



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)

UNIDROIT CGE/Int.Int./3-WP/3  
ICAO Ref. LSC/ME/3-WP/3

## THIRD JOINT SESSION

(Rome, 20 – 31 March 2000)

### PUBLIC INTERNATIONAL LAW WORKING GROUP

(Cape Town /en route to Pretoria, 8-11 December 1999):

### REPORT

#### I. INTRODUCTION

1. Pursuant to the decision taken by the Second Joint Session to set up a Public International Law Working Group (cf. Report on the Second Joint Session (ICAO Ref. LSC/ME/2-Report; UNIDROIT CGE/Int. Int./2-Report), §3:1) and to authorise the convening of a formal session of that Working Group in advance of the Third Joint Session (*idem*, § 6:1), a session of the Working Group was convened by the UNIDROIT and ICAO Secretariats from 8 to 11 December 1999. At the kind invitation of Ms Gloria T. Serobe (South Africa), who had been elected Chairman of the Working Group at the first informal meeting of the Group, held during the Second Joint Session,<sup>1</sup> the first two days of the session were held in Cape Town and the second two days on the Blue Train *en route* to Pretoria. The session was opened at 9.30 a.m. on the 8<sup>th</sup> by Ms Serobe.

2. The terms of reference and priorities of the Working Group, as approved by the Second Joint Session (*idem*, §3:7), were reflected in the paper *Problem areas to be dealt with by the Public International Law Working Group and Priorities among these* (ICAO Ref LSC/ME/2-UNIDROIT CGE/Int. Int./2/ PILWG-Flimsy No.5 rev.), reproduced hereafter as an appendix to this report.

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<sup>1</sup> Mr J. Sanchez Cordero (Mexico) was elected First Vice-Chairman and Mr G. Grall (France) Second Vice-Chairman at the first and third informal meetings of the Working Group, held during the Second Joint Session, respectively.

3. The following States had been appointed members of the Working Group by the Second Joint Session: Australia, Austria, Canada, Egypt, France, Ireland, Japan, Mexico, Republic of Korea, Russian Federation, South Africa, United Kingdom and United States of America (cf. Report on the Second Joint Session (ICAO Ref. LSC/ME/2-Report; UNIDROIT CGE/Int. Int./2-Report), §3:4). It had been agreed that those States participating in the Joint Session which had not been appointed members of the Working Group could attend meetings of the Working Group as observers (*idem*). The following intergovernmental Organisations had been appointed observers on the Working Group: United Nations Commission on International Trade Law (UNCITRAL) and United Nations Office for Outer Space Affairs (*idem*). The following intergovernmental Organisation, non-governmental Organisations and experts had been appointed advisers to the Working Group: the Hague Conference on Private International Law, the Aviation Working Group, the International Air Transport Association, the Rail Working Group, the Space Working Group and Ms C. Chinkin and Ms C. Kessedjian, authors of the *Discussion paper on the legal relationship between the preliminary draft Convention and its equipment-specific Protocols* (ICAO Ref. LSC/ME/2-WP/2- UNIDROIT CGE/Int. Int./2-WP/2) (*idem*).

4. In the event the session of the Working Group was attended by the following representatives of States and the following adviser:

#### MEMBERS OF THE WORKING GROUP

CANADA	Ms Patricia NICOLL, Oceans, Environmental and Economic Law Division (J.L.O.), Department of Foreign Affairs and International Trade
EGYPT (Arab Republic of)	Mr Khairy EL HUSSAINY, Chairman of the ICAO Legal Committee  Mr Mohamed Mostafa SHEBL EL SAWEY, Consultant to the Chairman of the Egyptian Civil Aviation Authority
FRANCE	Mr Georges GRALL, sous-Directeur des entreprises, Direction générale de l'Aviation civile, Ministère de l'Équipement, des Transports et du Logement; <i>Second Vice-Chairman of the Working Group</i>
IRELAND	Mr Feargal Ó DUBHGHAILL, Barrister, Office of the Attorney-General
JAPAN	Mr Toshiyuki ONUMA, Deputy Director, General Affairs Division, Civil Aviation Bureau, Ministry of Transport
REPUBLIC OF KOREA	Mr KIM Moon Hwan, Dean of Graduate School of Intellectual Property and Professor of Law, Kookmin University

SOUTH AFRICA

Mr Yong-II LEE, Consul, Consulate General of the Republic of Korea in Montreal

Ms Gloria T. SEROBE, Executive Director-Finance, Transnet Limited; *Chairman of the Working Group*

Mr Enver DANIELS, Chief State Law Adviser to the South African Government, Department of Justice

Mr Nasser SOLOMON, Manager, Regulation and International Co-operation, Department of Transport

Mr Ralph ZULMAN, Judge of the Supreme Court of Appeal of South Africa

Mr Gasant ORRIE, Director, Hofmeyr Herbstein Gihwala Cluver & Walker Inc.

Ms Cynthia N. MHLONGO, Aviation Enterprise Adviser, Office of the Director-General, Department of Transport

Mr Johan van der WESTHUIZEN, Legal Officer, Department of Transport

Ms Joanne B. SCHNEEBERGER, Office of State Law Adviser, Department of Foreign Affairs

UNITED KINGDOM

Mr Carl WARREN, Director, Business Law Unit, Department of Trade & Industry

Ms Catherine R. ALLEN, Head, Business Law Unit, Department of Trade & Industry

Mr Bryan WELCH, Legal Director (Competition Law), Department of Trade & Industry

UNITED STATES OF AMERICA

Mr Harold S. BURMAN, Executive Director, Office of the Assistant Legal Adviser for Private International Law, Office of the Legal Adviser, Department of State

Mr Peter M. BLOCH, Chief Negotiator - International Affairs, Office of the General Counsel, Department of Transportation

## OBSERVER

TUNISIA

Mr Lassaad KHECHANA, Administrateur -  
Juriste, Ministère du Transport

## ADVISER

AVIATION WORKING GROUP

Mr Jeffrey WOOL, Attorney-at-Law, Perkins  
Coie, Washington, D.C.; *Co-ordinator of the  
Aviation Working Group*

The Secretariat to the session was provided by the UNIDROIT and ICAO Secretariats in the persons of Mr Martin J. Stanford and Mr Silvério Espínola, Joint Secretaries to the Joint Session, respectively.

5. In order to facilitate its work, the Working Group had agreed at its first informal meeting, held during the Second Joint Session, that each of the problem areas identified in the *Problem areas* paper referred to above should be the subject of a brief discussion paper to be prepared in time for its intersessional session and that responsibility for the preparation of such discussion papers should be apportioned among the different members of the Working Group. Following consultations between the UNIDROIT and ICAO Secretariats, the Chairman and all members of the Working Group, it was agreed as follows:

- Australia should assume responsibility for the preparation of a discussion paper on the legal relationship between the preliminary draft Convention/Aircraft Protocol and other future Protocols (point 2.(b) of the terms of reference reproduced in the appendix to this report) and, with Canada, of another on Federal State clauses (point 3.(c)(iii) of the terms of reference);

- Austria should assume responsibility for a paper on declarations and reservations (point 3.(a) of the terms of reference) and, with Canada, of another on international liability, immunity and privileges of the Supervisory Authority and the Registrar (point 5 of the terms of reference);

- Canada should assume responsibility, with Australia, for a paper on Federal State clauses (point 3.(c)(iii) of the terms of reference) and, with Austria, for another on international liability, immunity and privileges of the Supervisory Authority and the Registrar (point 5 of the terms of reference);

- Egypt should assume responsibility for a paper on the relationship between the preliminary draft Convention/Aircraft Protocol and the Geneva Convention on the International Recognition of Rights in Aircraft (point 1.(a)(ii) of the terms of reference);

- France should assume responsibility for a paper on the relationship between the preliminary draft Convention/Aircraft Protocol and the UNIDROIT Convention on International Factoring (point 1.(b)(ii) of the terms of reference) and for another on the relationship between the preliminary draft Convention/Aircraft Protocol and the future UNCITRAL Convention on Assignment in Receivables Financing (point 1.(b)(iii) of the terms of reference);

- Ireland should assume responsibility for a paper on the relationship between the preliminary draft Convention/Aircraft Protocol and the Rome Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft (point 1.(a)(iii) of the terms of reference) and for another on the harmonisation of the language used in the Final Provisions of the preliminary draft Convention/Aircraft Protocol (point 3.(c)(iv) of the terms of reference);

- Japan should assume responsibility, with the United Kingdom, for a paper on transitional provisions (point 4 of the terms of reference);

- Mexico should assume responsibility for a paper on the entry into force of the preliminary draft Convention/Aircraft Protocol (point 3.(c)(ii) of the terms of reference);

- Republic of Korea should assume responsibility for a paper on denunciations (point 3.(b) of the terms of reference) and for another on reciprocity rules in the context of the preliminary draft Convention/Aircraft Protocol (point 3.(c)(i) of the terms of reference);

- Russian Federation should assume responsibility for a paper on the relationship between the preliminary draft Convention/Aircraft Protocol and the UNIDROIT Convention on International Financial Leasing (points 1.(a)(iv) and 1.(b)(i) of the terms of reference);

- South Africa should assume responsibility for a paper on the alignment of the preliminary draft Convention/Aircraft Protocol, in particular as regards the concepts used therein, with the Chicago Convention on International Civil Aviation and the Annexes thereto (point 1.(a)(i) of the terms of reference);

- United Kingdom should assume responsibility, with Japan, for a paper on transitional provisions (point 4 of the terms of reference);

- United States of America should assume responsibility for the preparation of a paper on the legal relationship between the preliminary draft Convention and the preliminary draft Aircraft Protocol (point 2.(b) of the terms of reference).

6. The Working Group was seised of the following materials (in English only):

(1) Problem areas to be dealt with by the Public International Law Working Group and Priorities among these (ICAO Ref LSC/ME/2-UNIDROIT CGE/Int. Int./2/ PILWG-Flimsy No.5 rev.);

(2) Second Joint Session: Report by the Drafting Committee (ICAO Ref. LSC/ME/2-WP/24- UNIDROIT CGE/Int. Int./2-WP/24);

(3) Report by the *ad hoc* Drafting Group to the Third Joint Session (UNIDROIT CGE/Int. Int./3-WP/2-ICAO Ref. LSC/ME/3-WP/2);

(4) Current working Draft of a preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Space Property (January 1999 version);

- (5) Current working Draft of a preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (July 1999 version);
- (6) Chicago Convention on International Civil Aviation;
- (7) Geneva Convention on the International Recognition of Rights in Aircraft;
- (8) Rome Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft;
- (9) UNIDROIT Convention on International Financial Leasing;
- (10) UNIDROIT Convention on International Factoring;
- (11) United Nations Commission on International Trade Law: Report of the Working Group on International Contract Practices on the work of its thirty-first session (Vienna, 11-22 October 1999) (A/CN.9/466);
- (12) 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)(ICAO Ref. LSC/ME/2-WP/2-UNIDROIT CGE/Int. Int./2-WP/2);
- (13) Headquarters Agreement between the International Civil Aviation Organization and the Government of Canada;
- (14) Discussion paper by South Africa on the alignment of the preliminary draft Convention/Aircraft Protocol, in particular as regards the concepts used therein, with the Chicago Convention on International Civil Aviation and the Annexes thereto;
- (15) Revised discussion paper by South Africa on the alignment of the preliminary draft Convention/Aircraft Protocol, in particular as regards the concepts used therein, with the Chicago Convention on International Civil Aviation and the Annexes thereto;
- (16) Discussion paper by the ICAO Secretariat on the alignment of the preliminary draft Convention/Aircraft Protocol, in particular as regards the concepts used therein, with the Chicago Convention on International Civil Aviation and the Annexes thereto;
- (17) Discussion paper by the Aviation Working Group on the relationship between the preliminary draft Convention/Aircraft Protocol and the Chicago Convention: scope, related or common concepts and technical considerations for aligning the treaty instruments;
- (18) Resolution adopted by the ICAO Council on 14 December 1967 on Nationality and Registration of Aircraft operated by international operating agencies;

- (19) Discussion paper by Egypt on the relationship between the preliminary draft Convention/Aircraft Protocol and the Geneva Convention on the International Recognition of Rights in Aircraft;
- (20) Discussion paper by Ireland on the relationship between the preliminary draft Convention/Aircraft Protocol and the Rome Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft;
- (21) Discussion paper by the Russian Federation on the relationship between the preliminary draft Convention/Aircraft Protocol and the UNIDROIT Convention on International Financial Leasing;
- (22) Discussion paper by the UNIDROIT Secretariat on certain considerations of Public International Law in the preliminary draft Convention on International Interests in Mobile Equipment and its relationship with other UNIDROIT Conventions;
- (23) Discussion paper by France on the relationship between the preliminary draft Convention/Aircraft Protocol and the future UNCITRAL Convention on Assignment in Receivables Financing;
- (24) Discussion paper by the United States of America on the legal relationship between the preliminary draft Convention and its equipment-specific Protocols;
- (25) Discussion paper by Australia on an accelerated procedure for finalisation of further Protocols and other matters affecting the relationship between the proposed Convention and Protocols;
- (26) Discussion paper by the Republic of Korea on denunciations;
- (27) Discussion paper by the Republic of Korea on reciprocity rules in the context of the preliminary draft Convention/Aircraft Protocol;
- (28) Discussion paper by the Aviation Working Group on international treaty law reciprocity rules in the context of the opt-out mechanism of the preliminary draft Convention/Aircraft Protocol;
- (29) Discussion paper by Canada on Federal State clauses;
- (30) Discussion paper by Ireland on the harmonisation of the language used in the Final Provisions of the preliminary draft Convention/Aircraft Protocol;
- (31) Joint discussion paper by the United Kingdom and Japan on transitional provisions;
- (32) Joint discussion paper by Austria and Canada on Liability and International Privileges and Immunities;

(33) Comments by the United Nations Office for Outer Space Affairs (on the relationship between the preliminary draft Convention and other existing or future Conventions and on international liability, immunity and privileges of the Supervisory Authority and the Registrar);

(34) Comments by the Space Working Group.

## II. CONSIDERATION BY WORKING GROUP OF PROBLEM AREAS REFERRED TO IT BY JOINT SESSION<sup>2</sup>

*Re relationship between preliminary draft Convention/Aircraft Protocol and Geneva Convention on the International Recognition of Rights in Aircraft (cf. Article XXII of preliminary draft Protocol)*

7. The Working Group agreed that an effort should be made to simplify the formulation of Article XXII of the preliminary draft Aircraft Protocol, which was considered to be complex and confusing. It further agreed that the basic principle to be reflected in such a reformulation should be that the future Convention/Aircraft Protocol would supersede the Geneva Convention on the International Recognition of Rights in Aircraft (hereinafter referred to as the **Geneva Convention**) among States Parties to both, as the later of the two treaties. The question as to whether the approach of Article 30(2) or that of Article 30(3) and(4) of the Vienna Convention on the Law of Treaties (hereinafter referred to as the **Vienna Convention**) should be followed was left open. It was also agreed that the reformulated provision should incorporate those elements of the Geneva Convention that were worth preserving. It was noted that the text of Article XXII of the preliminary draft Aircraft Protocol on this point reflected the view of the Aircraft Protocol Group that Articles VII and VIII were the only provisions of the Geneva Convention worth preserving in the new regimen and attention was drawn to the difficulties that would arise in seeking to marry instruments characterised by such fundamentally different approaches. The Working Group nevertheless felt that the Geneva Convention should be thoroughly examined by the Secretariats and other interested parties in order to ensure that there were not other provisions of that instrument that might be worth preserving. It was agreed that Working Group members might exchange further thoughts with one another on this subject in the run-up to the Third Joint Session.

8. In the course of the Working Group's consideration of this item, one member proposed that the future Convention and Aircraft Protocol provide a dual registration system giving users the choice between registering in the international registration system and continuing to register their rights and interests in the national registry of the State of nationality. It was agreed that this was an issue that fell outside the terms of reference of the Working Group and should therefore rather be brought before the Third Joint Session. Another member, however, commenting on the proposal, noted that it was wholly inconsistent with the fundamental conceptual premise that had informed the development of the project to date, namely the need for the proposed new international regimen to establish one single place in which all rights and interests in high-value mobile equipment could be searched in order to attract more credit at lower cost for the financing of such equipment. Yet another member drew attention to the need for the creation of a comprehensive new regimen establishing precisely the interconnections between national aircraft registers and the proposed international registration system, particularly in the context of the financing of aircraft

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<sup>2</sup> This account of the Working Group session concentrates on its deliberations and accordingly only refers to the various discussion papers prepared for the session by Working Group members, which provided the basis for those deliberations, to the extent necessary to report the Working Group's decisions.



engines. The adviser attending the session indicated that his Organisation was strongly opposed to the proposal and suggested that the solution to the problem rather be sought in an amendment to Article 17 of the preliminary draft Convention designed to confirm a State's right to impose the conditions to national registration.

*Re relationship between preliminary draft Convention/Aircraft Protocol and Rome Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft (cf. Article XXIII of preliminary draft Protocol)*

9. The Working Group noted one potentially incongruous result of a State Party to the Rome Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft (hereinafter referred to as the **Rome Convention**) making a declaration under Article Y(2) of the preliminary draft Convention: such a State, desirous of ensuring that the remedies provisions of Articles 8 to 10 of the preliminary draft Convention should only be exercisable with leave of the court, might be surprised to find that, as a consequence of its declaration, an aircraft - other than one covered by Article 3 of the Rome Convention - could be arrested on its territory without any need for the attaching claimant to go before a court at all. The Working Group, moreover, noted a potential inconsistency between the future Convention/ Aircraft Protocol and the Rome Convention in respect of an aircraft falling under one of the special cases covered by Article 3 of the latter: whereas the Rome Convention would in such a case require an attaching claimant to obtain a full court decision, under Article 14 of the preliminary draft Convention a creditor would be entitled to speedy interim relief. It was agreed that the author of the discussion paper on this subject might usefully give further thought to an appropriate manner of regulating the relationship between the future Convention and the Rome Convention on this point.

10. The ICAO Secretariat tabled a proposal during the Working Group's discussion of this issue for the preservation in the future Convention/ Aircraft Protocol of the public interest rule of the Rome Convention (cf. Article 3(1)(b)) designed to protect air transport users. While this proposal was taken up by one Working Group member, there was general agreement among the other members present, first, that the remit of the Working Group, being limited to the technical co-ordination of the two instruments, did not authorise it to entertain substantive amendments on matters already agreed upon by the Joint Session and that it was a proposal that should rather be brought before the Third Joint Session, secondly, that it would undermine the opt-in /opt-out compromise regarding the exercise of self-help remedies under the future Convention/ Aircraft Protocol negotiated at the Second Joint Session and, thirdly, that a more appropriate method of accommodating those States Parties to the Rome Convention desirous of continuing to benefit from such a rule without imposing it on those States that had already rejected it, by virtue of their failure to become Parties thereto, would be to treat the future Convention/ Aircraft Protocol as superseding the Rome Convention among States Parties to both, in accordance with Article 30 of the Vienna Convention, while contemplating the creation of a mechanism whereby States Parties to the Rome Convention might opt to preserve the rule contained in Article 3 of the Rome Convention. Some support was also expressed in the Working Group's discussion of this proposal for the idea of the protection afforded by Article Y(2) being expanded to take in also those additional remedies contemplated by Article 13.

*Re legal relationship between preliminary draft Convention and preliminary draft Aircraft Protocol (cf. Article U of preliminary draft Convention and Article II of preliminary draft Protocol) and between preliminary draft Convention/Aircraft Protocol and other future Protocols (cf. Article W of preliminary draft Convention)*

11. The Working Group took these two issues together, in view of what was seen as their interrelated nature. As regards the legal relationship between the future Convention and the future Aircraft Protocol, the Working Group noted that the Convention/ Protocol structure contemplated by the proposed new international regimen was consistent with existing treaty law and practice and that there was recognised modern precedent for the conclusion of a *basic* Convention containing general principles and forming a framework for the States Parties thereto but to which effect would only be given to the extent provided by Protocols thereto. The Working Group further noted, first, the controlling nature that each future Protocol was intended to have in relation to the future Convention (cf. Article U(1)(b) of the preliminary draft Convention) and, secondly, the fact that the future Convention and each future Protocol were to be read and interpreted as a single instrument in respect of each category of equipment (cf. Article U(2) of the preliminary draft Convention and Article II(2) of the preliminary draft Aircraft Protocol).

12. In the absence of the author of the discussion paper on the second issue, the Working Group limited itself to the making of general remarks regarding the proposals made in his paper with a view to facilitating the work of the Third Joint Session. It was agreed, first, that UNIDROIT, in view of its central role in the inception of the overall multi-equipment project and in the development of additional future Protocols (in particular, the preliminary draft Protocols on Matters specific to Railway Rolling Stock and Space Property being prepared by Rail and Space Working Groups, both organised at the invitation of the President of UNIDROIT), should play a co-ordinating role, and be intimately involved in the development of future Protocols, in conjunction with the relevant intergovernmental Organisations and non-governmental Organisations representing the professional interests involved. It was suggested that such a policy statement might most appropriately be made in a resolution to be adopted at the diplomatic Conference for the adoption of the future draft Convention and Aircraft Protocol.

13. Secondly, it was agreed that Ms Chinkin should be invited to draft provisions regarding the adoption of future Protocols for consideration at the Working Group's following session, focussing essentially on fast-track procedures but also considering the more traditional (diplomatic Conference) procedure. It was noted that some States might have problems in accepting a fast-track procedure in view of the national sovereignty issues involved, all the more so in view of the complex matters to be dealt with in such future Protocols. It was suggested that an opting-in, rather than an opting-out procedure might make such a procedure more widely acceptable. Concern was expressed as to the practicability of a fast-track procedure consisting essentially in a written procedure: the view was expressed that substantive input from Governments would be required, if not at the stage when the texts came before the UNIDROIT Governing Council and General Assembly then at the initial working group stage.

14. Thirdly, it was agreed that, in recognition of the controlling nature of Protocols in the context of the Convention/Protocol system, the fundamental and only binding review mechanism for the future Convention/Protocol in relation to a particular category of equipment should be through the Protocol relating to that category of equipment (cf. Article XXXIV of the preliminary draft Aircraft Protocol). Only a Review Conference of Contracting States to a given Protocol would thus have the power to propose amendments binding on the Contracting States to that Protocol.

Such amendments would only be binding on the Contracting States to that Protocol and would not therefore affect the rights and obligations of Contracting States to other Protocols.

15. At the same time it was agreed that Contracting States to the future Convention should also have the power periodically to call General Review Conferences, although any amendments proposed by such Conferences could only be implemented in relation to a particular category of equipment following confirmation by the Contracting States to the Protocol concerned. It was agreed that it would not be desirable to give Contracting States to the future Convention, which might well include States not Parties to a particular Protocol, the power to determine the review of that Protocol without an opportunity for such States to confirm whether such an amendment was acceptable for the particular category of equipment concerned. This also reflected the fact that the future Convention/Protocol for a particular category of equipment were to be read as a single instrument. It was nevertheless recognised that such General Review Conferences, whilst having only an advisory purpose, could nevertheless play an important part in filtering the latest international commercial finance developments through the Convention/Protocol system.

16. The Working Group took the view that, in the same way as it had indicated its preference for the entry into force of the future Convention/Aircraft Protocol upon the deposit of only a limited number of ratifications/accessions with a view to ensuring their speedy entry into force, the procedure to be established for the entry into force of amendments should also require ratification/accession by only a limited percentage (and in any case less than 50%) of the Contracting States to the future Convention/Protocol in relation to the category of equipment concerned.

17. It was suggested that the author of the discussion paper on this subject might give further thought to certain of the proposals (Proposals C-H) contained in his paper in the light of the general remarks of the Working Group reported under §§ 14-16 *supra*.

*Re entry into force of preliminary draft Convention/Aircraft Protocol (cf. Article U(1) of preliminary draft Convention and Article XXVI of preliminary draft Aircraft Protocol)*

18. The Working Group declared itself in favour of the future Convention/Aircraft Protocol entering into force, in common with other international private law instruments, upon the deposit of only a small number of ratifications/accessions (either three or five). The Working Group also considered that in principle the future Convention/Aircraft Protocol should enter into force in respect of a State that had deposited its instruments of ratification/accession only three months (as opposed to the more usual six months) following such deposit. Given the need to leave the affected business and financial parties sufficient time to prepare themselves for entry into force, it did not however believe that the idea of any shorter period of time should be entertained. Some concern was expressed regarding the practicality of providing for such a small number of ratifications/accessions for the entry into force of the future Convention/Aircraft Protocol in view of the significant financial burden implicit in making the future International Registry operational. The future Convention/Aircraft Protocol might enter into force as between States none of which had many aircraft. It was agreed in this connection that it would be necessary to make provision in the relevant registration provisions for the initial fee schedule to be structured in such a way as to

amortise the cost of making the International Registry operational over a reasonably long period, say, within five years of the future Convention/Aircraft Protocol entering into force.<sup>3</sup>

*Re international liability, immunity and privileges of Supervisory Authority and Registrar (cf. Chapters VI and VII of preliminary draft Convention)*

19. The view was expressed that, to the extent that the Supervisory Authority might end up being composed of governmental representatives - fear having been expressed that the idea of setting up a new international Organisation might not be popular with Governments, lending force to the simpler solution, raised in the context of aircraft equipment, of a body made up of members of the ICAO Council and the representatives of certain Contracting States - and that it would be difficult for Governments to accept the principle of their representatives being held liable, provision would need to be made for the Supervisory Authority being granted functional immunity.

20. Equally, the need to establish the credibility of the International Registry in the eyes of potential users meant that there would be a strong case against the Registrar being granted extensive immunities and for it to be made liable for its defaults with insurance providing the solution. For this reason, it was suggested that it would be difficult to grant the Registrar the immunity from liability for default granted to the World Intellectual Property Organization, referred to in the comments submitted by the United Nations Office for Outer Space Affairs. It was suggested that this might also be seen as a strong argument in favour of the International Registry being a separate body from the Supervisory Authority.

21. It was agreed that it would be essential for the commercial viability, and in particular the insurability, of the future international regimen for the future Convention/Aircraft Protocol to spell out the principle and the extent of the Registrar's liability. It was further agreed that, subject to the statement of such liability, it would be appropriate for the future Convention/Aircraft Protocol to grant the Registrar functional immunity: it would not however be appropriate for the question of such immunity to be dealt with in the host State agreement. It was emphasised that it would be important that the future Convention/ Aircraft Protocol send a clear signal that it was not the intention to create full privileges and immunities for persons not otherwise entitled thereto in their professional capacity. The fact that the Registrar was only to be entitled to functional immunity would need to be made clear in the text of the future Convention/Aircraft Protocol.

*Re alignment of preliminary draft Convention/Aircraft Protocol, in particular as regards concepts used therein, with Chicago Convention on International Civil Aviation and Annexes thereto (cf. Articles I(2)(a)-(d),(g),(l),(n),(o), II(1), III(2), IX(1)(a) and (b) and XX of preliminary draft Aircraft Protocol)*

22. It was noted that the provisions of the preliminary draft Aircraft Protocol, under Article II(1) when read in conjunction with Article I(2)(c), applied with one exception to airframes, aircraft engines and helicopters as separate categories of equipment. It was further noted that the reason why, with this one exception, the preliminary draft Aircraft Protocol treated airframes and aircraft engines separately, unlike the Geneva Convention, was to reflect the way in which these two categories of equipment were separately financeable. Likewise with one exception, these three categories of equipment were collectively referred to in the title of, and preamble to the preliminary

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<sup>3</sup> It was pointed out that this highlighted the cost benefits of the international registration system being computer-driven.

draft Aircraft Protocol as “aircraft equipment” and elsewhere therein as “aircraft objects.” The one exception to this nomenclature was the reference to “aircraft” in Articles I(2)(a) and IX(1)(a) of the preliminary draft Aircraft Protocol. The exceptional employment of this term in these provisions was justified by the special context in which it was used, that is, for the purposes of the additional remedy of deregistration. Aircraft engines not having separate nationality under the Chicago Convention on International Civil Aviation (hereinafter referred to as the *Chicago Convention*), it had been decided to combine the two categories “airframes” and “aircraft engines” into one (“aircraft”), the term employed in the Chicago Convention to cover the idea of airframes with aircraft engines installed thereon, for the sole purposes of this one additional remedy. It was noted that the term “aircraft object” as employed in Article IX(1)(b) should therefore also read “aircraft”.

23. Some concern was expressed by two members of the Working Group as to the extent to which the distinction intended was actually sufficiently clearly conveyed by the relevant definitions provided in Article I(2), with the definitions of “aircraft” and “airframes” being found to cause particular confusion in their present drafting. There was some support for the proposal by the ICAO Secretariat that the term “aeroplanes” be used to cover the idea of “airframes with aircraft engines installed thereon” with the term “aircraft” being reserved to cover the idea of “aeroplanes and helicopters”. It was agreed that efforts might usefully be made to improve those definitions that might be seen as ambiguous and the source of possible confusion. There was agreement in particular that consideration should be given to the insertion of a cross-reference to Article IX(1) in the definition of “aeroplanes” so as to link it clearly to the additional remedy of deregistration. It was further agreed that, where the future Convention/ Aircraft Protocol employed terms used in the Chicago Convention in contexts where the former interfaced with the latter, in particular in the case of deregistration, care should be taken not to use them with a different meaning from that attributed to them in the Chicago Convention, given the status of the latter as the leading international instrument in the field of civil aviation.

24. In the course of the Working Group’s consideration of this item, one member however emphasised the need for clarification as to whether “aeroplanes” in the sense indicated in § 23 *supra* should be *generally* brought within the sphere of application of the preliminary draft Aircraft Protocol, and not just for the purposes of the additional remedy of deregistration. To the extent that the future Convention/ Aircraft Protocol was to be seen as superseding the 1948 Geneva Convention, he saw this as raising the question as to which regimen would in future govern the taking of security in “aircraft” as understood by Article XVI of that Convention. He took the view that, even if it was not customary at the present time for an aeroplane to be financed as a single unit, this should not be seen as excluding the possibility that it might nevertheless become the practice again in future. The adviser to the Working Group took exception to this approach, which would, he stated, speaking on behalf of aviation manufacturers and financiers and airlines, be totally at variance with modern aviation finance practice: aircraft engines, which represented a significant percentage of the value of an aeroplane, were nowadays increasingly the subject of separate financing - a trend which was likely to become ever more widespread - and were moved on and off airframes with regularity, with consequent risk to the interests of engine financiers by reason of the different approaches taken by national law to the question of accessions.

25. Consideration was also given by the Working Group to the situation arising under Article 77 of the Chicago Convention, that is, where two or more States constitute “joint air transport operating organizations or international operating agencies”. This situation was

encompassed by the “common mark registering authority” defined in Article I(2)(g) of the preliminary draft Aircraft Protocol. It was agreed that the definitions of “*national* aircraft register” and “*national* registry authority” featuring in Articles I(2)(n) and (o) of the preliminary draft Aircraft Protocol respectively should be amended in order more adequately to cover this special type of registration. The ICAO Secretariat proposed redrafting Article I(2)(n) to read “ ‘aircraft register’ means the national or non-national register...” and Article I(2)(o) to read “ ‘competent registry authority’ means the authority responsible for an aircraft register”. The adviser to the Working Group suggested, as a possible alternative, replacing the terms “national aircraft register” and “national registry authority” by the terms “relevant Chicago Convention register” and “relevant Chicago Convention registry authority”. It was also suggested that every effort be made to follow the language employed in this connection by the Chicago Convention and the Resolution adopted on 14 December 1967 by the ICAO Council on nationality and registration of aircraft operated by international operating agencies. It was noted that the relevant terms employed by the Resolution were “joint registration” and “international registration”.

26. The Working Group further noted that it would be for the Joint Session to consider the policy issues of what should be the appropriate connecting factor under Article III of the preliminary draft Aircraft Protocol in the case of a situation arising under Article 77 of the Chicago Convention as also of the implications of such a situation regarding the additional ground of jurisdiction provided in Article XX of the preliminary draft Aircraft Protocol. It was suggested that these issues were already answered by the Chicago Convention as implemented by the aforementioned ICAO Resolution and that the solutions provided therein be followed for the purposes of Articles III and XX of the preliminary draft Aircraft Protocol. It was agreed that this suggestion should be studied in the run-up to the Third Joint Session.

*Re relationship between preliminary draft Convention/Aircraft Protocol and future UNCITRAL Convention on Assignment in Receivables Financing (cf. Chapter XIII of preliminary draft Convention)*

27. The Working Group considered the best means of dealing with the problems raised by the fact that the Working Group on International Contract Practices preparing the draft UNCITRAL Convention on Assignment [in Receivables Financing] [of Receivables in International Trade] (hereinafter referred to as the *draft/future UNCITRAL Convention*), had at its 31<sup>st</sup> session, held in Vienna from 11 to 22 October 1999, that is at its last session prior to that text being considered for adoption by the Commission at its 33<sup>rd</sup> session, to be held in New York from 12 June to 7 July 2000, concluded “that it did not have the specific information necessary to make a decision for a blanket exclusion of aircraft and spacecraft receivables from the scope of the draft UNCITRAL Convention” (cf. A/CN.9/466, § 81) and that the omens did not seem good for the Commission agreeing at its forthcoming session to an exclusion of receivables associated with the generality of categories of equipment covered by the preliminary draft Convention or indeed receivables associated with only one or a limited number of such categories.

28. One member of the Working Group suggested that one possible alternative to a blanket exclusion from the sphere of application of this or that category of equipment covered by the preliminary draft Convention might be to include in the latter a general provision permitting Contracting States, at the time of ratification, approval, acceptance or accession, to reserve to that instrument the coverage of receivables associated with one or more of the categories of equipment falling within its sphere of application, thus withdrawing such receivables from the ambit of the future UNCITRAL Convention.

29. The adviser to the Working Group, on the other hand, laid stress on the absolutely vital need for a clear exclusion in respect of receivables associated with aircraft objects. He was convinced that the failure of UNCITRAL to agree to such an exclusion would result in many States deciding not to become Parties to the future UNCITRAL Convention. He indicated that the preliminary draft Convention/ Aircraft Protocol was superior to the draft UNCITRAL Convention in its treatment of various key aspects of contemporary asset-based aircraft financing. He noted that the treatment of aircraft even under national law was better than that proposed by the draft UNCITRAL Convention, which would however require many States to amend their national law. Failure to include a clear exclusion for aircraft objects in the future UNCITRAL Convention would greatly complicate the practical application of the sphere of application and temporal application provisions of the two future international instruments for commercial parties, one result of which would be to increase rather than decrease the cost of aircraft financing. This situation would not in his opinion be improved by the inclusion in the draft UNCITRAL Convention of a rule on the settlement of conflicts between that instrument and the future UNIDROIT Convention.

30. It was noted that the UNIDROIT Secretariat was also seeking the advice of its Rail and Space Working Groups as to the need for similar exclusions in respect of receivables associated with railway rolling stock and space property before responding to the invitation it had received from the UNCITRAL Secretariat to comment on the draft UNCITRAL Convention. Preliminary indications from those Working Groups appeared to show that there was indeed such a need.

31. In a general way, it was noted that there was much room for improvement in the co-ordination between those departments of individual Governments following the Joint Session and those following the development of the draft UNCITRAL Convention. It was noted that there had seemed to be some confusion in the minds of members of the UNCITRAL Working Group as to the precise delimitation of the substantive sphere of application of the preliminary draft Convention/ Aircraft Protocol and the true purport of the exclusion that was being requested: it was noted that in respect of aircraft objects the exclusion was being requested only for those receivables associated with aircraft objects as such. It was agreed that members of the Public International Law Working Group should make representations to those of their colleagues following the draft UNCITRAL Convention as to the desirability of their Governments signalling to UNCITRAL, by the deadline (15 February 2000) set for the making of comments on the draft UNCITRAL Convention, the need to grant an exclusion in favour of receivables associated with a narrow, clearly defined number of the categories of equipment covered by the preliminary draft Convention and, at the very least, receivables associated with those categories of aircraft object covered by the preliminary draft Aircraft Protocol.

32. It was agreed that the Joint Session should be urged to communicate to the UNCITRAL Secretariat its concern that provision be made in the draft UNCITRAL Convention for the exclusion from the sphere of application of that instrument of receivables associated with a narrow, clearly defined number of the categories of equipment covered by the preliminary draft Convention and, at the very least, receivables associated with those categories of aircraft object covered by the preliminary draft Aircraft Protocol. Allusion having been made to the evident risks implicit in both future instruments containing separate provisions dealing with their interrelationship, it was further agreed that the UNCITRAL Secretariat should be sent a signal as to the need for a solution that was as comprehensive and clear as possible for the commercial parties who would have to work with the future instruments. It was agreed that, as a fall-back approach, the Joint Session should additionally contemplate introducing a provision in the preliminary draft Aircraft Protocol providing that Contracting States thereto would not apply the future UNCITRAL

Convention in respect of receivables associated with aircraft objects falling within its sphere of application.

33. Finally, it was agreed that Working Group members should submit their considered opinions on the issues involved to the author of the discussion paper with a view to enabling him to prepare a supplement to that paper for consideration by the Joint Session.

*Re relationship between preliminary draft Convention/Aircraft Protocol and UNIDROIT Convention on International Financial Leasing (cf. Chapter XIII of preliminary draft Convention and Article XXIV of preliminary draft Aircraft Protocol)*

34. The Working Group agreed that, in so far as Article 17 of the UNIDROIT Convention on International Financial Leasing (hereinafter referred to as the **UNIDROIT Convention**) deferred to all future treaties and that Convention was not equipment-specific, it would be appropriate to include a provision in Chapter XIII of the preliminary draft Convention indicating that the question as to whether the UNIDROIT Convention was indeed to be superseded by the future Convention and its various Protocols was a matter to be provided for in the relevant Protocol. Otherwise the existing UNIDROIT Convention would automatically be superseded even where a Protocol was actually silent on the question. It was agreed that the insertion of such a provision in the preliminary draft Convention should however be without prejudice to the regulation of the relationship between the existing UNIDROIT Convention and the preliminary draft Convention in the relevant Protocol.

*Re transitional provisions (cf. Articles 27 and 38(3) of preliminary draft Convention and Article XI(7) of preliminary draft Aircraft Protocol)*

35. The Working Group considered the options that might be forwarded to the Joint Session for dealing, first, with the application of the priority rule set forth in Article 27 of the preliminary draft Convention in respect of an international interest which might have vested in a creditor but which that creditor would not have been able to register because the future Convention/Aircraft Protocol had not at the time entered into force in respect of the relevant State, secondly, with the application of the priority rule set forth in Article 38(3) of the preliminary draft Convention in respect of a similarly pre-existing non-consensual right or interest and, thirdly, with the application of the rule set forth in Article XI(7) in respect of insolvency proceedings in course at the time of the entry into force of the future Convention/ Aircraft Protocol.

36. The Working Group essentially concentrated its attention on the first situation referred to in § 35 *supra*. There was agreement amongst all members of the Working Group that, as a matter of principle, a registered international interest should *not* have priority over an unregistered interest where the only reason that interest was not registered was because the possibility of registration did not exist in the relevant State at the time when the interest was created.

37. Opinions however differed as to the most appropriate manner of achieving this result. A majority of members indicated their preference for a solution whereby pre-existing international interests should not be registrable but with their priority unaffected by the rule in Article 27 (hereinafter referred to as **Option A**). Two members however indicated their preference (provisional only in the case of one of the two) for a solution whereby a lengthy (say, seven-year) transition period would be provided for the registration of pre-existing interests at the end of which priority would be established on the basis of Article 27 (hereinafter referred to as **Option B**). A lengthy



transition period was proposed under this solution with a view to ensuring that pre-existing creditors and debtors were not put at risk.

38. All were agreed that Option B would have the advantage of giving the clearest picture for the purposes of Article 27 at the end of the transition period. However, the objection was raised that it would involve the holders of pre-existing rights being disturbed in a way that was not acceptable, all the more so since, even if such registration was made available free of charge, such parties would find themselves exposed to a considerable financial risk, namely that of subordination of their rights in the event that, for whatever reason, they failed to register those rights during the transition period.

39. It was suggested that Option B might be expected to arouse fewer objections in respect of aircraft, in view of the existing registration requirements for aircraft. Concern was however expressed that, whichever solution were to be preferred, it would be important that it did not require the Registrar to make factual determinations.

40. As a compromise solution, it was provisionally agreed to work on the basis of Option A being accepted as the general rule, to be included in the future Convention, but with Option B being accepted as a special rule for aircraft objects, to be included in the future Aircraft Protocol. The general rule to be included in the future Convention would thus begin along the following lines: "Except as otherwise provided in the Protocol,..." It was suggested that more information should however be sought from I.A.T.A. and the aviation finance community as to the viability of such a regimen for aircraft objects.

41. It was suggested that perhaps the best solution to the problem raised by Article XI(7) of the preliminary draft Aircraft Protocol would be to restrict its application to insolvency proceedings commencing after the date of the entry into force of the future Convention/ Aircraft Protocol.

42. The Working Group also considered the question as to whether in a given State pre-existing interests could, provided that they complied with the constitutive requirements laid down in Article 7 of the preliminary draft Convention, be considered "international interests" once the future Convention/ Protocol entered into force in respect of that State, entitling the creditors under such interests to benefit from the default remedies provisions of those texts. It was noted that to make it possible to treat pre-existing interests as international interests for such purposes would have the advantage that interests of the same class would be treated in the same way under the law of a Contracting State. Two members however expressed their opposition to making the default remedies provisions of the future Convention/ Aircraft Protocol retroactively applicable to pre-existing interests, noting that this would bring the two texts into conflict with the rules applied in this connection by domestic law. It was suggested that States might be left free to make their own choice on this subject.

43. It was finally agreed that the authors of the discussion paper should prepare a revised paper in time for the Third Joint Session. In this revised paper they should give further thought to the issues raised during the Working Group's deliberations, *inter alia* in the light of such comments as they might receive from Working Group members.

*Re reciprocity rules in context of preliminary draft Convention/Aircraft Protocol (cf. Article XXX of preliminary draft Aircraft Protocol)*

44. It was agreed by the Working Group that a clause should be drafted jointly by the author of the discussion paper and the adviser to the Working Group, to be considered for inclusion in the future Final Provisions, designed to confirm beyond any doubt that the reciprocity principle enshrined in Article 21 of the Vienna Convention was not intended to apply to those declarations whereby Contracting States would, under the preliminary draft Aircraft Protocol, be able to opt out of certain provisions thereof. It was however pointed out that it was an established feature of post-Vienna Convention treaty practice that those territorial non-application declarations whereby Contracting States to international private law Conventions were permitted to opt in or out of certain provisions of such Conventions were not to be considered as reservations for the purposes of Article 2(1)(d) of the Vienna Convention and were not therefore subject to the application of the reciprocity principle. One member noted that it would therefore be advisable for the future Convention/ Aircraft Protocol to avoid use of the term “reservation” when referring to such declarations.

*Re denunciations in context of preliminary draft Convention/Aircraft Protocol (cf. Article XXXIII of preliminary draft Aircraft Protocol)*

45. The Working Group agreed that Contracting States should be given the possibility of denouncing both the future Convention and the future Aircraft Protocol. Contracting States might desire to render the future Convention no longer applicable not only in respect of a given category of equipment but in its entirety, that is, in respect of all categories of high-value mobile equipment. It would accordingly be necessary for provision to be made on this subject in the Final Provisions of both the future Convention and the future Aircraft Protocol.

46. The Working Group further agreed that consideration might usefully be given to a shorter rather than a longer period of time for the taking effect of a denunciation. It was therefore agreed to work on the basis that an instrument of denunciation, whether of the future Convention or of the future Aircraft Protocol, should take effect in respect of the Contracting State in question six months after the depositing of its instrument to that effect.

47. The Working Group also considered a proposal made by the author of the discussion paper to extend the benefit of the rule set forth in Article XXXIII(3) of the preliminary draft Aircraft Protocol to interests registered as prospective international interests prior to the date when a Contracting State’s instrument of denunciation takes effect in respect of that State. It was argued that such a rule was necessary to satisfy the need of financiers for predictability. Exception was however taken to the unqualified introduction of such a rule, on the ground that it could lend itself to manipulation by commercial parties. It was feared that such parties might see it as an invitation to register an interest as a prospective international interest when they already knew that an instrument of denunciation was about to come into effect in respect of the relevant State and the prospective international interest in question then only became a full international interest some years later. Concern was expressed that Contracting States might thus find their intentions frustrated. Doubt was moreover expressed as to the fairness of a rule that would permit parties to take advantage of the remedies of the future Convention/ Aircraft Protocol notwithstanding the fact that at the time when they closed their transaction they knew that those instruments no longer applied to new international interests.

48. As a compromise solution, it was agreed to extend the rule set forth in Article XXXIII(3) of the preliminary draft Aircraft Protocol to prospective international interests registered prior to the date when a Contracting State's instrument of denunciation takes effect in respect of that State *but only so long as the registered prospective international interest in question is then converted into a full registered international interest within a period of time equal to the period to be provided for the taking of effect of a State's instrument of denunciation.*

*Re Federal State clauses (cf. Article XXVII of preliminary draft Aircraft Protocol)*

49. When considering the type of Federal State clause contemplated by the discussion paper submitted on this subject, the Working Group noted that most States had not experienced particular problems in practice with the more concise Federal State clauses that had to date featured in international private commercial law Conventions. It further took the view that unnecessary disparity between one such instrument and another on this matter should be avoided. It was therefore agreed that the author of the paper should revise her paper in such a way as to ensure greater consistency between the kind of Federal State clause to be proposed for inclusion in the future Convention/Aircraft Protocol and the more concise models featuring in Article 35 of the draft UNCITRAL Convention.

50. One Working Group member expressed concern over the need to ensure that the operation of such clauses did not give Federal States an advantage over unitary States.

*Re declarations and reservations (cf. Articles XXIX-XXXII of preliminary draft Aircraft Protocol)*

51. The Working Group spent most of the time that it devoted to this issue considering the appropriateness or otherwise of the drafting of Article XXIX of the preliminary draft Aircraft Protocol. Confusion arose out of the fact that, whereas Article XXIX seemed to imply that the preliminary draft Protocol already contained authorised declarations and authorised reservations, for the moment it only appeared to contain authorised declarations. It was explained that the term "declaration" was being employed in the sense of those territorial non-application declarations referred to in § 44, *supra*, that is, in a sense quite distinct from the term "reservation" as defined in the Vienna Convention.

52. On the other hand, it was explained that the term "reservations" was employed in Article XXIX in addition to the term "declarations" in order to ensure consistency with other recent international private commercial law Conventions. For instance, Article 22 of the UNIDROIT Convention provided that "[n]o reservations are permitted except those expressly authorised in this Convention," whilst Article 42 of the draft UNCITRAL Convention provided that "[n]o reservations are permitted except those expressly authorized in this Convention". It was pointed out that the employment of the term "reservation" in this context was typically reserved to cover those compromises authorised at an advanced stage in the negotiations leading up to the adoption of a draft Convention, typically at the diplomatic Conference itself, in order to enable one or more States, notwithstanding a fundamental difference of opinion on a particular provision of the draft Convention between them and the other States participating in those negotiations, still to become Parties to the future Convention. Examples of such authorised reservations were to be found in Article 95 of the 1980 United Nations Convention on Contracts for the International Sale of Goods and Article 28 of the 1983 Geneva Convention on Agency in the International Sale of Goods.

53. It had always been judged necessary to include a final provision along the lines of Article 22 of the UNIDROIT Convention and Article 42 of the draft UNCITRAL Convention in the interest of guaranteeing the maximum degree of uniformity. It would otherwise be open to States to enter any sort of reservation at the moment of becoming Parties to the future Convention/Aircraft Protocol.<sup>4</sup>

54. It was however finally considered desirable in the present state of the text that, in the interest of greater clarity, Article XXIX should deal separately with the two terms “declarations” and “reservations” and carry separate statements regarding, on the one hand, the prohibition of declarations other than those expressly authorised by Article XXX of the preliminary draft Aircraft Protocol and, on the other, the prohibition of reservations other than those that might be expressly authorised by the Protocol. This would signal that the term “declaration” was not being employed in the sense of the term “reservation” as defined by the Vienna Convention. It was agreed that Article XXIX should accordingly be redrafted along the following lines, perhaps as two separate Articles: “No declarations are permitted other than those expressly authorised in this Protocol. No reservations are permitted other than those expressly authorised in this Protocol.” It was further suggested that a definition of the term “declaration” might usefully be included in the preliminary draft Aircraft Protocol with a view to underscoring the fact that the term in question was not being employed in the sense of the term “reservation” as defined by the Vienna Convention. It was also pointed out that Article XXIX should logically be relocated in such a way as to appear after Article XXXII.

55. While the Working Group did not in the event have any time left to discuss the proposals in question, a number of proposals were tabled regarding Articles XXX to XXXII. It was suggested for a start that some of these provisions might usefully be relocated to the preliminary draft Convention (cf. also § 58, *infra*). It was also suggested that, in line with what had been agreed in respect of denunciations (cf. § 46, *supra*), the period prescribed in Article XXXI(2) should also be reduced to six months. It was further suggested that, in line with the amendment that had been agreed to Article XXXIII(3) in respect of prospective international interests (cf. § 48, *supra*), it would be appropriate to make a similar amendment to Article XXXI(3). Attention was also drawn to the fact that a shorter period of time was prescribed for the taking of effect of a withdrawal of a declaration or a reservation under Article XXXII (three months) than that that was being proposed, for instance, for entry into force under Article XXVI(1) (cf. § 18, *supra*). It was however noted in this connection that the effect of the withdrawal of a declaration or a reservation could actually be to increase rights. Finally, it was proposed that the Secretariats prepare a model ratification instrument of the kind referred to in footnote 24 to the preliminary draft Aircraft Protocol (as reproduced in UNIDROIT CGE/Int.Int./3-WP/2; ICAO Ref. LSC/ME/3-WP/2, Appendix II, Addendum). It was noted that such a model would enhance the degree of uniformity to be achieved in respect of the various declarations that Contracting States would be able to make.

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<sup>4</sup> Cf. *United Nations Conference on Contracts for the International Sale of Goods (Vienna, 10 March-11 April 1980): Official Records*, p.459, where the late Mr Plantard (France) stated: “the rule...was justified, particularly for the purpose of avoiding problems in regard to States which had not participated in the Conference and which might later wish to enter reservations incompatible with the spirit of the text”.

*Re harmonisation of language used in Final Provisions of preliminary draft Convention/  
Aircraft Protocol*

56. It was agreed that headings should be provided for the Articles setting forth final provisions in both the preliminary draft Convention and the preliminary draft Aircraft Protocol.

57. Attention was drawn in the discussion paper to the fact that different periods of time were provided for the entry into force of the preliminary draft Convention and the preliminary draft Aircraft Protocol (cf. Article U(1) of the former and Article XXVI(1) of the latter). This matter is dealt with elsewhere in this report (cf. § 18, *supra*).

58. It was agreed that the author of the discussion paper, in conjunction with the Secretariats, should prepare a further paper designed to ascertain which of the final provisions currently located in the preliminary draft Aircraft Protocol<sup>5</sup> might usefully be relocated to the preliminary draft Convention and thus made of general application, albeit on the clear understanding that the controlling nature of each Protocol in relation to the preliminary draft Convention be respected.

*Additional points*

59. One member of the Working Group suggested that a full complement of Final Provisions, to run parallel with those set forth in the Addendum to the preliminary draft Aircraft Protocol, might usefully be prepared for the preliminary draft Convention.

*Future work*

60. It was agreed that the Working Group should next meet at the very beginning of the Third Joint Session. Should the Chairman and the Secretariats, however, judge a further meeting of the Working Group to be necessary in advance of the Third Joint Session, the representative of France indicated the willingness of his Authorities to facilitate the holding of such a meeting.

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<sup>5</sup> *Note by the UNIDROIT Secretariat:* With the exception of special matters such as those dealt with in Chapter XIV of the preliminary draft Convention, it is not UNIDROIT practice to prepare draft final provisions until such time as a draft Convention is ready for transmission to a diplomatic Conference: at such time the Secretariat prepares a draft set of final provisions to be considered by the body with exclusive competence for such matters, namely the Final Clauses Committee of the diplomatic Conference. The reason for this procedure is that it is not possible to see which final provisions will be necessary until such time as the intergovernmental negotiations preparing a draft Convention have reached their final stage. UNIDROIT was not involved in the preparation of the draft final provisions featuring in the addendum to the preliminary draft Aircraft Protocol. These provisions were prepared by the external working group invited by the President of UNIDROIT in February 1997 to prepare a preliminary draft Protocol on Matters specific to Aircraft Equipment to the preliminary draft Convention (a working group the members of which were ICAO, I.A.T.A. and the Aviation Working Group) and were transmitted by the UNIDROIT Governing Council to Governments in 1998 only as an addendum to the text of the preliminary draft Aircraft Protocol with a view to signalling that these final provisions were in no way to be seen as being proposed by UNIDROIT (cf. also UNIDROIT CGE/Int.Int./3-WP/2; ICAO Ref. LSC/ME/3-WP/2, Appendix II, Addendum, Footnote 23).