

**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 ad hoc Drafting Group, constituted by the second Joint Session, in the
light of the Joint Session's second reading, at its meeting held in Rome
from 25 to 27 November 1999*¹

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

PREAMBLE

CHAPTER I SPHERE OF APPLICATION AND GENERAL PROVISIONS

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

CHAPTER II DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article IX	Modification of default remedies provisions
Article X	Definition of speedy judicial relief
Article XI	Remedies on insolvency
Article XII	Insolvency assistance
Article XIII	De-registration and export authorisation
Article XIV	<u>[Deleted]</u>
Article XV	Modification of assignment provisions

¹ *Note by the Secretariats:*

Amendments made to the preliminary draft Aircraft Equipment Protocol as reproduced in UNIDROIT CGE/Int.Int./2-WP/24; ICAO Ref. LSC/ME/2-WP/24, 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.

CHAPTER III REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN AIRCRAFT OBJECTS

Article XVI	Regulation and operation of Registry <u>The Supervisory Authority and the Registrar</u>
Article XVII	Basic regulatory responsibilities <u>First regulations</u>
Article XVIII	Registration facilities
Article XIX	Additional modifications to Registry provisions

[CHAPTER IV JURISDICTION

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

CHAPTER V RELATIONSHIP WITH OTHER CONVENTIONS

Article XXII	Relationship with 1948 Convention on the International Recognition of Rights in Aircraft
Article XXIII	Relationship with 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

ADDENDUM

CHAPTER VI [OTHER] FINAL PROVISIONS

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

APPENDIX FORM OF IRREVOCABLE DE-REGISTRATION AND EXPORT REQUEST AUTHORISATION

PREAMBLE

THE CONTRACTING STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the UNIDROIT Convention on International Interests in Mobile Equipment as it relates to aircraft equipment, in the light of the purposes set out in the preamble to the Convention,

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

HAVE AGREED upon the following provisions relating to aircraft equipment:

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I *Defined terms*

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

~~2.1. - In this Protocol, the following except where the context otherwise requires, terms used in it have the meanings set out below in the Convention.~~

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

(a) “aircraft” means airframes with aircraft engines installed thereon or helicopters; [(a)]

(b) “aircraft engines” means aircraft engines [(other than those used in military, customs or police services)]² powered by jet propulsion or turbine or piston technology and:

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

² At the second Joint Session Plenary noted that the question whether there should be an opt-in or opt-out for all or certain categories of State aircraft (in particular, those used in military, customs or police services) was a policy question. The Drafting Group noted that, in the event that such categories of State aircraft are included in the preliminary draft Aircraft Protocol, specific rules will be required dealing with the manner in which such aircraft are to be identified and registered and with issues particular to priorities and enforcement. The Drafting Group noted that a paper would be submitted by the Aviation Working Group to the third Joint Session with specific proposals on this subject.

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

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

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

(d) “airframes” means airframes [(other than those used in military, customs and police services)]³ that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:

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

(ii) goods in excess of 2750 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines),⁴ and all data, manuals and records relating thereto; ~~(f)~~ [(e)]

(e) “authorised party” means the party referred to in Article XIII(2); ~~(e)~~ [(m)]

(f) “Chicago Convention” means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, as amended; ~~(i)~~ [(g)]

(g) “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; ~~(e)~~ [(b)]

(h) “de-register the aircraft” means delete or remove the registration of an aircraft from a national aircraft register; ~~(r)~~ [(n)]

(i) “Geneva Convention” means the Convention on the International Recognition of Rights in Aircraft, opened for signature at Geneva on 19 June 1948; ~~(j)~~ [(h)]

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

(k) “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; ~~(m)~~ [(j)]

(l) “helicopters” means heavier-than-air machines [(other than those used in military, customs or police services)]⁵ 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)~~ (i) at least five (5) persons including crew; or

~~(b)~~ (ii) goods in excess of 450 kilograms,

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

³ *Idem.*

⁴ Consider the position of propellers.

⁵ Cf. footnote 2, *supra*.

~~(m)~~ “insolvency date” means the date referred to in Article XI(1); ~~[(k)]~~

(m) “insolvency-related event” means:

(i) the commencement of the insolvency proceedings;

(ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under Chapter III of the Convention is prevented or suspended by law or State action; ~~[(q)]~~

~~(n)~~ ~~[(“International Registry Authority” means the permanent international body designated as the International Registry Authority under this Protocol;)]~~ ~~[(b)]~~⁶

~~(o)~~ ~~[(“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)];)]~~ ~~[(p)]~~⁷

~~(p)~~(n) “national aircraft register” means any register maintained for the purposes of the Chicago Convention; ~~[(s)]~~ ~~[(o)]~~

~~(q)~~(o) “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; ~~[(d)]~~ ~~[(c)]~~

~~(r)~~(p) “primary insolvency jurisdiction” means the insolvency jurisdiction of the Contracting State in which the centre of the obligor’s debtor’s main interests is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat⁸ unless proved otherwise; ~~[(t)]~~ ~~[(p)]~~ and

~~(s)~~ ~~[(“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];)]~~ ~~[(g)]~~ and

~~(t)~~ (q) “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. ~~[(h)]~~ ~~[(i)]~~

Article II

Implementation Application of Convention as regards aircraft objects

1. - The Convention shall apply in relation to aircraft objects as implemented provided

⁶- This definition will need to be reconsidered in the light of the Drafting Committee’s review of the registration provisions pursuant to the deliberations of Plenary regarding the Report by the Registration Working Group.

⁷- This definition will need to be reconsidered in the light of the Drafting Committee’s review of the registration provisions pursuant to the deliberations of Plenary regarding the Report by the Registration Working Group.

⁸ The Insolvency Working Group suggested that the place of the debtor’s incorporation be used in this connection. The Drafting Group, however, preferred the debtor’s statutory seat in view of the fact that companies in a number of jurisdictions are not incorporated. The Drafting Group noted that, where a company is incorporated in a particular jurisdiction, it will be able to elect to make its place of incorporation its statutory seat and thus to take advantage of this presumption.

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 III⁹ *Sphere of application*

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

~~1. 2.~~ The connection with a Contracting State under Article 3(1)(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].]~~¹¹

[3.] The parties may, by agreement in writing, exclude the application of Article XI and, 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 this Protocol, except as stated in Articles IX(4)(2)-(4), X or XI(1)-(6).

Article IV *Application of Convention to sales*

Except where the context otherwise requires, 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 (e);~~

~~Articles 17—19;~~

~~Article 22;~~

~~Article 20(1);~~

~~Articles 24 and 26;~~

~~Article 25;~~

~~Chapter VIII~~ VIII other than Article 27(3)¹¹; and

⁹ ~~Add a paragraph inserting as a connecting factor the situation of the transferor under a contract of sale.~~

¹¹ This provision will need to be reinstated in the event that Article V of the preliminary draft Convention is not found to be acceptable.

¹¹ A technical drafting proposal will be submitted on this point to the third Joint Session designed to make

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~~ enables the aircraft object to be identified in conformity with this Protocol.
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~~ person may enter into an agreement or a contract of sale ~~may enter into an agreement, and, or register a related~~ an international interest in an aircraft object created or provided for by the agreement in an agency, trust or other representative capacity. In such case, that ~~party~~ person is entitled to assert rights and interests under the Convention to the exclusion of the ~~party or parties~~ person or persons 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 necessary and sufficient to identify the object for the purposes of Article 7(c) of the Convention and Article V(1)(c) of this Protocol.

Article VIII

Choice of law

1. - 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~~

the effect of this rule clearer (cf. deleted Article XIV, *infra*).

territorial unit of a State other than its rules of private international law domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

CHAPTER II

DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article IX

Modification of default remedies provisions

1. - In addition to the remedies specified in the provisions of Articles 8(1), 10 and 14(1) of the Convention, the ~~obligee~~ creditor may, to the extent that the ~~obligor~~ debtor 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~~ creditor ~~may~~ shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the ~~obligee~~ creditor.¹²

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

(b) ~~A new Article 13^{bis} shall be inserted after Article 13 of the Convention, to read as follows: In relation to aircraft objects the following provisions shall apply:~~

~~“1. (i) - Any remedy given by this the Convention shall be exercised in a commercially reasonable manner.~~

~~2. (ii) - An agreement between an obligor the debtor and an obligee the creditor as to what is a commercially reasonable manner 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.¹³ 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 calendar days' prior written notice of a proposed sale or lease to interested persons is shall be deemed to satisfy the requirement of providing “reasonable 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 of prior notice.

¹² Further consideration is to be given to the situation of holders of other interests that are protected under Article IX of the Geneva Convention.

¹³ ~~It will be necessary to delete the reference to “by lawful means” in line with the decision to delete the words “and by lawful means” in Article 8 (2) of the preliminary draft Convention.~~

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, within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.]~~

[2. - ~~The obligor debtor and obligee the creditor may at any time agree that~~ An agreement between the debtor and the creditor to exclude the application of Article 14(2) of the Convention shall not apply. ~~be binding upon all interested persons.~~]

[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 [...] calendar days after the judicial relief specified in paragraph 1 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 proceedings¹⁴ in another [Contracting] State unless its application would contravene an international instrument binding on that Contracting State.]¹⁵~~

Article XI ¹⁶
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.~~

¹⁴ The phrase “insolvency proceedings” should be defined and brought into line with the terminology of the Convention.

¹⁵ *Note by the Secretariats:*

The provisions of this paragraph are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by Plenary during its consideration of the Report by the Insolvency Working Group (ICAO Ref. LSC/ME/2-WP/19; UNIDROIT CGE/Int.Int./2-WP/19).

¹⁶ *Note by the Secretariats:*

The provisions of this Article are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by Plenary during its consideration of the Report by the Insolvency Working Group (ICAO Ref. LSC/ME/2-WP/19; UNIDROIT CGE/Int.Int./2-WP/19).

2. — This Article applies where:

~~— (a) any insolvency proceedings¹⁷ 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 [. . .]¹⁸ days from the insolvency date the obligor shall:~~

~~(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 [. . .]¹⁹ working calendar 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.~~

1. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 6, give possession of the aircraft object to the creditor no later than the earlier of:

(a) the end of the waiting period; and

(b) the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply.

2. For the purposes of this Article, the “waiting period” shall be the period specified

¹⁷ 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.

¹⁸ See Article XXX.

¹⁹ See Article XXX.

in a declaration of the Contracting State which is the primary jurisdiction.

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

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

(a) the insolvency administrator or the debtor, as applicable, shall preserve the aircraft object and maintain it and its value in accordance with the agreement; and

(b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

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

6. The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph 1, it has cured all defaults and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

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

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

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

10. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law [to terminate the agreement].²⁰

11. No rights or interests, except for preferred non-consensual rights or interests of a category covered by a declaration deposited under Article 38(1), shall have priority in the insolvency over registered interests.

12. Article IX of this Protocol and Article 8 of the Convention as modified by Article IX of this Protocol, shall apply to the exercise of any remedies under this Article.

²⁰ The Drafting Group considered the addition at the end of Article XI(10) (Alternative A) of the words “or permit the conversion of unsecured claims to secured claims or limit the obligee’s rights, if any, to the former” suggested by the Insolvency Working Group but concluded that these words would not be compatible with the principle underlying Alternative A.

[Alternative B] ²⁴ ²²

1. Where insolvency proceedings involving the debtor have been commenced, or, alternatively, where the debtor is not eligible for or subject to insolvency proceedings under applicable law and has declared its intention to suspend, or has actually suspended payments to creditors generally, the insolvency administrator or the debtor, as applicable upon the request of the creditor, has to declare within a reasonable time period whether it will:

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

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

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

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

4. If the debtor or the insolvency administrator, as applicable, does not make such a declaration within a reasonable time period, or when he has declared that he will give possession of the aircraft object but fails to do so, the court may permit the creditor to take possession of the aircraft object upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

In any event, the debtor or the insolvency administrator must give possession of the aircraft object to the creditor not later than the end of the waiting period if the debtor has not cured all defaults by that time.

For the purposes of Article XI, the “waiting period” shall be the period of time specified in the declaration of the Contracting State referred to in paragraph

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

²⁴ ~~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.~~

²² The Drafting Group noted, without however implementing, the proposal made at the second Joint Session to Article XI (Alternative B) by the observer from Insol International (ICAO Ref. LSC/ME/2 – UNIDROIT CGE/Int.Int./2 Flimsy No. 4) for the addition of a clause specifying that Article XI (Alternative B) was without prejudice to the applicable insolvency law.

~~Article XII~~²³
Insolvency assistance

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

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 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~~²⁴
Modification of priority provisions

~~Article 27 of the Convention applies with the omission of paragraph 3.~~

Article XV
Modification of assignment provisions

²³ *Note by the Secretariats:*

The provisions of this Article are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by Plenary during its consideration of the Report by the Insolvency Working Group (ICAO Ref. LSC/ME/2 WP/19; UNIDROIT CGE/Int.Int./2 WP/19).

²⁴ Cf. footnote 12, supra.

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.”²⁵

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

~~[[3.] [2.] - Article 34 of the Convention applies with the omission of the words following the phrase “not held with an international interest” beginning with the words “to the extent that” as if the words following the phrase “not held with an international interest” were omitted.]~~^{26 27}

CHAPTER III²⁸

REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN AIRCRAFT OBJECTS

Article XVI

Regulation and operation of Registry *The Supervisory Authority and the Registrar*

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 Regulator²⁹ and operated by the Registrar.]]³⁰~~

²⁵ This provision will be deleted if the words “consents in writing to the assignment, whether or not the consent is given in advance of the assignment or identifies the assignee” are accepted in Article 31(1)(c) of the preliminary draft Convention.

²⁶ Article 34 of the preliminary draft Convention, as it may be modified by this preliminary draft Protocol, will have important implications for the competing rights of a receivables financier and an asset-based financier. Consideration should be given to the appropriate rule in the context of aviation financing as well as to its effects on general receivables financing.

²⁷ This provision was seen as raising an important policy question to be decided by Plenary, namely the desirability of extending the scope of this rule beyond equipment-specific financing.

²⁸ Note by the Secretariats:

The provisions of this Chapter are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by the Plenary during its consideration of the Report by the Registration Working Group (ICAO Ref. LSC/ME/2-WP/17; UNIDROIT CGE/Int.Int./2-WP/17).

²⁹ Further consideration needs to be given as to whether the appropriate term is *International Regulator* or *Intergovernmental Regulator*.

³⁰ 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 Supervisory Authority and the Registrar will be deleted, whilst if the latter are adopted references to the International Registry Authority will be deleted.

Alternative B

~~1. - The International Registry shall be regulated by~~ The Supervisory Authority shall be the Council of the International Civil Aviation Organization or such other permanent body designated by it to be the International Regulator as it may designate³¹

~~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.~~ [The first Registrar shall be . . .] [The Supervisory Authority shall appoint the Registrar.]³²

~~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.~~ 3. - The initial first Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or re-appointed at regular five-yearly intervals by the [Contracting States] [International Regulator Supervisory Authority].

~~{2./5. Article 16(1) and (3) of the Convention apply as modified by the preceding paragraphs of this Article.}~~

Article XVII

Basic regulatory responsibilities

First regulations

~~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~~

³¹ The Drafting Group noted that Plenary at the second Joint Session “would not express its preference for any of the three approaches identified by the RWG until it had had the opportunity to note the view of the ICAO Council on this matter” (cf. Report on the second Joint Session, § 5:52 in fine).

³² Cf. Report on the second Joint Session, § 5:53.

~~reports shall be made on a yearly basis or more frequently as the [International Registry Authority] [International Regulator] deems appropriate.]~~

~~[3. The initial~~ The first regulations shall be ~~promulgated~~ made by the ~~[International Registry Authority] [International Regulator~~ Supervisory Authority] on the 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)~~ 17(3) 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~~ procure the discharge of the registration no later than five calendar days after the receipt of the demand described in such paragraph.

Alternative A

~~[3. - The fees referred to in Article 16(4) 16(2)(f) of the Convention shall be determined so as to recover the reasonable costs of operating the International Registry and the registration facilities and, in the case of the initial fees, of designing and implementing the international registration system.]~~

Alternative B

~~[3. - The Registrar shall, in the performance of its functions as operator of the~~

International Registry, be a non-profit-making organisation.]

4. - The centralised functions of the International Registry shall be operated and administered by the ~~{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)~~ 16(2)(d) and ~~(7)~~;

Article 17;

~~Article 18~~;

Article 21;

Article 22(1) and (2);

Article 23; and

Article 24.]

6. - The insurance referred to in Article 26 bis (3) shall be [full insurance].³³

[CHAPTER IV³⁴

JURISDICTION

Article XX³⁵

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 Articles 40 or 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

³³ The term “full insurance” will need to be defined more precisely.

³⁴ *Note by the Secretariats:*

The provisions of this Chapter were not considered by the Drafting Committee pending completion of their review by the Jurisdiction Working Group.

³⁵ The Jurisdiction Working Group concluded during the second Joint Session that discussion of this Article “should take place on a later occasion once delegations and observers had given more consideration to the matter” (cf. Report by the Jurisdiction Working Group ICAO Ref. LSC/ME/2-WP/27 / UNIDROIT CGE/Int.Int./2-WP/27, § 2:14).

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 ³⁶

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) ³⁷ of the Convention, supersede the 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft.

³⁶ With the exception of Article XXX, the Joint Session did not discuss Chapters V and VI, leaving consideration of those Chapters to a time nearer to a diplomatic Conference.

³⁷ If Alternative B of Article Y(2) is adopted, this will need to be amended accordingly.

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 ³⁸

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.³⁹

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.

³⁸ It is envisaged that, in line with practice, draft Final Provisions will be prepared for the Diplomatic Conference at such time as governmental experts have completed their preparation of the draft Protocol. The proposals for draft Final Provisions set out in the Addendum to this preliminary draft Protocol below are in no way intended to prejudge that process but simply to indicate the suggestions of the Aircraft Protocol Group on this matter. 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).

³⁹ 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

1. - 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, XII ~~to~~ and XIII of this Protocol[; and

(b) to the extent that it has not made a declaration under sub-paragraph (a), ~~must~~ shall declare that it will apply time-periods as specified in its declaration for the purposes of Articles X(1) and (3); ~~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];~~

2. - A Contracting State, at the time of ratification, acceptance, approval of, or accession to this Protocol shall declare whether it will apply Alternative A or Alternative B of Article XI to which types of insolvency proceedings.

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

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~~ Supervisory Authority]; 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]

Its: [insert title of signatory]

By: [insert name of signatory]

[insert relevant notational details]

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