suggested that one way of addressing this problem might again be to ensure that the initial declaration of non-consensual interests was formulated in broad terms.

## [CHAPTER [X]: APPLICATION OF THE CONVENTION TO SALES]

## ARTICLE 41

91. It was decided to defer consideration of this article until after the question of the relationship between the preliminary draft Convention and the equipment-specific Protocols had been decided.

## [CHAPTER [XI]: JURISDICTION]

## ARTICLES 42 - 43

92. In consideration of the numerous problems that the question of jurisdiction raised, it was agreed that the Secretariats of UNIDROIT and ICAO should give more thought to these questions in the light of domestic rules and regional Conventions on jurisdiction and the submissions that the Hague Conference on Private International Law had agreed to transmit to the two Secretariats, in the context of its work on the preparation of a universal Convention on jurisdiction and the recognition and enforcement of judgments.

## [CHAPTERS [XII]: RELATIONSHIP WITH OTHER CONVENTIONS] AND [XIII]: [OTHER] FINAL PROVISIONS

93. It was decided that consideration of these two chapters should be deferred until a moment in time closer to the Diplomatic Conference that would be convened for the adoption of the future draft Convention and draft Protocol.

## REPORT BY THE DRAFTING COMMITTEE (UNIDROIT CGE/ INT. INT./WP/16 AND ICAO REF. LSC/ME-WP/27; cf. Attachment D)

94. The Report by the Drafting Committee, on the work it had accomplished during the Joint Session, was laid before the latter at its final plenary session. The Report was introduced by the Chairman of the Committee. He stressed that the points referred to the Committee by the Joint Session had not only concerned drafting but also questions of substance and that, while the Committee had endeavoured, wherever possible, to resolve such questions, this had not always been possible. It had, as a result, been found necessary to include a number of footnotes in the texts drawing attention to problems left open and to submit certain provisions in the form of alternative versions. These points would have to be the subject of further discussion by the Joint Session.

95. The *Rapporteur* illustrated the principal amendments made by the Drafting Committee to those provisions of the preliminary draft Convention and the preliminary draft Protocol discussed by the Joint Session. He indicated that, with a few minor exceptions, the registration provisions had not been reviewed by the Drafting Committee, in that they were being looked at from a technical point of view by the R.W.G.. However, it would in due course also be necessary for the Drafting Committee to review those provisions on the basis of a report from the R.W.G.

96. In taking note with appreciation of the work accomplished by the Drafting Committee, the Joint Session nevertheless decided that the texts of the preliminary draft Convention and the preliminary draft Protocol as reviewed by the Drafting Committee should not be the subject of further substantive discussion by the Joint Session until its following session.

REPORT BY THE REGISTRATION WORKING GROUP (UNIDROIT CGE/ INT. INT./WP/15 AND ICAO REF. LSC/ME-WP/26; cf. Attachment C)

97. The Report by the R.W.G., on the work it had accomplished during the Joint Session, was laid before the latter at its final plenary session. The Report was introduced by the Chairman of the R.W.G. He indicated that the group had in particular sought to identify which of the registration provisions of the preliminary draft Convention had their rightful place there and which should rather be moved to the Protocol or regulations. In its approach the group had recognised that different Protocols might call for different structures and different features, entailing that the preliminary draft Convention had to be both sufficiently flexible and sufficiently comprehensive.

98. While the group had made detailed proposals regarding the registration provisions of the preliminary draft Convention, involving the moving of a number of these to the preliminary draft Protocol, it had refrained from any attempt completely to overhaul the registration provisions of the latter, partly for reasons of time but also given its view that some fundamental decisions needed to be taken by aviation interests before any productive work of that nature could be carried out. For instance, the question of the relationship, if any, that might exist between national registries under the Chicago Convention and the International Registry needed to be settled on the basis of consultations with Governments before it could be dealt with in the preliminary draft Protocol. Likewise, there could be no point in providing in the preliminary draft Protocol that the International Registry was to be liable for errors and omissions without it first being investigated whether insurance coverage could be found for such liability. Similarly, the question of the immunity of the International Registry could only be accurately dealt with on the basis of further study of the manner in which this question was dealt with in existing international instruments conferring immunity on analogous bodies. By the same token, additional information would be required from aviation interests as to the type of International Registry it desired before effect could be given to the group's proposal to move Articles 18 to 24 of the preliminary draft Convention (dealing with modalities of registration) to the preliminary draft Protocol. In Appendix III to its Report, the group had, however, indicated the provisions of the preliminary draft Protocol that would be directly affected by the amendments to the preliminary draft Convention which it recommended.

99. The group recommended that it be maintained in being until the following joint session. It further requested the Joint Session to authorise it to work in the interim with an aircraft industry sub-group looking at the background issues mentioned above with a view to being in a position to table specific proposals, responding to the needs of users of the future international registration system, at the following session.

100. The Chairman of the group finally noted an infelicity in the French rendering of one of the technical terms that it had employed. This would be resolved subsequently.

101. The Joint Session took note with appreciation of the work accomplished by the R.W.G.

102. One observer stated that her Organisation, while recognising the considerable importance of the preliminary draft Convention and in particular the positive impact that it would undoubtedly have on the financing of the needs of the aviation sector, nevertheless urged the Drafting Committee to bear in mind that the future Convention related not so much to financing (that is, economic matters) as to proprietary interests, a subject that was typically legal in its dimensions, and that, accordingly, the more the solutions adopted were likely to lead to the registering of interests which were soundly and validly based, the more the financial sector was likely to benefit therefrom, in the sense of a greater measure of legal certainty and a reduction in those costs represented by recourse to courts.

103. As regards access to the International Registry, she urged the Drafting Committee to compare the systems of access under study with similar systems in force under other International Registries



(concerning, for instance, patents) with a view to ensuring that access be possible solely by means of authentic documents, capable of testifying in advance as to the origins of the parties and the lawfulness of the registration.

104. She further urged the Drafting Committee to look very closely at the drafting of Chapter III (Articles 9 *et seq.*) on default remedies, in particular the right given to the chargee to take possession and/or ownership of the asset charged, in that these provisions ran contrary to the public policy rules of several States and could therefore impede ratification of the future Convention.

105. On behalf of the International Union of Latin Notaries, she declared its readiness to assist the Joint Session in overcoming the problems mentioned in any way possible. She reserved the possibility of submitting further comments to the following joint session once she had had time to study the new texts.

AGENDA ITEM 6: CONSIDERATION OF THE PRELIMINARY DRAFT PROTOCOL TO THE PRELIMINARY DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT (UNIDROIT 1998, STUDY LXXIID - DOC. 3) / PRELIMINARY DRAFT [UNIDROIT] CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT (ICAO REF. LSC/ME-WP/4) (hereinafter referred to as the *preliminary draft Protocol*)

#### GENERAL DISCUSSION

106. Mr Wool, in his capacity of Chairman of the Aircraft Protocol Group, introduced the preliminary draft Protocol.

#### CONSIDERATION OF THE TEXT OF THE PRELIMINARY DRAFT PROTOCOL

##### PREAMBLE

107. In view of the potential overlap between the text of the preamble to the preliminary draft Protocol and the new preamble to the preliminary draft Convention, it was decided that the preamble of the preliminary draft Protocol should be simplified by the Drafting Committee, which should decide which provisions should be absorbed by the preamble to the preliminary draft Convention.

#### CHAPTER I: SPHERE OF APPLICATION AND GENERAL PROVISIONS

##### ARTICLE I

108. A number of delegations queried some of the definitions contained in Art. I of the preliminary draft Protocol. In particular, it was felt that the definitions of «aircraft», «aircraft engines», «aircraft objects», «Chicago Convention», «deregister the aircraft», «helicopters» and «primary insolvency jurisdiction» should be reconsidered in the light of existing international instruments. The exclusion of airframes and helicopters used in military, customs and police services was also queried by some delegations, who felt that they should be included within the sphere of application of the preliminary draft Protocol. Other delegations instead wanted to see them excluded, but preferred a wording closer to that of the Chicago Convention.

109. It was finally decided that it was premature to decide whether or not airframes and helicopters used in military, customs or police services should be included within the sphere of application of the preliminary draft Protocol.

##### ARTICLE II

110. This article was approved without discussion.

#### ARTICLE III

111. It was agreed that the Drafting Committee should reconsider the formulation of this article, so as to align it with the modifications that had been made to the preliminary draft Convention, in particular Art. 4 thereof.

112. It was also agreed that, with reference to Art. III(3), the Drafting Committee should take into consideration the fact that Art. X of the preliminary draft Protocol, to which reference was made in that provision, was addressed to Contracting States and not to the parties to the transactions under consideration.

113. Finally, it was agreed that the Drafting Committee should consider defining the term «purely domestic transaction».

#### ARTICLE IV

114. It was suggested that the use of the term «*mutatis mutandis*» should be reconsidered.

#### ARTICLE V

115. It was agreed that Art. V should be brought into line with Art. 8 of the preliminary draft Convention as modified. It was also pointed out that the words «by or» in Art. V(3) should be deleted.

#### ARTICLE VI

116. This article was approved without discussion.

#### ARTICLE VII

117. It was pointed out that regulations would need to provide the details necessary to identify the aircraft object, in particular as the manufacturer's serial number and model designation were not sufficient for this purpose.

#### ARTICLE VIII

118. A number of delegations raised the question of the extent of the autonomy of the parties as to the choice of the law that should govern their rights and obligations under the Convention. It was suggested that regional instruments, such as the Convention on the Law Applicable to Contractual Obligations (Rome, 1980) and the Inter-American Convention on the Law Applicable to International Contracts (Mexico, 1994), should be taken into consideration in the formulation of this provision.

119. In relation to Art. VIII(2), it was suggested that the words «unless otherwise agreed by the parties» be added at the beginning of the paragraph, so as to cover also the case where the parties wished to include the rules of private international law of the State whose law they had chosen to govern their rights and obligations under the Convention, as these would otherwise be excluded by the words «other than its rules of private international law».

120. It was agreed that the Drafting Committee should find a more suitable expression to express what was intended by «rules of law» in Art. VIII(2). Furthermore, it was decided that the expression «designated State» should be clarified in a specific federal State clause.



## CHAPTER II: DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

### ARTICLE IX

121. It was agreed that the Drafting Committee should provide clarification regarding the concept of «disruption of air transport».

### ARTICLE X

122. There was general agreement on the need to provide for speedy relief, but the manner in which the preliminary draft Protocol sought to attain it encountered many difficulties as a result of the different standards that were applicable in the different countries. It was therefore agreed that the Drafting Committee should find a more suitable wording for this article.

### ARTICLE XI

123. A number of delegations stressed that the adoption of this very detailed article would require substantial modifications to national insolvency laws. Other delegations instead stressed the economic importance of the provision and its centrality in the preliminary draft Protocol system. It was therefore agreed that the Drafting Committee should prepare two alternative formulations of this article for the following session of the Joint Session.

### ARTICLE XII

124. It was agreed that the Drafting Committee should reconsider the formulation of this article so as to take into consideration the fact that a number of States required specific bilateral agreements or multilateral Conventions for co-operation between their courts and the courts of other States to be possible. In its consideration of this issue, the Drafting Committee should take existing instruments, such as the 1995 European Union Convention on Insolvency Proceedings, the 1990 European Convention on certain International Aspects of Bankruptcy and the UNCITRAL Model Law on Cross-Border Insolvency, into consideration.

### ARTICLE XIII

125. It was agreed that in its consideration of Article XIII, the Drafting Committee should clarify how it was linked to Arts. IX, X and XI. It was not clear at what time the submissions had to be made to the civil aviation authorities and what obligations ensued for those authorities. It was pointed out that there was no provision that provided for the removal of the form and that this possibility should instead be provided for.

### ARTICLE XIV

126. This article was approved without discussion.

### ARTICLE XV

127. It was suggested that the formulation of Art. XV(4) be reconsidered, in particular as regards the effects of the omission of the words after «not held with an international interest» in Art. 36 of the preliminary draft Convention.

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

ARTICLES XVI – XIX

128. The Chairman of the R.W.G. informed the Joint Session that the R.W.G. had closely examined the structures of the proposed Registry and of the International Regulator, and would be presenting proposals in relation thereto. Furthermore, there were many issues presently dealt with in the preliminary draft Convention that the R.W.G. would be proposing moving to the preliminary draft Protocol.

129. It was agreed to delete Alternative B under Art. XVI.

130. The Chairman of the R.W.G. indicated that a number of delegates had expressed the fear that the Registry would be a large, expensive and bureaucratic organisation. The R.W.G. had considered this point and had reached the conclusion that this would not be the case, and that the Registry would without doubt be self-financing.

131. The Canadian delegation indicated that, although Canada did not wish to be the operator of the Aircraft Registry, it would be pleased to host it.

132. Attention was drawn to the fact that under Art. XVII the International Registry Authority or, alternatively, the International Regulator was accountable to Contracting States as regards its regulatory functions. It was suggested that this accountability be extended to cover also financial matters.

133. It was decided that the Drafting Committee should consider Chapter III together with the registration provisions of the preliminary draft Convention. The role of Contracting States should also be considered, in particular as regards the preparation of the regulations and the accountability to Contracting States of the International Registry Authority or International Regulator.

CHAPTER IV: JURISDICTION

ARTICLES XX – XXI

134. It was suggested that Art. XX should be examined together with Arts. 42 and 43 of the preliminary draft Convention, in the light of the comments expected from the Hague Conference on Private International Law in relation to jurisdiction.

135. The utility of Art. XXI was queried, as it was seen as merely stating a generally recognised principle of law. The A.W.G. observer however pointed out that the purpose of the provision was to provide certainty in a way that was not contentious.

CHAPTERS V: RELATIONSHIP WITH OTHER CONVENTIONS AND VI: [OTHER] FINAL PROVISIONS

ARTICLES XXII – XXXV

136. It was agreed to defer discussion on Chapters V and VI to the following session of the Joint Session.

137. A general point raised regarded the number of ratifications necessary for the instruments to enter into force. It was suggested that a small number of ratifications should be required, as this would permit an early entry into force of the instruments.

138. It was pointed out that any accession to a Protocol would require prior accession to the future Convention.

REPORT BY THE DRAFTING COMMITTEE (UNIDROIT CGE/ INT. INT./WP/16 AND ICAO REF. LSC/ME-WP/27; cf. Attachment D)

139. Cf. §§ 94-96, *supra*.

REPORT BY THE REGISTRATION WORKING GROUP (UNIDROIT CGE/ INT. INT./WP/15 AND ICAO REF. LSC/ ME-WP/26; cf. Attachment C)

140. Cf. §§ 97-105, *supra*.

#### AGENDA ITEM 7: FUTURE WORK

141. The Joint Session considered the best means of enabling work on various aspects of the preliminary draft Convention and the preliminary draft Protocol to be prosecuted over the period between its first and second sessions. Two different types of work fell to be considered in this connection. First, there were those aspects of the work of organs of the Joint Session, in particular the Drafting Committee and the R.W.G., that it had not been possible to complete during the first session. Secondly, there were those fundamental issues with which the Joint Session had not felt itself to be in a position to deal at its first session and on which it had accordingly agreed to seek the specialist advice of others with a view to facilitating the work of its second session.

142. As regards the first, it was agreed to authorise the Secretariats, in conjunction with the Chairman of the Drafting Committee and the *Rapporteur* and in informal consultation with members of the sub-committee of the Drafting Committee (Canada, France and United States of America) that had assumed responsibility during the Joint Session for the preparation of preliminary drafts in English and French, to make such minor drafting adjustments to the texts produced by the Drafting Committee, essentially limited to matters of *toilette*, as might be found necessary and to complete the giving of headings to the articles of the preliminary draft Convention. It was further agreed to authorise the R.W.G. to continue to work informally in between sessions of the Joint Session; such activity should at all times be co-ordinated by the Chairman of that group and the Secretariats. It was stressed that informality should be the keynote of such intersessional activity, not only because the Joint Session ceased formally to be in session on 12 February but also in view of the limited human resources of the two Secretariats involved.

143. As regards the second type of issue, it was agreed that an informal working group should consider the insolvency-related provisions of the preliminary draft Convention and the preliminary draft Protocol from the angle of their relationship with existing international instruments on insolvency and insolvency assistance and national law rules pertaining to transnational insolvency. It was agreed that further informal consultations would also be required on the question of jurisdiction, an issue that had essentially only been discussed at a superficial level during the Joint Session (cf. §92, *supra*), as on the relationship between the proposed new international regimen and the aforementioned UNCITRAL draft Convention (cf. §74, *supra*).

144. It was, however, stressed that, independently of any informal consultations that might be held between Governments in between sessions, the texts of the preliminary draft Convention and the preliminary draft Protocol should remain substantially in the form in which they stood at the close of the first session right up to the opening of the second session. It was essential that Governments should be able to carry out their own internal consultations in the period between sessions on the basis of texts that would not be amended over that period.

145. Whilst it was envisaged that electronic mail should in principle be the preferred vehicle for any informal intersessional consultations, a number of delegations (Canada, Ireland, Mexico and Singapore) indicated that their Governments would be happy to host any meeting that the Secretariats might find it useful to convene in the context of such consultations.

146. It was agreed that the Russian Federation should become a member of the R.W.G. as from the following Joint Session and should be invited to take part in such informal intersessional consultations as the members of that group might hold.

147. The representative of Mexico indicated that his Government would be interested in hosting the second Joint Session.

148. Two delegations (Ireland and Singapore) expressed their Governments' particular interest in hosting the future International Registry as indeed the future diplomatic Conference, as and when necessary. The delegation of Singapore indicated its Government's willingness to assist in the development of an electronic international registry, having itself already done much work in that field.

149. It was provisionally agreed that the second session of the Joint Session should be held in Montreal at ICAO Headquarters over the seven days 30 August-5 September 1999.

150. It was agreed that time should be found for a short presentation of the current structures used in asset-based aircraft financing at the second Joint Session.

151. The delegation which had proposed consolidation of the preliminary draft Convention and the preliminary draft Protocol (cf. §22, *supra*) requested that, the preliminary draft Convention and the preliminary draft Protocol having been given a first reading by the Joint Session (cf. §23, *supra*), the question of the structure of the future international instruments should be placed on the draft agenda of the second session.

#### AGENDA ITEM 8: REVIEW OF REPORT (UNIDROIT CGE / INT. INT./WP/17 AND ICAO REF. LSC/ME-WP/28)

152. A propos of the comments he and Mr Weber had made at the opening of the Joint Session (cf. §2, *supra*) regarding the problems that UNIDROIT and ICAO had experienced in their relations with some of their member States prior to the session as a result of the activities of certain private sector representatives, Mr Kronke nevertheless placed on record the enormous debt of gratitude everyone owed for all that had been achieved hitherto to the intellectual contribution and organisational skills deployed in support of the project by A.W.G. and Mr Wool, as co-ordinator thereof. At the same time he reiterated his and Mr Weber's call for all those representatives of the private sector actively following the project, while not disputing for a moment the indispensableness of their contributions, always to bear in mind the limited capacity of the UNIDROIT and ICAO Secretariats to follow up all their activities.

153. However, in recognition of the invaluable contributions to the project already made by representatives of the private sector and with a view to ensuring the maintenance of the spirit of goodwill that had fostered these contributions, it was agreed to delete the last sentence of §2 of the draft Report.

154. In order to avoid any possible misinterpretation, it was agreed to add the clause «on the understanding that the annexes would form an integral part of the basic Convention and be obligatory in character» onto the text of §21 of the draft Report.

155. It was agreed to amend §89 of the draft Report and to add a new §90.

156. The draft Report as thus amended was adopted by the Joint Session. The latter authorised the Chairman to approve the final text of the Report on its behalf.

#### AGENDA ITEM 9: ANY OTHER BUSINESS

157. The delegation which had proposed consolidation of the preliminary draft Convention and the preliminary draft Protocol (cf. §§22-23, *supra*) reiterated its request to see the question of the structure of the future international instruments placed on the draft agenda at the second Joint Session.

#### CLOSURE

158. The Chairman expressed her gratitude to all those who had particularly facilitated her task, namely the First and Second Vice-Chairmen of the Joint Session, the Chairman of the Drafting Committee, the Chairman of the R.W.G., the *Rapporteur*, to whom she paid especial tribute, the UNIDROIT and ICAO Secretariats, which she also singled out for special praise, the interpreters and the technical staff.

159. The Secretary-General of UNIDROIT added his own thanks, in particular to the Chairman, for her exemplary direction of the Joint Session's work, to the First and Second Vice-Chairmen, to the Chairmen of the Drafting Committee and of the R.W.G., to the *Rapporteur* and to the two Secretariats, for their remarkable stamina, for their combined contribution to a successful session.

160. The Secretary to the Joint Session acting for ICAO (Mr Espinola), speaking on behalf of the Secretary General of ICAO, thanked all participants for their support and welcomed them in advance to Montreal for the following session.

161. The Chairman declared the Joint Session closed.



## ATTACHMENT A

### LIST OF PARTICIPANTS

#### MEMBER STATES OF UNIDROIT / MEMBERS OF THE ICAO SUB-COMMITTEE (\*)

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AUSTRIA (*)	Ms Maria WAIS
BELGIUM (*)	Mr Lucien DE LEEBEECK
CANADA (*)	Me Gilles LAUZON Me Philippe LORTIE Me Jean-Philippe TACHDJIAN Mr Ronald CUMING Me J. Michel DESCHAMPS Me Suzanne POTVIN PLAMONDON Mr Donald G. GRAY Mr David J. SHAPIRO
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(\*) In this list member States of UNIDROIT are indicated by an asterisk and members of the ICAO Sub-Committee by a double asterisk.

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EUROPEAN SPACE AGENCY	Mr Marco FERRAZZANI
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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW	Mr Spiros V. BAZINAS

## INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS

AVIATION WORKING GROUP	Mr Jeffrey WOOL, <i>Co-ordinator of the Aviation Working Group</i> Mr Gregory VOSS Mr David L. CLANCY Mr Joe CLARKIN Mr David WALTON
BANKING FEDERATION OF THE EUROPEAN UNION	Ms Teresa BROGGIATO
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INTERNATIONAL LAW ASSOCIATION	Mr Giuseppe GUERRERI
INTERNATIONAL UNION OF LATIN NOTARIES	Ms Maria Emanuela VESCI
INTERNATIONAL UNION OF PRIVATE WAGONS	Mr Antoine MAILLARD
RAIL WORKING GROUP	Mr Howard ROSEN, <i>Co-ordinator of the Rail Working Group</i> Mr Roger REINHOLD
SPACE WORKING GROUP	Mr Peter D. NESGOS, <i>Co-ordinator of the Space Working Group</i>

LIST OF DOCUMENTS <sup>(\*)</sup>

UNIDROIT references CGE/Int. Int/		ICAO references LSC/ME
Agenda	Draft Agenda / <i>Provisional Agenda</i>	WP/1
Agenda/rev.	Revised draft Agenda	
	Introductory Note (presented by the ICAO Secretariat)	WP/2
Study LXXII - Doc. 42	Preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment (as established by an Unidroit Study Group and revised, in accordance with a decision taken by the Unidroit Governing Council at its 77 <sup>th</sup> session, held in Rome from 16 to 20 February 1998, by a Steering and Revisions Committee, meeting in Rome from 27 to 29 June 1998) / <i>Preliminary draft [UNIDROIT] Convention on International Interests in Mobile Equipment</i>	WP/3
Study LXXIID - Doc. 3	Preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (as established by a working group organised, at the invitation of the President of Unidroit, by Mr J. Wool, expert consultant on international aviation finance matters to the Unidroit Study Group for the preparation of uniform rules on international interests in mobile equipment, and revised, in accordance with a decision taken by the Unidroit Governing Council at its 77 <sup>th</sup> session, held in Rome from 16 to 20 February 1998, by a Steering and Revisions Committee, meeting in Rome from 27 to 29 June 1998) / <i>Preliminary draft Protocol to the preliminary draft [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment</i>	WP/4
Study LXXII – Doc. 43 / Study LXXIID – Doc. 4	Preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment and preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment: preliminary observations (submitted by the Government of the United States of America) / <i>Comments on the preliminary draft [UNIDROIT] Convention on International Interests in Mobile Equipment and on the preliminary draft Protocol to the preliminary draft [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (presented by the United States)</i>	WP/8

(\*) Where the same document as reproduced by UNIDROIT and ICAO bears different titles, the title employed by UNIDROIT appears first with that employed by ICAO set out after in italics.

<p>Study LXXII – Preliminary draft UNIDROIT Convention on the International Interests in Mobile Equipment and preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment: comments (submitted by the Government of Australia) / <i>Comments on the preliminary draft [UNIDROIT] Convention on International Interests in Mobile Equipment and on the preliminary draft Protocol to the preliminary draft [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (presented by Australia)</i></p> <p>Doc. 44 / Study LXXIID – Doc. 5 (**)</p>	<p>WP/6</p>
<p>Study LXXII – Preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment and preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment: comments (submitted jointly by the International Air Transport Association and the Aviation Working Group) / <i>Comments on the preliminary draft [UNIDROIT] Convention on International Interests in Mobile Equipment and on the preliminary draft Protocol to the preliminary draft [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (presented jointly by the International Air Transport Association (IATA) and the Aviation Working Group (AWG))</i></p> <p>Doc. 45 / Study LXXIID – Doc. 6</p>	<p>WP/5</p>
<p>Study LXXII – Preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment and preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment: comments (submitted by the Government of Canada) / <i>Comments on the preliminary draft [UNIDROIT] Convention on International Interests in Mobile Equipment and on the preliminary draft Protocol to the preliminary draft [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (presented by Canada)</i></p> <p>Doc. 46 / Study LXXIID – Doc. 7(**)</p>	<p>WP/7</p>
<p>Study LXXII – Preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment: discussion paper on the legal relationship between the preliminary draft Convention and its equipment-specific Protocols (prepared by Ms C. Chinkin (Professor of Public International Law, London School of Economics) and Ms C. Kessedjian (Professor of Law; Deputy Secretary-General, Hague Conference on Private International Law) at the request of the Steering and Revisions Committee)</p> <p>Doc. 47</p>	<p>WP/12</p>
<p>Study LXXII – Preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment and preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment: comments (submitted by the Government of Switzerland)</p> <p>Doc. 48 / Study LXXIID – Doc. 8</p>	<p>WP/17</p>

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(\*\*) Those documents designated by a double asterisk were distributed as a single document by ICAO but as two separate documents (referring to the preliminary draft Convention and the preliminary draft Protocol respectively) by UNIDROIT.

Study LXXII – Doc. 49 / Study LXXIID – Doc. 9	Preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment and preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment: comments (submitted by the Government of Japan)	WP/18
INF. 1	Provisional list of participants	INF. 1
INF. 1 REV.	Revised list of participants	List. N° 2
INF. 2	Final list of participants	List. N° 3
O/B-1	Order of business (Monday, 1 February 1999)	O/B-1
WP/1	Future role and structure of the Steering and Revisions Committee established by the UNIDROIT Governing Council – discussion paper (submitted jointly by the UNIDROIT and ICAO Secretariats)	WP/10
WP/2	The main objectives of the draft instruments (presentation by the Director of the Legal Bureau, Dr. L. Weber, to the Joint Session of the ICAO Sub-Committee of the Legal Committee on the study of international interests in mobile equipment (aircraft equipment), and the UNIDROIT Committee of governmental experts, on 1 February 1999): information paper	WP/11
WP/3	Establishment of an International Registry for the registration of international interests in aircraft objects (presented by the ICAO Secretariat)	WP/9
WP/4	Summary and issues note relating to the International Registry system contemplated by the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment as applied to aircraft equipment by virtue of the preliminary draft Protocol on Matters specific to Aircraft Equipment (submitted by Jeffrey Wool, Co-ordinator, Aviation Working Group; Chairman, Aircraft Protocol Group)	WP/13
WP/5	Draft Report - 1 February 1999	WP/14
WP/6 rev.	Draft Report - 2 February 1999	WP/15 rev.
WP/7	Draft Report - 3 February 1999	WP/16
WP/8	Information paper (relating to the structure of the preliminary draft Convention) (submitted jointly by the UNIDROIT and ICAO Secretariats)	WP/19
WP/9	Proposal submitted by the Delegation of Germany	WP/20
WP/10	Draft Report – 4 February 1999	WP/21
WP/11	Proposal submitted by the Delegation of France	WP/22
WP/12	Draft Report – 5 February 1999	WP/23
WP/13	Draft Report – 8 February 1999	WP/24
WP/14	Draft Report – 9 February 1999	WP/25
WP/15	Report by the Registration Working Group	WP/26
WP/16	Report by the Drafting Committee	WP/27
WP/17	Draft Report 1-12 February 1999	WP/28

## ATTACHMENT C

### REPORT BY THE REGISTRATION WORKING GROUP

1. – The Registration Working Group set up by the Joint Session on 5 February 1999 met on five occasions during the session, on the 5<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup>. Representatives of the following States sat on the Registration Working Group as members: Canada, Egypt, Finland, France, Ireland, Japan, Mexico, Singapore, South Africa and the United States of America. The observers of the Aviation Working Group and the International Air Transport Association also attended sessions of the Group as advisers. The Secretariats of UNIDROIT and ICAO were represented at all meetings of the Registration Working Group.

2.– At the first session of the Registration Working Group, Mr R.C.C. Cuming (Canada) was elected Chairman, Ms G.T. Serobe (South Africa) Vice-Chairman and Ms S. Potvin Plamondon (Canada) Assistant to the Chairman.

3.– The business of the Registration Working Group was to consider the provisions of the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment (Study LXXII – Doc. 42) / preliminary draft [UNIDROIT] Convention on International Interests in Mobile Equipment (ICAO Ref. LSC/ME-WP/3) (**the preliminary draft Convention**) concerned with the international registration system, modalities of registration and liabilities and immunities of the international registry (Chapters IV, V and VI) and the provisions of the preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (Study LXXIID – Doc. 3) / preliminary draft [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (ICAO Ref. LSC/ME-WP/4) (**the preliminary draft Protocol**) concerned with registration of international interests in aircraft objects (Chapter III).

4. – The Registration Working Group examined in detail Articles 16, 17, 24, 25, 26 and 27 of the preliminary draft Convention and have proposed amendments or replacements. It was the opinion of the Group that Articles 18-23 should be moved to the preliminary draft Protocol since they deal with conditions and requirements of registration. Time and circumstance did not permit an examination of these provisions and the registration provisions of the preliminary draft Protocol. Consequently, this report contains only reference to Articles of the preliminary draft Protocol affected by changes in the preliminary draft Convention proposed by the Registration Working Group. As regards the revisions to the registration provisions of the preliminary draft Protocol (Chapter III), the immediate task is to prepare a redraft to reflect the changes to the registration provisions in the preliminary draft Convention, in particular the decision to relocate select provisions therein to the preliminary draft Protocol. An extract of such provisions is attached as Appendix IV. It is recommended that this redraft, together with the making of consequential amendments to the preliminary draft Protocol, be promptly undertaken.



5. – As regards future work, it is recommended that the Registration Working Group be maintained in being until the next Joint Session. In view of the fact that, given its limited time, the Registration Working Group focussed its attention on the registration provisions of the preliminary draft Convention, rather than those of the preliminary draft Protocol, it is further suggested that work, through an Aircraft Registration Sub-group of the Registration Working Group, be done on the latter. In particular, that group might be asked to address, and make recommendations to the next joint UNIDROIT-ICAO plenary session on the issues outlined by the ICAO Secretariat in Part 3 of UNIDROIT CGE/Int.Int./WP/3 / ICAO Ref. LSC/ME-WP/9 and by the Chairman of the Aircraft Protocol Group in Part III of UNIDROIT CGE/Int.Int./WP4 / ICAO Ref. LSC/ME-WP/13. In that regard, consideration might be given to the practical aspects of the possible work of such a sub-group.

6. – The text of the registration provisions of the preliminary draft Convention as reviewed by the Registration Working Group is appended hereto as Appendix I, with an extract of the original provisions contained in the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment (Study LXXII-Doc. 42) / preliminary draft [UNIDROIT] Convention on International Interests in Mobile Equipment (ICAO Ref. LSC/ME-WP/3), appended as Appendix II. The text of the registration provisions of the preliminary draft Protocol is appended as Appendix III.

7. – The Joint Session, in considering the Registration Working Group's recommendations, is invited to consider the appropriate means of ensuring their due consideration by the Drafting Committee in time for their submission to the next meeting of the Joint Session.

## APPENDIX I

### TEXT OF THE REGISTRATION PROVISIONS OF THE PRELIMINARY DRAFT UNIDROIT CONVENTION AS REVIEWED BY THE REGISTRATION WORKING GROUP

#### SPECIFIC RECOMMENDATIONS <sup>1</sup>

##### Article 1 *Definitions*

It is recommended that the definition of “Intergovernmental Regulator” be deleted.

It is recommended that the definition of “International Registry” be amended to refer to Article 16(2).

It is recommended that the definition of “Registrar” be amended to refer to Article 17(2).

It is recommended that the definition of “regulations” be amended to refer to Article 17(2).

##### Article 16

It is recommended that this Article be replaced by proposed Article 16 set out below.

1. – Different international registries may be established under Protocols for different categories of objects and associated rights. In this Convention a reference to “International Registry” is a reference to the relevant International Registry.

2. – In this Convention and the Protocol, “International Registry” means, where the context permits, a Supervisory Authority and International Registry facilities established for the purposes of this Convention and the Protocol.

3. – The following may be registered in the international registry facilities:

(a) international interests, prospective international interests [and registrable non-consensual rights and interests];

(b) assignments and prospective assignments of international interests;

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<sup>1</sup> *Note by the Secretariat:*

The numbering of the Articles cited in these Recommendations has not been brought into line with the new numbering given to the Articles of the preliminary draft Convention following its review during the first Joint Session by the Drafting Committee, as it appears in Appendix I to Attachment D.

- (c) subordinations of interests referred to in sub-paragraph (a) of this paragraph;
- and
- (d) such other interests as may be specified in the Protocol.

4. – For the purposes of this Chapter (and Chapter V) the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration, and for the purposes of Chapter VII, “registered interest” includes any interest referred to in paragraph 3(a)-(e) of this Article.

5. – When carrying out the functions under this Convention and the Protocol, the International Registry shall have international legal personality and such legal capacity as may be necessary. The assets, documents, data base and archives of the International Registry (and the Registrar) shall be inviolable and immune from seizure or legal process except to the extent set out in the Protocol or to the extent that such immunity is waived by the Supervisory Authority.

#### Article 17

It is recommended that this Article be replaced by proposed Article 17 set out below.

1. – A Supervisory Authority may be created pursuant to the Protocol or may be specified in the Protocol.

2. – The Supervisory Authority may:

- (a) establish or provide for the establishment of international registration facilities;

- (b) designate a Registrar;

- (c) promulgate and interpret regulations dealing with the operation of the international registration facilities;

- (d) exercise direct supervisory control over the Registrar and the international registration facilities;

- (e) set and periodically review the fee structure for services of the International Registry so as to ensure that all costs are recovered;

- (f) establish policies concerning the operation of the International Registry and for dealing with complaints with respect to the operation of the international registration facilities;

- (g) do all things necessary to ensure a modern, efficient and effective registry system exists for the purposes of this Convention and the Protocol; and

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

3. – The Protocol may:

(a) provide that a Contracting State may designate an entity in its territory as an exclusive or non-exclusive transmitter of information required for registration, and

(b) specify the legal relationship between that entity and the International Registry.

4. – A person may not be precluded from having access to the international registration facilities of the International Registry for the purposes of registration and searching because the person is not a national of or is not located in a Contracting State.

5. – The Registrar designated under paragraph 2(b) shall:

(a) operate the international registry facilities and perform the functions assigned to it by this Convention, the Protocol and regulations promulgated by the Supervisory Authority in accordance with established business practices;

(b) [maintain a list of the categories of non-consensual rights or interests declared by Contracting States in conformity with Article 40 and the date of each such declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol and regulations to any person requesting it.]

(c) implement the policies of and directives issued by the Supervisory Authority.

#### Articles 18 - 24

It is recommended that these Articles be replaced by proposed Article 18 set out below.

The Protocol or regulations promulgated by the Supervisory Authority may:

1. – contain conditions and requirements for

(a) registration of items referred to in Article 16(3);

(b) searches of the International Registry data base;

(c) the medium for transmitting registration information and appropriate security measures;

(d) the issue of search certificates by the Registrar, and

(e) the confidentiality of information and documents of the International Registry;

2. – fix the time of registration of an interest;

3. – set the period of time a registration remains effective;

4. – specify when written consent of an obligor, assignor, intended obligor, intended assignor or subordinated party is required before a registration can be effected; and

5. – deal with such additional matters as are incidental to the creation and operation of the International Registry.

#### Article 25

It is recommended that this Article be amended as set out below.

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

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

#### Article 26

It is recommended that this Article be replaced by proposed Article 26 set out below.

1. – When the obligations secured by a security interest [or the obligations giving rise to a registrable non-consensual right or interest] have been discharged, or the conditions of transfer of title under a title reservation agreement have been fulfilled, the holder shall discharge a registration relating to the interest upon receipt of a written demand delivered by the obligor to the holder requiring discharge of the registration.

2. – Where a prospective international interest or a prospective assignment of an international interest has been registered, the intended grantee or assignee shall discharge the registration upon receipt of a written demand delivered by the intending grantor or assignor to the intended grantee or assignee, at any time before the latter has given value or incurred a commitment to give value, requiring discharge of the registration.

3. – The Protocol may provide:

(a) that, if a holder, intended grantee or assignee fails to respond to a demand referred to in paragraphs 1 or 2 when required to do so, the obligor, intended obligor or assignor may resort to the court for a determination as to whether the holder, intended grantee or assignee is entitled to maintain the registration;

(b) that the court of the Contracting State in which the Registrar is located or the court chosen by the parties involved shall have jurisdiction to make the determination referred to in sub-paragraph (a) and make an order binding on the Registrar to discharge the registration.

#### Article 27

It is recommended that this Article be replaced by proposed Article 27 set out below.

The Protocol may contain provisions dealing with the following matters:

(a) the liability, including the type of liability and the amount recoverable, of the International Registry to users of the international registry facilities for loss or damages suffered by reason of any error or system malfunction of the facilities;

(b) the court(s) which has jurisdiction to determine liability of the International Registry and the amount of loss suffered by a user;

(c) the immunity of the International Registry, the Registrar and their personnel;

(d) the acquisition of insurance against liability for loss or damages resulting from acts or omissions in the operation of international registry facilities.

## APPENDIX II

### EXTRACT FROM THE TEXT OF THE REGISTRATION PROVISIONS OF THE PRELIMINARY DRAFT UNIDROIT CONVENTION AS IT STOOD PRIOR TO ITS REVIEW BY THE REGISTRATION WORKING GROUP

#### Article 16

- 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; and
  - (c) subordinations of interests referred to in sub-paragraph (a) of this paragraph.
- 2.– [The International Registry shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes under this Convention.]
- 3.– Different registries may be established for different categories of object and associated rights. For the purposes of this Convention, “International Registry” means the relevant international registry.
- 4.– For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

#### [Article 17

- 1.– The Protocol shall designate an Intergovernmental Regulator to exercise the functions assigned to it by this Chapter, Chapter V and the Protocol.
- 2.– The Protocol may provide for Contracting States to designate operators of registration facilities in their respective territories. Such operators shall be transmitters of the information required for registration and, in such capacity, shall constitute an integral part of the registration system of this Convention. The Protocol may specify the extent to which the designation of such an operator shall preclude alternative access to the International Registry.
- 3.– The Intergovernmental Regulator shall establish the International Registry, designate the Registrar and oversee the International Registry and the operation and administration thereof.
- 4.– The manner in which such oversight is conducted, the responsibilities of the Registrar and operators of registration facilities and the fees to be paid by users of the international registration system shall be prescribed in the Protocol and/or from time to time in the regulations.
- 5.– The Registrar shall:

- (a) operate the International Registry efficiently and responsibly;
- (b) perform the functions assigned to it under this Convention, the Protocol and the regulations;
- (c) report to the Intergovernmental Regulator on its performance of these functions and otherwise comply with the oversight requirements specified by the Intergovernmental Regulator;
- (d) maintain financial records relating to its functions in a form specified by the Intergovernmental Regulator; and
- (e) insure against liability for its acts and omissions in a manner acceptable to the Intergovernmental Regulator.

6. – The Intergovernmental Regulator shall have power to require acts and omissions which are in contravention of this Convention, the Protocol or the regulations to be rectified.

7. – The Protocol and/or the regulations may prescribe the procedures pursuant to which the Registrar and operators of registration facilities may request advice from the Intergovernmental Regulator regarding the exercise of their respective functions under this Convention, the Protocol and the regulations.]

#### [Article 24

The Registrar shall maintain a list of the categories of non-consensual right or interest declared by Contracting States in conformity with Article 40 and the date of each such declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol and regulations to any person requesting it.]

#### Article 25

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 under Article 21.

#### Article 26

1. – When the obligations secured by a security interest [or the obligations giving rise to a registrable non-consensual right or interest] have been discharged, or the conditions of transfer of title under a title reservation agreement have been fulfilled, the obligor may, by written demand delivered to the holder of such a registered interest, require the holder to remove the registration relating to the interest.

2. – Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending grantor or assignor may by notice in



writing, delivered to the intended grantee or assignee at any time before the latter has given value or incurred a commitment to give value, require the relevant registration to be removed.

#### Article 27

1. – Any person suffering loss by reason of any error or system malfunction in the International Registry shall be entitled to an indemnity in respect of such loss. The measure of liability shall be compensatory damages for loss incurred as the result of the act or omission.

2. – The courts [of the Contracting State[s] in which the Registrar or the operators of registration facilities, as the case may be, [is] [are] situated] shall have jurisdiction to resolve any disputes arising under this Article.

3. – Subject to paragraph 1, the International Registry, the Registrar and staff of the International Registry, the Intergovernmental Regulator and the operators of registration facilities and the staff thereof shall, in the exercise of their functions, enjoy immunity from legal process except:

(a) to the extent that the International Registry expressly waives such immunity;

or

(b) as otherwise provided by agreement with a State in which the International Registry is situated.

4. – The assets, documents and archives of the International Registry shall be inviolable and immune from seizure or legal process except to the extent that the International Registry expressly waives such immunity.]

TEXT OF THE REGISTRATION PROVISIONS OF THE PRELIMINARY DRAFT PROTOCOL  
AS REVIEWED BY THE REGISTRATION WORKING GROUP <sup>2</sup>

Article XVI  
*Regulation and operation of Registry*

~~Alternative A~~

{1. – [The International Registry shall be regulated and operated by the International Registry Authority.] [The International Registry shall be regulated by the ~~International Regulator and operated by the Registrar.~~] Supervisory Authority.]

~~Alternative B~~

~~1. — The International Registry shall be regulated by the Council of the International Civil Aviation Organization or such other permanent body designated by it to be the International Regulator.~~

~~2. — The initial Registrar hereby designated to operate the International Registry shall be a newly created, independent special purpose affiliate of the International Air Transport Association.~~

~~3. — The initial Registrar shall be organised in consultation with the International Regulator. Its constitutive documents shall contain provisions that:~~

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

4.2. – The initial Registrar designated pursuant to Article 17(1)(b) of the Convention shall operate the International Registry for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or re-appointed at regular five-year intervals by the ~~[Contracting States] [International Regulator.]~~ Supervisory Authority.

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<sup>2</sup> *Note by the Secretariat:*

Amendments made to the preliminary draft Protocol as reproduced in UNIDROIT Study LXXIID – Doc. 3 /ICAO Ref. LSC/ME-WP/4 may be identified, in the case of deletions, by the striking through of the provisions in question and, in the case of additions, by the use of underlining.

The numbering of the Articles of the preliminary draft Convention cited in this Appendix has not been brought into line with the new numbering given to them following their review during the first Joint Session by the Drafting Committee, as this appears in Appendix I to Attachment D.

~~[2./5. — Article 17(1) and (3) of the Convention apply as modified by the preceding paragraphs of this Article.]~~

## Article XVII

### *Basic regulatory responsibilities*

~~1. — The [International Registry Authority] [International Regulator] shall act in a non-adjudicative capacity. This shall not prevent the [International Registry Authority] [International Regulator] from undertaking the functions specified in Article 17(6) and (7) of the Convention.~~

2 [1. –] The ~~[International Registry Authority] [International Regulator]~~ Supervisory Authority shall [be responsible to the Contracting States, and shall report thereto on its regulatory [and oversight] functions. Such reports shall be made on a yearly basis or more frequently as the ~~[International Registry Authority] [International Regulator]~~ Supervisory Authority deems appropriate.]

~~[3.2. – The initial regulations shall be promulgated by the [International Registry Authority] [International Regulator] Supervisory Authority on entry into force of this Protocol.]~~

## Article XVIII

### *Registration facilities*

1. – At the time of ratification, acceptance, approval of, or accession to this Protocol, a Contracting State may, subject to paragraph 2:

(a) designate its operators of registration facilities as specified in Article 17(2) of the Convention; and

(b) declare the extent to which any such designation shall preclude alternative access to the International Registry.

[2. – A Contracting State may only designate registration facilities as points of access to the International Registry in relation to:

(a) helicopters or airframes pertaining to aircraft for which it is the State of registry; and

(b) registrable non-consensual rights or interests created under its domestic law.]<sup>3</sup>

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<sup>3</sup> To be reconsidered in the light of Article 17(3) of the amended draft Convention.

Article XIX  
*Additional modifications to Registry provisions*

1. – For the purposes of Article ~~20(6)~~ 18(1)(a) and (b) of the Convention, the search criterion for an aircraft object shall be its manufacturer's serial number, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

2. – For the purposes of Article 26(2) of the Convention, and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest shall take such steps as are within its power to effect a removal thereof no later than five working days after the receipt of the demand described in such paragraph.

~~3. — The fees referred to in Article 17(4) of the Convention shall be determined so as to recover the reasonable costs of operating the International Registry and the registration facilities and, in the case of the initial fees, of designing and implementing the international registration system.~~<sup>4</sup>

4.3 – The centralised functions of the International Registry shall be operated and administered by the [International Registry Authority] [Registrar] on a twenty-four hour basis. The various registration facilities shall be operated and administered during working hours in their respective territories.

5.4 – The regulations shall prescribe the manner in which the following provisions of the Convention shall apply:

~~Article 17(6) and (7);~~<sup>5</sup>

Article 18;

Article ~~19~~ 18(1)(c);

Article ~~22~~ 18(3);

Article ~~23(1) and (2)~~ 18(1)(d);

Article 24 17(5)(b); and

Article 25 [as amended by the draft Convention].

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<sup>4</sup> See Article 16(2)(e) of the amended draft Convention.

<sup>5</sup> See Article 17(2)(d) of the amended draft Convention.

## APPENDIX IV

### TEXT OF THE REGISTRATION PROVISIONS OF THE PRELIMINARY DRAFT CONVENTION WHICH THE REGISTRATION WORKING GROUP SUGGESTS RELOCATING TO THE PRELIMINARY DRAFT PROTOCOL<sup>6</sup>

#### Article 18

The Protocol and regulations may contain conditions and requirements, including the criterion or criteria for the identification of the object, which must be fulfilled in order:

- (a) to effect a registration; or
- (b) to convert the registration of a prospective international interest or a prospective assignment of an international interest into registration of an international interest or of an assignment of an international interest.

#### Article 19

The information required for a registration shall be transmitted, by any medium prescribed by the Protocol or regulations, to the International Registry or registration facility prescribed therein.

#### Article 20

1. – A registration shall take effect upon entry of the required information into the International Registry data base so as to be searchable.

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

- (a) the International Registry has assigned to it a sequentially ordered file number; and
- (b) the registration, including the file number, may be accessed at the International Registry and at each registration facility in which searches may be made at that time.

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

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

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<sup>6</sup> *Note by the Secretariat:*

The numbering of the Articles of the preliminary draft Convention cited in this Appendix has not been brought into line with the new numbering given to them following their review during the first Joint Session by the Drafting Committee, as this appears in Appendix I to Attachment D.

5. – The International Registry shall record the date and time a registration takes effect.

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

#### Article 21

1. – An international interest which is a security interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered by or with the consent in writing of the chargor or assignor or intending grantor or assignor, as the case may be. Any other type of international interest may be registered by the holder of that interest.

2. – The subordination of an international interest to another international interest may be registered by the person in whose favour the subordination is made.

3. – A registration may be amended, extended prior to its expiry or discharged, by or with the consent in writing of the party in whose favour it was made.

[4. – A registrable non-consensual right or interest may be registered by the holder thereof].

#### Article 22

Registration of an international interest remains effective for the period of time [specified in the Protocol or the regulations as extended in conformity with Article 21(3)] [agreed between the parties in writing].

#### Article 23

1. – A person may, in the manner prescribed by the Protocol and regulations, make or request a search of the International Registry concerning interests registered therein.

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

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

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

## ATTACHMENT D

### REPORT BY THE DRAFTING COMMITTEE

1.– The Drafting Committee set up by the Joint Session on 3 February 1999 met on six occasions during the session, on the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 11<sup>th</sup>. Representatives of the following States sat on the Drafting Committee as members: Canada, Egypt, France, Germany, Japan, Mexico, Republic of Korea, Singapore, South Africa and the United States of America. Mr R.M. Goode (United Kingdom), the *Rapporteur* to the Joint Session, took part in the work of the Drafting Committee in accordance with the invitation addressed to him by the Chairman of the Joint Session. The observers of the Hague Conference on Private International Law, the Aviation Working Group and the International Air Transport Association also attended sessions of the Committee as advisers.

2.– At the first session of the Drafting Committee, Mr K.F. Kreuzer (Germany) was elected Chairman and Mr G. Lauzon (Canada) Vice-Chairman.

3.– The business of the Drafting Committee was to give effect to the matters referred to it by the Joint Session in the light of its first reading of the preliminary draft Unidroit Convention on International Interests in Mobile Equipment (Study LXXII – Doc. 42) / preliminary draft [Unidroit] Convention on International Interests in Mobile Equipment (ICAO Ref. LSC/ME-WP/3) (**the preliminary draft Convention**) and the preliminary draft Protocol to the preliminary draft Unidroit Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (Study LXXIID – Doc. 3) / preliminary draft [Unidroit] Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (ICAO Ref. LSC/ME-WP/4) (**the preliminary draft Protocol**).

4.– With the exception of its correction of a few errors in Article 21 of the preliminary draft Convention, the Drafting Committee decided not to consider the provisions of the preliminary draft Convention and the preliminary draft Protocol concerned with the international registration system, modalities of registration and liabilities and immunities of the international registry (Chapters IV, V and VI of the preliminary draft Convention respectively) and registry provisions relating to international interests in aircraft objects (Chapter III of the preliminary draft Protocol) given that these provisions were at the time the subject of consideration by the Registration Working Group set up by the Joint Session. The texts of the preliminary draft Convention and the preliminary draft Protocol referred to the Joint Session by the Drafting Committee in this document are accordingly presented in square brackets.

5.– The Drafting Committee noted that, the Registration Working Group having in the course of its work considerably recast the registration provisions of the preliminary draft Convention and the preliminary draft Protocol, it would be necessary for it in due course to review the provisions in question as to drafting. The Drafting Committee would accordingly propose that it revert to this matter at its next session and that the Chairmen of the two committees should in the meantime consult informally with a view to ascertaining the best means of dealing with this matter.

6.– On certain issues referred to it by the Joint Session, the Drafting Committee did not feel that its instructions from the Joint Session permitted it to provide a solution. These issues are annotated in the texts referred by the Drafting Committee to the Joint Session. Furthermore, the Drafting Committee took the view that it would not be useful for it to embark on a review of the insolvency-related provisions of the preliminary draft Convention and the preliminary draft Protocol. Only after more thorough analysis could a decision be taken as to whether the preliminary draft Convention or the preliminary draft Protocol is the more appropriate instrument in which to address these issues. The Drafting Committee also echoed the concern expressed by the Joint Session that this review should include consideration of the relevant international instruments.

7.– The text of the preliminary draft Convention as reviewed by the Drafting Committee is appended hereto as Appendix I, with the text of the preliminary draft Protocol as reviewed by the Drafting Committee appended as Appendix II.



**TEXT OF THE PRELIMINARY DRAFT UNIDROIT CONVENTION ON  
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT  
AS REVIEWED BY THE DRAFTING COMMITTEE \***

PRELIMINARY DRAFT UNIDROIT CONVENTION ON INTERNATIONAL  
INTERESTS IN MOBILE EQUIPMENT

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

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Article 2	The international interest
Article 3	Sphere of application
Article 4	Where obligor is situated
Article 5	Derogation
Article 6	Interpretation and applicable law

**CHAPTER II            CONSTITUTION OF AN INTERNATIONAL INTEREST**

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Article 8	Remedies of chargee
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Article 10	Remedies of conditional seller or lessor
Article 11	Meaning of default
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Article 13	Additional remedies
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**CHAPTER IV            THE INTERNATIONAL REGISTRATION SYSTEM**

Article 15	The International Registry
Article 16	The Intergovernmental Regulator and the Registrar

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\* *Note by the Secretariat:*

The Drafting Committee did not have the time to complete its giving of headings to each Article of the preliminary draft Convention; in this text headings are accordingly only given up to and including Article 26.

**CHAPTER V        MODALITIES OF REGISTRATION**

Article 17	Registration requirements
Article 18	Transmission of information
Article 19	When registration takes effect
Article 20	Who may register
Article 21	Duration of registration
Article 22	Searches
Article 23	List of declared non-consensual rights or interests
Article 24	Evidentiary value of certificates
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**[CHAPTER VI        LIABILITIES AND IMMUNITIES OF THE INTERNATIONAL  
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**CHAPTER [VII]        EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST  
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Article 38

**[CHAPTER [X]        APPLICATION OF THE CONVENTION TO SALES ]**

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**[CHAPTER [XI] JURISDICTION ]**

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**[CHAPTER [XII] RELATIONSHIP WITH OTHER CONVENTIONS]**

**CHAPTER [XIII] [OTHER] FINAL PROVISIONS**

Article U

Article V

Article W

Article X

Article Y

Article Z

[ PREAMBLE

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use high-value mobile equipment 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,

DESIRING to provide broad economic benefits for all interested parties,

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

CONSCIOUS of the need to establish an international registration system as one of the essential features of the legal framework applicable to international interests in high-value mobile equipment,

HAVE AGREED upon the following provisions: ]

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1  
*Definitions*

In this Convention the following words are employed with the meanings set out below:

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

“assignment” means a consensual transfer, whether by way of security or otherwise, which confers on the assignee rights in the international interest;

“associated rights” means all rights to payment or other performance by the obligor under an agreement or a contract of sale secured by or associated with the object;

“buyer” means a buyer under a contract of sale;

“chargee” means the grantee of an interest in an object under a security agreement;

“chargor” means the grantor of an interest in an object under a security agreement;

“conditional buyer” means the buyer under a title reservation agreement;

“conditional seller” means the seller under a title reservation agreement;

“contract of sale” means a contract for the sale of an object which is not an agreement;

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

“Intergovernmental Regulator” means, in respect of any Protocol, the intergovernmental regulator referred to in Article 16(1);

“international interest” means an interest to which Article 2 applies and which is constituted in conformity with Article 7;

“International Registry” means the international registry referred to in Article 15(3);

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

“object” means an object of a category to which Article 2 applies;

“obligee” means the chargee under a security agreement, the conditional seller under a title reservation agreement or the lessor under a leasing agreement;

“obligor” means the chargor under a security agreement, the conditional buyer under a title reservation agreement, the lessee under a leasing agreement [or the person whose interest in an object is burdened by a registrable non-consensual right or interest];

“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;

“prospective international interest” means an interest that is intended to be created or provided for as an international interest in the future, upon the occurrence of a stated event (which may include the obligor’s acquisition of an interest in the object), whether or not the occurrence of the event is certain;

“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;

“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;

[“qualified proceeds” means proceeds of an object payable by reason of the loss or physical destruction of the object or payable by a Government or State entity in respect of the confiscation, condemnation or requisition of the object; ]<sup>1</sup>

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

“registered interest” means an international interest [or a registrable non-consensual right or interest] registered pursuant to Chapter V;

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<sup>1</sup> Consideration should be given to an optional provision for compensation in respect of such governmental acts to be paid before they are performed in order to reduce political risk.

["registrable non-consensual right or interest" means a right or interest registrable pursuant to an instrument deposited under Article 37;]

"Registrar" means, in respect of any category of object and associated rights to which this Convention applies, the person designated under Article 16(3);

"regulations" means regulations made, pursuant to the Protocol, by the Intergovernmental Regulator under Article 16(4);

"sale" means a transfer of ownership of an object pursuant to a contract of sale;

"secured obligation" means an obligation secured by a security interest;

"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;

"security interest" means an interest created by a security agreement;

"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;

"unregistered interest" means a consensual interest or non-consensual right or interest [(other than an interest to which Article 38 applies)] which has not been registered, whether or not it is registrable under this Convention[; and

"writing" means a record of information (including information [sent][obtained] by teletransmission) which is in tangible form or is capable of being reproduced in tangible form and which [identifies][indicates] by reasonable means the person sending the record and that person's approval of it].

## Article 2

### *The international interest*

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

2. – For the purposes of this Convention, an international interest in mobile equipment is an interest, constituted under Article 7, in a uniquely identifiable object of a category of such objects designated in a 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. – This Convention does not determine whether an interest to which the preceding paragraph applies falls within sub-paragraph (a), (b) or (c) of that paragraph.

[4. – This Convention governs only:

- (a) the constitution of an international interest, its effects, its assignment and rights of subrogation;
  - (b) matters relating to the international registration system and the modalities of registration;
  - (c) questions of jurisdiction,
- as provided for in Articles 2 to 41.]

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

### Article 3 *Sphere of application*

[ 1. – ] This Convention shall apply when at the time of the conclusion of the agreement creating or providing for the international interest:

- (a) the obligor is situated in a Contracting State; or
- (b) the object to which the international interest relates has a connection, as specified in the Protocol, with a Contracting State.

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

### Article 4 *Where obligor is situated*

[1. –] For the purposes of this Convention [other than the provisions of Article 40], the obligor is situated in any Contracting State where it:

- (a) is incorporated;
- (b) has its registered office;
- (c) has its centre of control; or
- (d) has its place of business

in that State.

[2. – A reference in this Convention to the obligor'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  
*Derogation*

In their relations with each other, the parties may, by agreement in writing, derogate from or vary the effect of any of the provisions of Chapter III, except as stated in Articles 8(2)-(6), 9 (3) and (4), 12(1) and 13.

Article 6  
*Interpretation and applicable law*

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

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

3. – References to the applicable law are [, except as provided in Articles ...,] to the law applicable by virtue of the rules of private international law of the forum State.

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

CHAPTER II

CONSTITUTION OF AN INTERNATIONAL INTEREST

Article 7  
*Formal requirements*

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

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



## CHAPTER III

### DEFAULT REMEDIES

#### Article 8

##### *Remedies of chargee*

1. – In the event of default as provided in Article 11, the chargee may, to the extent that the chargor has so agreed, exercise any one or more of the following remedies:

- (a) take possession or control of any object charged to it;
  - (b) sell or grant a lease of any such object;
  - (c) collect or receive any income or profits arising from the management or use of any such object,
- or apply for a court order authorising or directing any of the above acts.

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

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

- (a) interested persons specified in paragraph 6 (a) and (b); and
- (b) interested persons specified in paragraph 6 (c) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

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

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

6. – In this Article and in Article 9 “interested persons” means:

- (a) the chargor;
- (b) any person who, for the purpose of assuring performance of any of the obligations in favour of the chargee, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;

(c) any other person having rights subordinate to those of the chargee in or over the object.

## Article 9

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

1. – At any time after default as provided in Article 11, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

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

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

4. – At any time after default as provided in Article 11 and before sale of the charged object or the making of an order under paragraph 1, the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted by the chargee under Article 8(1). Where, after such default, the payment of the amount secured is made in full by an interested person, that person is subrogated to the rights of the chargee.

5. – Ownership or any other interest of the chargor passing on a sale under Article 8(1) or passing under paragraph 1 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 27.

## Article 10

### *Remedies of conditional seller or lessor*

In the event of default under a title reservation agreement or under a leasing agreement as provided in Article 11, the conditional seller or the lessor, as the case may be, may:

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

## Article 11

### *Meaning of default*

1. – The obligor and obligee may agree as to the events that constitute a default or otherwise give rise to the rights and remedies specified in Articles 8 to 10 and 14.

2. – In the absence of such an agreement, “default” for the purposes of Articles 8 to 10 and 14 means a substantial default.

## Article 12 *Procedural requirements*

1. – Subject to paragraph 2, any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.

2. – Any remedy available to the obligee under Articles 8 to 10 which is not there expressed to require application to the court may be exercised without leave of the court except to the extent that the Contracting State where the remedy is to be exercised has made a declaration under Article Y or in the Protocol.

## Article 13 *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 5.

## Article 14 *Relief pending final determination*

1. – A Contracting State shall ensure that an obligee who adduces *prima facie* evidence of default by the obligor may, pending final determination of its claim and to the extent that the obligor has<sup>2</sup> so agreed, obtain speedy judicial relief in the form of [such] one or more of the following orders [as the obligee requests]:

- (a) preservation of the object and its value;
- (b) possession, control or custody of the object;
- (c) immobilisation of the object;<sup>3</sup>
- (d) sale, lease or management of the object;
- (e) application of the proceeds or income of the object.

[2. – In making any order under sub-paragraphs (d) or (e) of the preceding paragraph, the court may impose such terms as it considers necessary to protect the obligor in the event that the obligee:

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<sup>2</sup> The question remains to be considered whether the words “at any time” need to be added.

<sup>3</sup> It was proposed that the comment by a delegation seeking to ensure that Article 14(1)(c) should not run counter to any other international instrument on the subject should be dealt with at the appropriate time in the Final Provisions.

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

[3.] – Ownership or any other interest of the obligor passing on a sale under the preceding paragraph is free from any other interest over which the obligee's international interest has priority under the provisions of Article 27.

[4.] – Nothing in this Article limits the availability of forms of interim judicial relief other than those set out in paragraph 1.

#### [CHAPTER IV <sup>4</sup>

### 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; and
  - (c) subordinations of interests referred to in sub-paragraph (a) of this paragraph.

[2. – The International Registry shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes under this Convention.]

[3.] – Different registries may be established for different categories of object and associated rights. For the purposes of this Convention, “International Registry” means the relevant international registry.

[4.] – For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

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<sup>4</sup> The provisions of this Chapter are presented in square brackets in that they were not the subject of consideration by the Drafting Committee pending the outcome of their consideration by the Registration Working Group. It should be noted that the Registration Working Group has proposed considerable amendments to the provisions of this Chapter.

[Article 16  
*The Intergovernmental Regulator and the Registrar*

1. – The Protocol shall designate an Intergovernmental Regulator<sup>5</sup> to exercise the functions assigned to it by this Chapter, Chapter V and the Protocol.

2. – The Protocol may provide for Contracting States to designate operators of registration facilities in their respective territories. Such operators shall be transmitters of the information required for registration and, in such capacity, shall constitute an integral part of the registration system of this Convention. The Protocol may specify the extent to which the designation of such an operator shall preclude alternative access to the International Registry.

3. – The Intergovernmental Regulator shall establish the International Registry, designate the Registrar and oversee the International Registry and the operation and administration thereof.<sup>6</sup>

4. – The manner in which such oversight is conducted, the responsibilities of the Registrar and operators of registration facilities and the fees to be paid by users of the international registration system shall be prescribed in the Protocol and/or from time to time in the regulations.

5. – The Registrar shall:

- (a) operate the International Registry efficiently and responsibly;
- (b) perform the functions assigned to it under this Convention, the Protocol and the regulations;
- (c) report to the Intergovernmental Regulator on its performance of these functions and otherwise comply with the oversight requirements specified by the Intergovernmental Regulator;
- (d) maintain financial records relating to its functions in a form specified by the Intergovernmental Regulator; and
- (e) insure against liability for its acts and omissions in a manner acceptable to the Intergovernmental Regulator.

6. – The Intergovernmental Regulator shall have power to require acts and omissions which are in contravention of this Convention, the Protocol or the regulations to be rectified.

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<sup>5</sup> The present text assumes that the Intergovernmental Regulator and the operators of the International Registry will be different bodies. However, as indicated in the preliminary draft Protocol on Matters specific to Aircraft Equipment, an alternative to be considered is an unitary International Registry Authority which would act as both operator and regulator (cf. Article XVI(1) of that text which provides as follows:

**ALTERNATIVE A**

[1. – [The International Registry shall be regulated and operated by the International Registry Authority.] [The International Registry shall be regulated by the International Regulator and operated by the Registrar.]]

<sup>6</sup> It was noted by the Aircraft Protocol Group that Article 16(3) is an example of the type of provision which was envisaged as being within Article U(b) and which may therefore find itself modified by the terms of a Protocol.

7. – The Protocol and/or the regulations may prescribe the procedures pursuant to which the Registrar and operators of registration facilities may request advice from the Intergovernmental Regulator regarding the exercise of their respective functions under this Convention, the Protocol and the regulations.]]

## [ CHAPTER V <sup>7</sup>

### MODALITIES OF REGISTRATION

#### Article 17

##### *Registration requirements*

The Protocol and regulations may contain conditions and requirements, including the criterion or criteria for the identification of the object, which must be fulfilled in order:

- (a) to effect a registration; or
- (b) to convert the registration of a prospective international interest or a prospective assignment of an international interest into registration of an international interest or of an assignment of an international interest.

#### Article 18

##### *Transmission of information*

The information required for a registration shall be transmitted, by any medium prescribed by the Protocol or regulations, to the International Registry or registration facility prescribed therein.

#### Article 19

##### *When registration takes effect*

1. – A registration shall take effect upon entry of the required information into the International Registry data base so as to be searchable.

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

- (a) the International Registry has assigned to it a sequentially ordered file number; and
- (b) the registration, including the file number, may be accessed at the International Registry and at each registration facility in which searches may be made at that time.

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<sup>7</sup> The provisions of this Chapter are presented in square brackets in that, with the exception of Article 20(1) and (2), they were not the subject of consideration by the Drafting Committee pending the outcome of their consideration by the Registration Working Group. It should be noted that the Registration Working Group has proposed considerable amendments to the provisions of this Chapter.

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

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

5. – The International Registry shall record the date and time a registration takes effect.

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

## Article 20

### *Who may register*

[1. – An international interest which is a security interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered by or with the consent in writing of the chargor or assignor or intending chargor or assignor, as the case may be. Any other type of international interest may be registered by the holder of that interest.]<sup>8</sup>

[2.] – The subordination of an international interest to another international interest may be registered by or with the written consent of the person whose interest has been subordinated.

[3.] – A registration may be amended, extended prior to its expiry or discharged by or with the consent in writing of the party in whose favour it was made.

[4. – A registrable non-consensual right or interest may be registered by the holder thereof].

## Article 21

### *Duration of registration*

Registration of an international interest remains effective for the period of time [specified in the Protocol or the regulations as extended in conformity with Article 20(3)] [agreed between the parties in writing].

## Article 22

### *Searches*

1. – A person may, in the manner prescribed by the Protocol and regulations, make or request a search of the International Registry concerning interests registered therein.

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<sup>8</sup> Consideration should be given to whether the written consent of obligors under leasing and title reservation agreements should also be required for the registration of international interests.

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

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

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

[Article 23

*List of declared non-consensual rights or interests*

The Registrar shall maintain a list of the categories of non-consensual right or interest declared by Contracting States in conformity with Article 38 and the date of each such declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol and regulations to any person requesting it.]

Article 24

*Evidentiary value of certificates*

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

(a) that it has been so issued; and

(b) of the facts recited in it, including the date and time of a registration under Article 20.

Article 25

*Removal of registration*

1. – When the obligations secured by a security interest [or the obligations giving rise to a registrable non-consensual right or interest] have been discharged or the conditions of transfer of title under a title reservation agreement have been fulfilled, the obligor may, by written demand delivered to the holder of such a registered interest, require the holder to remove the registration relating to the interest.

2. – Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending grantor or assignor may by notice in writing, delivered to the intended grantee or assignee at any time before the latter has given value or incurred a commitment to give value, require the relevant registration to be removed. ]



## [CHAPTER VI<sup>9</sup>

### LIABILITIES AND IMMUNITIES OF THE INTERNATIONAL REGISTRY

#### Article 26

##### *Indemnity and immunity*

1. – Any person suffering loss by reason of any error or system malfunction in the International Registry shall be entitled to an indemnity in respect of such loss. The measure of liability shall be compensatory damages for loss incurred as the result of the act or omission.

2. – The courts [of the Contracting State[s] in which the Registrar or the operators of registration facilities, as the case may be, [is] [are] situated] shall have jurisdiction to resolve any disputes arising under this Article.

3. – Subject to paragraph 1, the International Registry, the Registrar and staff of the International Registry, the Intergovernmental Regulator and the operators of registration facilities and the staff thereof shall, in the exercise of their functions, enjoy immunity from legal process except:

(a) to the extent that the International Registry expressly waives such immunity; or

(b) as otherwise provided by agreement with a State in which the International Registry is situated.

4. – The assets, documents and archives of the International Registry shall be inviolable and immune from seizure or legal process except to the extent that the International Registry expressly waives such immunity.]

## CHAPTER [VII]

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

#### Article 27<sup>10</sup>

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

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<sup>9</sup> The provisions of this Chapter are presented in square brackets in that they were not the subject of consideration by the Drafting Committee pending the outcome of their consideration by the Registration Working Group. It should be noted that the Registration Working Group has proposed considerable amendments to the provisions of this Chapter.

<sup>10</sup> It was proposed by the Committee that the question of registration by the trustee in bankruptcy of the date of commencement of the bankruptcy raised by one delegation be considered in the context of the general review of the insolvency-related provisions of the two instruments. The Committee did not believe itself to be in a position to deal with the question of non-consensual rights and interests, in the absence of adequate instructions from the Joint Session.

2. – The priority of the first-mentioned interest under the preceding paragraph applies:
- (a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and
  - (b) even as regards value given by the holder of the first-mentioned interest with such knowledge.
3. – The buyer of an object acquires its interest in it:
- (a) subject to an interest registered at the time of its acquisition of that interest; and
  - (b) free from an unregistered interest even if it has actual knowledge of such an interest.
4. – The priority of competing interests under this Article may be varied by agreement between the holders of those interests, but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.
5. – Any priority given by this Article to an interest in an object extends to [qualified proceeds].

[6.– For a registrable non-consensual right or interest to maintain its priority, the holder thereof must provide notice in writing, within ... days of the registration thereof, to all parties with registered interests in the same object.]<sup>11 12</sup>

#### [Article 28<sup>13</sup>

1. – An international interest is valid against the trustee in bankruptcy and creditors of the obligor if prior to the commencement of the bankruptcy<sup>14</sup> that interest was registered in conformity with this Convention.<sup>15</sup>
2. – For the purposes of this Article and Article 35:

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<sup>11</sup> The question was left open as to whether the more appropriate place for this provision would be Article 27(6) or Article 37.

<sup>12</sup> It is for consideration whether the Registrar should be required to provide the notice referred to in this paragraph.

<sup>13</sup> This Article will be revised in the light of a general review of the insolvency provisions of the preliminary draft Aircraft Protocol and consideration of the transfer of some or all of those provisions to the preliminary draft Convention itself.

The Committee moreover proposed that, on the occasion of the general review of the insolvency-related provisions, the definition of "bankruptcy" be extended to cover reorganisation and that consideration possibly be given to the definitions appearing in the Uncitral Model Law on Cross-Border Insolvency.

<sup>14</sup> Consideration should be given to the ability of an obligee to determine the commencement of bankruptcy proceedings.

<sup>15</sup> This paragraph is intended to state the substantive rights of the holder of the international interest but not to displace special rules of bankruptcy law restricting the exercise of remedies or avoiding unfair preferences.

(a) “bankruptcy” includes a liquidation, administration or other insolvency proceeding involving the administration of the estate or affairs of the obligor for the benefit of the general body of the obligor's creditors;

(b) “trustee in bankruptcy” includes a liquidator, administrator or other person appointed to administer the estate or affairs of the obligor for the benefit of the general body of creditors.

3. – Nothing in this Article affects the validity of an international interest against the trustee in bankruptcy where that interest is valid against the trustee in bankruptcy under the applicable law.]

## CHAPTER [VIII]

### ASSIGNMENTS OF INTERNATIONAL INTERESTS AND RIGHTS OF SUBROGATION

#### Article 29

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 30

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

(a) all the interests and priorities of the assignor under this Convention; and

(b) all associated rights.

2. – Subject to paragraph 3, an assignment made in conformity with the preceding paragraph shall take effect subject to:

(a) all defences of which the obligor could have availed itself against the assignor;

(b) any rights of set-off in respect of claims existing against the assignor and available to the obligor; and

(c) any restrictions on assignment contained in the agreement.

3. – The obligor may by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph.

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

#### Article 31 <sup>16</sup>

1. – To the extent that an international interest has been assigned in accordance with the provisions of this Chapter, the obligor in relation to that interest is bound by the assignment, and, in the case of an assignment within Article 30(1)(b), has a duty to make payment or give other performance to the assignee, if but only if:

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

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

(c) the obligor does not have [actual] knowledge of any other person's superior right to payment or other performance].

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

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

#### Article 32

In the event of default by the assignor under the assignment of an international interest made by way of security, Articles 8, 9 and 11 to 14 apply (and, in relation to associated rights, apply in so far as they are capable of application to intangible property) as if references:

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

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

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

(d) to the object included references to the assigned rights relating to the object.

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<sup>16</sup> A question to be considered is whether these provisions should be left to the Protocol, which might in turn refer to the applicable law.

### Article 33

Where there are competing assignments of international interests and at least one of the assignments is registered, the provisions of Article 27 apply as if the references to an international interest were references to an assignment of an international interest.

### Article 34

Where the assignment of an international interest has been registered, the assignee shall, in relation to the associated rights transferred by virtue of the assignment, have priority over the holder of associated rights not held with an international interest to the extent that the first-mentioned associated rights relate to:

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

and the reasonable costs referred to in Article 8(5).

### Article 35

1. – An assignment of an international interest is valid against the trustee in bankruptcy of the assignor if prior to the commencement of the bankruptcy that assignment was registered in conformity with this Convention.

2. – Nothing in this Article affects the validity of an assignment of an international interest against the trustee in bankruptcy where that interest is valid against the trustee in bankruptcy under the applicable law.

### [Article 36

1. – Subject to paragraph 2, nothing in this Convention affects rights or interests arising in favour of any person by operation of principles of legal subrogation under the applicable law.

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

[ CHAPTER [IX]

NON-CONSENSUAL RIGHTS AND INTERESTS

Article 37

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

Article 38

[1.–] A non-consensual right or interest (other than a registrable non-consensual right or interest) which under the law of a Contracting State would have priority over an interest in the object equivalent to that held by the holder of the international interest (whether in or outside the insolvency of the obligor) has priority over the international interest to the extent, and only to the extent that:

- (a) such priority is specified by that State in a declaration; and <sup>17</sup>
- (b) the non-consensual right or interest would, under the domestic law of that State, have priority over a registered interest of the same type as the international interest without any act of publication.

[2.– The non-consensual interest has priority only over an international interest registered after the declaration takes effect.] <sup>18</sup>

[CHAPTER [X]

APPLICATION OF THE CONVENTION TO SALES

Article 39

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

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<sup>17</sup> This sub-paragraph will need to be reviewed in the context of the Final Provisions, so as to state that such a declaration could be made at any time.

<sup>18</sup> This paragraph will need to be reviewed in the context of the Final Provisions.

[CHAPTER [XI]

JURISDICTION

Article 40 <sup>19</sup>

1. – A court of a Contracting State has jurisdiction to grant judicial relief under Article 14(1) where:

(a) the object is within [or is physically controlled from] the territory of that State;

(b) the defendant is situated within that territory; or

(c) the parties have agreed to submit to the jurisdiction of that court.

2. – A court may exercise jurisdiction under the preceding paragraph even if the trial of the claim referred to in Article 14(1) will or may take place in a court of another State or in an arbitral tribunal.

[Article 41

A court of a Contracting State to which Article 40(1) applies has jurisdiction in all proceedings relating to this Convention, but no court may make orders or give judgments or rulings against or purporting to bind the International Registry.] ]

[CHAPTER [XII]

RELATIONSHIP WITH OTHER CONVENTIONS] <sup>20 21</sup>

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<sup>19</sup> Article 40 will be amended in order to make it clear that it is intended to operate independently of Article 14(1). This Article and Article 41 will be comprehensively reviewed in the light of advice from the Hague Conference on Private International Law and the remarks made by some delegations.

<sup>20</sup> It is thought that the only existing Conventions needing to be dealt with in Chapter XII are the UNIDROIT Convention on International Financial Leasing and, possibly, the UNIDROIT Convention on International Factoring. It is thought that relations between this Convention and other equipment-specific Conventions should be left to each Protocol.

<sup>21</sup> This Chapter was not reviewed by the Drafting Committee in line with the decision taken by the Joint Session not to consider this Chapter at this stage.

## CHAPTER [XIII]

### [OTHER] FINAL PROVISIONS <sup>22</sup>

#### Article U

1. – This Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the ... instrument of ratification, acceptance, approval or accession but only applies as regards any category of object listed in Article 3 <sup>23</sup>:

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

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

#### Article V

A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that it will not apply this Convention in relation to [a purely domestic transaction]. <sup>24</sup> Such a declaration shall be respected by the courts of all other Contracting States.

#### Article W

[Insert provision for accelerated procedure to finalise further Protocols]

#### [Article X

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

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<sup>22</sup> *Idem.*

<sup>23</sup> *Note by the Secretariat:*

This reference to the former Article 3 will need to be reviewed in the light of the decision to delete that Article at the first Joint Session.

<sup>24</sup> To be defined by taking account of the location of the object and the parties.



## Article Y

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

2. – A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that any remedy available to the obligee under Articles 8 to 10 which is not there expressed to require application to the court may only be exercised with leave of the court.

## Article Z

A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that it will not apply the provisions of Article 14, wholly or in part.

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

**TEXT OF THE PRELIMINARY DRAFT PROTOCOL TO THE PRELIMINARY  
DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN  
MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT  
AS REVIEWED BY THE DRAFTING COMMITTEE**

PRELIMINARY DRAFT PROTOCOL TO THE PRELIMINARY DRAFT UNIDROIT  
CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON  
MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

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## **CHAPTER VI**

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- |                |  |
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## **APPENDIX**

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

## PREAMBLE

THE CONTRACTING STATES TO THIS PROTOCOL,

MINDFUL of the demand for, and utility of aircraft equipment and the need to finance the acquisition and use thereof as efficiently as possible,

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

BELIEVING that such rules must (i) reflect the principles underlying asset-based financing and leasing of aircraft objects and (ii) provide transaction parties with autonomy to allocate risks and benefits to the extent consistent with the policy decisions made by Contracting States in this Protocol,

CONSCIOUS of the need for an international registration system as an essential feature of the legal framework applicable to international interests in aircraft equipment,

CONSIDERING it necessary to implement the UNIDROIT Convention on International Interests in Mobile Equipment so as to meet the requirements of aircraft finance and the purposes described above,

HAVE AGREED upon the following provisions relating to aircraft equipment:

## CHAPTER I

### SPHERE OF APPLICATION AND GENERAL PROVISIONS

#### Article I

#### *Defined terms*

1. – Terms used in this Protocol and defined in Article 1 of the Convention are employed herein with the meanings there stated.

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

“aircraft” means airframes with aircraft engines installed thereon or helicopters;

“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:

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

(b) 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;

“aircraft objects” means airframes, aircraft engines and helicopters;

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

- (a) at least eight (8) persons including crew; or
- (b) goods in excess of 2750 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), <sup>1</sup> and all data, manuals and records relating thereto;

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

“Chicago Convention” means the Convention on International Civil Aviation, signed at Chicago on 7 December 1944, as amended;

“common mark registering authority” means the authority maintaining the non-national register in which an aircraft of an international operating agency is registered in accordance with Article 77 of the Chicago Convention;

“de-register the aircraft” means delete the registration of an aircraft from a national aircraft register;

“Geneva Convention” means the Convention on the International Recognition of Rights in Aircraft, signed at Geneva on 19 June 1948;

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

“guarantor” means a person who, for the purpose of assuring performance of any obligations in favour of an obligee 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;

“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:

- (a) at least five (5) persons including crew; or
- (b) 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;

“insolvency date” means the date referred to in Article XI(1);

[“International Registry Authority” means the permanent international body designated as the International Registry Authority under this Protocol;]

[“International Regulator” means [the permanent international body designated as the International Regulator under this Protocol] [the entity designated as the International Regulator in Article XVI(1)];]

“national aircraft register” means the national register in which an aircraft is registered pursuant to the Chicago Convention;

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<sup>1</sup> Consider the position of propellers.

“national registry authority” means the national authority, or the common mark registering authority in a Contracting State which is the State of registry responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention;

“primary insolvency jurisdiction” means the insolvency jurisdiction of the State in which the centre of the obligor's main interests is situated;

“prospective sale” means a sale that is intended to take effect on the conclusion of a contract of sale in the future;

[“Registrar” means [the entity designated as the Registrar under this Protocol] [the entity initially designated or subsequently appointed or re-appointed as the Registrar, as the case may be, as specified in Article XVI];] and

“State of registry” means in respect of an aircraft the State, or a State member of a common mark registering authority, on whose national aircraft register an aircraft is entered under the Chicago Convention.

## Article II

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

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

2. – The Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as the UNIDROIT Convention on International Interests in Mobile Equipment as applied to aircraft objects.

## Article III<sup>2</sup>

### *Sphere of application*

1. – The connection with a Contracting State under Article 3(b) of the Convention is satisfied with respect to this Protocol if an [aircraft object] is registered in a national aircraft register of a Contracting State [or if the agreement provides that the aircraft object shall be registered, and the aircraft object becomes so registered, in a Contracting State].

[2. – Notwithstanding the provisions of Article V of the Convention, this Protocol shall apply to [a purely domestic transaction].]

[3.] – In their relations with each other, the parties may not derogate from or vary the provisions of this Protocol, except, by agreement in writing, Articles IX(1), X or XI(1) - (6).

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<sup>2</sup> Add a paragraph inserting as a connecting factor the situation of the transferor under a contract of sale.

Article IV  
*Application of Convention to sales*

The following provisions of the Convention apply *mutatis mutandis* in relation to a sale and a prospective sale as they apply in relation to an international interest and a prospective international interest:

Article 15(1) other than sub-paragraph (c);  
Articles 17 - 19;  
Article 22;  
Articles 24 and 26;  
Chapter VII; and  
Article 38.

Article V  
*Formalities and effects of contract of sale*

1. – For the purposes of this Protocol, a contract of sale is one which:
  - (a) is in writing;
  - (b) relates to an aircraft object of which the transferor has power to dispose; and
  - (c) identifies the aircraft object.
  
2. – A contract of sale transfers the interest of the transferor in the aircraft object to the transferee according to its terms.
  
3. – A sale may be registered by either party to the contract of sale in the International Registry by or with the consent in writing of the other party.

Article VI  
*Representative capacities*

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

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 sufficient to identify the object for the purposes of Article 7(c) of the Convention and Article V(1)(c) of this Protocol.

Article VIII  
*Choice of law*

1. – 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 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 rules of law in force in the designated State or political subdivision of a State other than its rules of private international law.

CHAPTER II

DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article IX  
*Modification of default remedies provisions*

1. – In addition to the remedies specified in the provisions of Articles 8(1), 10 and 14(1) of the Convention, the obligee may, to the extent that the obligor has at any time so agreed and in the circumstances specified in such provisions:

- (a) de-register the aircraft; and
- (b) export and physically transfer the aircraft object from the territory in which it is situated.

2. – The obligee may not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the obligee.<sup>3</sup>

3. – (a) Article 8(2) of the Convention shall not apply to aircraft objects.

(b) A new Article 13<sup>bis</sup> shall be inserted after Article 13 of the Convention, to read as follows:

“1. – Any remedy given by this Convention shall be exercised in a commercially reasonable manner.

2. – An agreement between an obligor and an obligee as to what is commercially reasonable shall, subject to paragraph 3, be conclusive.

3. – An obligee may not take possession or control of an aircraft object otherwise than by lawful means. For these purposes, the removal of the aircraft object from service shall not in itself be deemed unlawful.”

4. – A chargee giving ten or more working days' prior written notice of a proposed sale or lease to interested persons is deemed to satisfy the requirement of providing “reasonable

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<sup>3</sup> Further consideration is to be given to the situation of holders of other interests that are protected under Article IX of the Geneva Convention.



prior notice” specified in Article 8(3) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer prior notice period.

Article X  
*Definition of speedy judicial relief*

[1. —For the purposes of Article 14(1) of the Convention, “speedy” in the context of obtaining judicial relief means a period not exceeding [...] calendar days from the date on which the instrument initiating the proceedings is lodged with the court or its administrative office.]

[2.— The obligor may at any time agree that Article 14(2) of the Convention shall not apply.]

[3.]– The remedies specified in Article IX(1) shall be made available by the national registry authority and other administrative authorities, as applicable, in a Contracting State no later than [...] working days after the judicial relief specified in the preceding paragraph is authorised or, in the case of judicial relief authorised by a foreign court, approved by courts of that Contracting State.

[4.]–Judicial relief under Article 14(1) of the Convention may be granted in a Contracting State notwithstanding the commencement of insolvency proceedings<sup>4</sup> in another [Contracting] State unless its application would contravene an international instrument binding on that Contracting State.

Article XI  
*Remedies on insolvency*

*[Alternative A]*

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

2. – This Article applies where:

(a) any insolvency proceedings<sup>5</sup> against the obligor have been commenced by the obligor or another person in a Contracting State which is the primary insolvency jurisdiction of the obligor; or

(b) the obligor is located in a Contracting State and has declared its intention to suspend, or has actually suspended payment to creditors generally.

3. – Within a period not exceeding [. . . ]<sup>6</sup> days from the insolvency date the obligor shall:

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<sup>4</sup> The phrase “insolvency proceedings” should be defined and brought into line with the terminology of the Convention.

<sup>5</sup> A Contracting State may find it appropriate or necessary to adjust its relevant domestic laws or regulations in order to give full effect to this Article and Article XII.

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

(b) give possession of the aircraft object to the obligee [in accordance with, and in the condition specified in the agreement and related transaction documents].

4. – Where possession has been given to the obligee pursuant to the preceding paragraph, the remedies specified in Article IX(1) shall be made available by the national registry authority and other administrative authorities, as applicable, no later than [. . . ]<sup>7</sup> working days after the date on which the aircraft object is returned.

5. – No exercise of remedies permitted by the Convention may be prevented or delayed after the period specified in paragraph 3.

6. – No obligations of the obligor under the agreement and related transactions may be modified [in the insolvency proceedings] without the consent of the obligee.

7. – No rights or interests, except for preferred non-consensual rights or interests listed in an instrument deposited under Article 38 of the Convention, shall have priority in the insolvency over registered interests.

[*Alternative B*] <sup>8</sup>

## Article XII *Insolvency assistance*

The courts of a Contracting State in which an aircraft object is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts or other foreign authorities administering the insolvency proceedings referred to in Article XI in carrying out the provisions of that Article.

## Article XIII *De-registration and export authorisation*

1. – Where the obligor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Protocol and has submitted such authorisation for recordation to the national registry authority, that authorisation shall be so recorded.

2. – The person in whose favour the authorisation has been issued (the “authorised party”) or its certified designee shall be the sole person entitled to exercise the remedies specified in Article IX(1) and may do so only in accordance with the authorisation and any

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<sup>6</sup> See Article XXX.

<sup>7</sup> See Article XXX.

<sup>8</sup> It was suggested that an alternative, more flexible formulation of the remedies on insolvency should be prepared. A proposed text does not yet exist, however.

applicable airworthiness or safety laws or regulations. Such authorisation may not be revoked by the obligor without the consent in writing of the authorised party. The national registry authority shall remove an authorisation from the registry at the request of the authorised party.

3. – The national registry authority and other administrative authorities in Contracting States shall expeditiously co-operate with and assist the authorised party in the exercise of the remedies specified in Article IX.

#### Article XIV

##### *Modification of priority provisions*

Article 27 of the Convention applies with the omission of paragraph 4.

#### Article XV

##### *Modification of assignment provisions*

1. – Article 29(2) of the Convention applies with the following being added immediately after sub-paragraph (c):

“(d) is consented to in writing by the obligor, whether or not the consent is given in advance of the assignment or specifically identifies the assignee.”

[2. – Article 31(1) of the Convention applies with the omission of sub-paragraph (c).]

[3. – Article 34 of the Convention applies with the omission of the words following the phrase “not held with an international interest”.]<sup>9</sup>

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<sup>9</sup> Article 34 of the preliminary draft Convention, as may be modified by this preliminary draft Protocol, will have important implications for the competing rights of a receivables financier and an asset-based financier. Consideration should be given to the appropriate rule in the context of aviation financing as well as to its effects on general receivables financing.

[ CHAPTER III <sup>10</sup>

REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS  
IN AIRCRAFT OBJECTS

Article XVI

*Regulation and operation of Registry*

*Alternative A*

[1. – [The International Registry shall be regulated and operated by the International Registry Authority.] [The International Registry shall be regulated by the International Regulator <sup>11</sup> and operated by the Registrar.]] <sup>12</sup>

*Alternative B*

[1. – The International Registry shall be regulated by the Council of the International Civil Aviation Organization or such other permanent body designated by it to be the International Regulator.

2. – The initial Registrar hereby designated to operate the International Registry shall be a newly created, independent special purpose affiliate of the International Air Transport Association.

3. – The initial Registrar shall be organised in consultation with the International Regulator. Its constitutive documents shall contain provisions that:

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

4. – The initial Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or re-appointed at regular five-year intervals by the [Contracting States] [International Regulator].]

[2./5. – Article 16(1) and (3) of the Convention apply as modified by the preceding paragraphs of this Article.]

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<sup>10</sup> The provisions of this Chapter are presented in square brackets in that they were not the subject of consideration by the Drafting Committee pending the outcome of their consideration by the Registration Working Group.

<sup>11</sup> Further consideration needs to be given as to whether the appropriate term is *International Regulator* or *Intergovernmental Regulator*.

<sup>12</sup> The two bracketed provisions in this Alternative A are mutually exclusive, so that if the decision is to have an International Registry Authority references in other Articles to the International Regulator and the Registrar will be deleted, whilst if the latter are adopted references to the International Registry Authority will be deleted.

Article XVII  
*Basic regulatory responsibilities*

1. – The [International Registry Authority] [International Regulator] shall act in a non-adjudicative capacity. This shall not prevent the [International Registry Authority] [International Regulator] from undertaking the functions specified in Article 16(6) and (7) of the Convention.

2. – The [International Registry Authority] [International Regulator] shall [be responsible to the Contracting States and shall report thereto on its regulatory [and oversight] functions. Such reports shall be made on a yearly basis or more frequently as the [International Registry Authority] [International Regulator] deems appropriate.]

[3. – The initial regulations shall be promulgated by the [International Registry Authority] [International Regulator] on entry into force of this Protocol.]

Article XVIII  
*Registration facilities*

1. – At the time of ratification, acceptance, approval of, or accession to this Protocol, a Contracting State may, subject to paragraph 2:

(a) designate its operators of registration facilities as specified in Article 16(2) of the Convention; and

(b) declare the extent to which any such designation shall preclude alternative access to the International Registry.

2. – A Contracting State may only designate registration facilities as points of access to the International Registry in relation to:

(a) helicopters or airframes pertaining to aircraft for which it is the State of registry; and

(b) registrable non-consensual rights or interests created under its domestic law.

Article XIX  
*Additional modifications to Registry provisions*

1. – For the purposes of Article 19(6) of the Convention, the search criterion for an aircraft object shall be its manufacturer's serial number, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

2. – For the purposes of Article 25(2) of the Convention and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest shall take such steps as are within its power to effect a removal thereof no later than five working days after the receipt of the demand described in such paragraph.

3. – The fees referred to in Article 16(4) of the Convention shall be determined so as to recover the reasonable costs of operating the International Registry and the registration facilities and, in the case of the initial fees, of designing and implementing the international registration system.

4. – The centralised functions of the International Registry shall be operated and administered by the [International Registry Authority] [Registrar] on a twenty-four hour basis. The various registration facilities shall be operated and administered during working hours in their respective territories.

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

Article 16(6) and (7);

Article 17;

Article 18;

Article 21;

Article 22(1) and (2);

Article 23; and

Article 24. ]

## CHAPTER IV

### JURISDICTION

#### Article XX

##### *Modification of jurisdiction provisions*

For the purposes of Articles 40 and 41 of the Convention, a court of a Contracting State also has jurisdiction where that State is the State of registry.

#### Article XXI

##### *Waivers of sovereign immunity*

1. – Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 41 of the Convention or relating to enforcement of rights and interests relating to an aircraft object under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

2. – A waiver under the preceding paragraph must be in a[n authenticated] writing that contains a description of the aircraft.

## CHAPTER V

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

#### Article XXII

##### *Relationship with 1948 Convention on the International Recognition of Rights in Aircraft*

1. – Where a Contracting State is a party to the Geneva Convention:
  - (a) the reference to the “law” of such Contracting State for the purposes of Article I (1)(d)(i) of the Geneva Convention should be to such law after giving effect to the Convention;
  - (b) for the purposes of the Geneva Convention, the term “aircraft” as defined in Article XVI of that Convention shall be deleted and replaced by the terms “airframes,” “aircraft engines” and “helicopters” as defined in this Protocol; and
  - (c) registrations in the International Registry shall be deemed to be regular recordations “in a public record of the Contracting State” for the purposes of Article I (1)(ii) of the Geneva Convention.
2. – Subject to paragraph 3, the Convention shall, for the Contracting States referred to in the preceding paragraph, supersede the Geneva Convention to the extent, after giving effect to the preceding paragraph, of inconsistency between the two Conventions.
3. – The provisions of the preceding paragraph shall not apply to Articles VII and VIII of the Geneva Convention where an obligee elects to exercise remedies against an obligor in accordance with those Articles [and provides the court with written evidence of that election].

#### Article XXIII

##### *Relationship with 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft*

The Convention shall, for Contracting States that do not make a declaration under Article Y(2) of the Convention, supersede the 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft.

#### Article XXIV

##### *Relationship with 1988 UNIDROIT Convention on International Financial Leasing*

The Convention shall supersede the 1988 UNIDROIT Convention on International Financial Leasing as it relates to aircraft objects.

## CHAPTER VI

### [OTHER] FINAL PROVISIONS <sup>14</sup>

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<sup>13</sup> With the exception of Article XXX, the meeting of governmental experts did not discuss Chapters V and VI, leaving consideration of those Chapters to a time nearer to a diplomatic Conference.

<sup>14</sup> It is envisaged that, in line with practice, draft Final Provisions will be prepared for the Diplomatic Conference at such time as governmental experts have completed their preparation of the draft Protocol. The

## ADDENDUM

### CHAPTER VI

#### [OTHER] FINAL PROVISIONS

##### Article XXV

##### *Adoption of Protocol*

1. – This Protocol is open for signature at the concluding meeting of the Diplomatic Conference for the Adoption of the Draft Protocol to the UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment and will remain open for signature by all Contracting States at [...] until [...].

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

3. – This Protocol is open for accession by all States which are not signatory Contracting States as from the date it is open for signature.

4. – Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the depositary.<sup>15</sup>

##### Article XXVI

##### *Entry into force*

1. – This Protocol enters into force on the first day of the month following the expiration of [three] months after the date of deposit of the [third] instrument of ratification, acceptance, approval or accession.

2. – For each Contracting State that ratifies, accepts, approves or accedes to this Protocol after the deposit of the [third] instrument of ratification, acceptance, approval or accession, this Protocol enters into force in respect of that Contracting State on the first day of the month following the expiration of [three] months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

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proposals for draft Final Provisions set out in the Addendum to this preliminary draft Protocol below are in no way intended to prejudge that process but simply to indicate the suggestions of the Aircraft Protocol Group on this matter. Particular attention is drawn to Articles XXXI(3) and XXXIII(3) (limiting the effect of any future declaration or reservation and denunciation respectively as regards established rights) and Article XXXIV (establishing a Review Board and contemplating review and revision of this Protocol).

<sup>15</sup> It is recommended that a resolution be adopted at, and contained in the Final Acts and Proceedings of, the Diplomatic Conference, contemplating the use by Contracting States of a model ratification instrument that would standardise, *inter alia*, the format for the making and/or withdrawal of declarations and reservations.



Article XXVII  
*Territorial units*

1. – If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them and may substitute its declaration by another declaration at any time.

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

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

Article XXVIII  
*Temporal application*

This Protocol applies in a Contracting State to rights and interests in aircraft objects created or arising on or after the date on which this Protocol enters into force in that Contracting State.

Article XXIX  
*Declarations and reservations*

No declarations or reservations are permitted except those expressly authorised in this Protocol.

Article XXX  
*Declarations disapplying certain provisions*

A Contracting State, at the time of ratification, acceptance, approval of, or accession to this Protocol[,],:

(a) may declare that it will not apply any one or more of the provisions of Articles VIII and X to XIII of this Protocol[;]

(b) to the extent that it has not made a declaration under sub-paragraph (a), must declare that it will apply time-periods as specified in its declaration for the purposes of Articles X and XII; and

(c) may declare that it will impose other conditions on the application of Articles VIII [, IX(1)] and X to XII as specified in its declaration].

Article XXXI  
*Subsequent declarations*

1. – A Contracting State may make a subsequent declaration at any time after the date on which it enters into force for that Contracting State, by the deposit of an instrument to that effect with the depositary.

2. – Any such subsequent declaration shall take effect on the first day of the month following the expiration of [twelve] months after the date of deposit of the instrument in which such declaration is made with the depositary. Where a longer period for that declaration to take effect is specified in the instrument in which such declaration is made, it shall take effect upon the expiration of such longer period after its deposit with the depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declaration had been made, in respect of all rights and interests arising prior to the effective date of that subsequent declaration.

Article XXXII  
*Withdrawal of declarations and reservations*

Any Contracting State which makes a declaration under, or a reservation to this Protocol may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of [three] months after the date of the receipt of the notification by the depositary.

Article XXXIII  
*Denunciations*

1. – This Protocol may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State, by the deposit of an instrument to that effect with the depositary.

2. – Any such denunciation shall take effect on the first day of the month following the expiration of [twelve] months after the date of deposit of the instrument of denunciation with the depositary. Where a longer period for that denunciation to take effect is specified in the instrument of denunciation, it shall take effect upon the expiration of such longer period after its deposit with the depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of that denunciation.

Article XXXIV  
*Establishment and responsibilities of Review Board*

1. – A five-member Review Board shall promptly be appointed to prepare yearly reports for the Contracting States addressing the matters specified in sub-paragraphs (a)-(d) of paragraph 2. [The composition, organisation and administration of the Review Board shall be determined, in consultation with other aviation interests, jointly by the International Institute for the Unification of Private Law and the International Civil Aviation Organization.]

2. – At the request of not less than twenty-five per cent of the Contracting States, conferences of the Contracting States shall be convened from time to time to consider:

(a) the practical operation of this Protocol and its effectiveness in facilitating the asset-based financing and leasing of aircraft objects;

(b) the judicial interpretation given to the terms of the Convention, this Protocol and the regulations;

(c) the functioning of the international registration system and the performance of the [International Registry Authority] [Registrar and its oversight by the Intergovernmental Regulator]; and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

Article XXXV  
*Depositary arrangements*

1. – This Protocol shall be deposited with the [...].

2. – The [...] shall:

(a) inform all Contracting States which have signed or acceded to this Protocol and [...] of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) each declaration made in accordance with this Protocol;

(iii) the withdrawal of any declaration;

(iv) the date of entry into force of this Protocol; and

(v) the deposit of an instrument of denunciation of this Protocol together with the date of its deposit and the date on which it takes effect;

(b) transmit certified true copies of this Protocol to all signatory Contracting States, to all Contracting States acceding to the Protocol and to [...];

(c) provide the [International Registry Authority] [Registrar] with the contents of each instrument of ratification, acceptance, approval or accession so that the information contained therein may be made publicly accessible; and

(d) perform such other functions customary for depositaries.

FORM OF IRREVOCABLE DE-REGISTRATION  
AND EXPORT REQUEST AUTHORISATION

[Insert Date]

To: [Insert Name of National Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorisation

The undersigned is the registered [operator] [owner]\* of the [insert the airframe/helicopter manufacturer name and model number] bearing manufacturer's serial number [insert manufacturer's serial number] and registration [number] [mark] [insert registration number/mark] (together with all installed, incorporated or attached accessories, parts and equipment, the “**aircraft**”).

This instrument is an irrevocable de-registration and export request authorisation issued by the undersigned in favour of [insert name of obligee] (“the **authorised party**”) under the authority of Article XIII of the Protocol to the UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

(i) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:

(a) obtain de-registration of the aircraft from the [insert name of national aviation registry] maintained by the [insert name of aviation authority] for the purposes of Chapter III of the Chicago Convention of 1944 on International Civil Aviation; and

(b) export and physically transfer the aircraft from [insert name of country]; and

(ii) confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in [insert name of country] shall co-operate with the authorised party with a view to the speedy completion of such action.

The rights in favour of the authorised party established by this instrument may not be revoked by the undersigned without the written consent of the authorised party.

Please acknowledge your agreement to this request and its terms by appropriate notation in the space provided below and lodging this instrument in [insert name of national registry authority].

[insert name of operator/owner]

Agreed to and lodged this  
[insert date]

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

[insert relevant notational details]

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