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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

STEERING AND REVISIONS COMMITTEE FOR THE FINALISATION OF THE
PRELIMINARY DRAFT UNIDROIT CONVENTION ON INTERNATIONAL
INTERESTS IN MOBILE EQUIPMENT AND THE PRELIMINARY DRAFT PROTOCOL
THERE TO ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

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

(as established by the Study Group at the conclusion of its fourth session, held in Rome from 3
to 7 November 1997, and revised by the Chairman of the Study Group)

Rome, June 1998

INTRODUCTION

At its 77th session, held in Rome from 16 to 20 February 1998, the Unidroit Governing Council was seised of a preliminary draft Unidroit Convention on international interests in mobile equipment (hereinafter referred to as the **preliminary draft Convention**), established by a Unidroit Study Group (hereinafter referred to as the **Study Group**) (Study LXXII - Doc. 37), and a preliminary draft Protocol thereto on matters specific to aircraft equipment (hereinafter referred to as the **preliminary draft Protocol**), established by a Working Group (hereinafter referred to as the **Aircraft Protocol Group**) organised and chaired, at the invitation of the President of Unidroit, by Mr J. Wool, expert consultant to the Study Group on international aviation finance matters (Study LXXIID - Doc. 1). On that occasion the Governing Council was called upon to advise as to the most appropriate steps to be taken regarding the prosecution of work on the aforementioned preliminary draft instruments.

While noting with appreciation the work accomplished by the Study Group and the Aircraft Protocol Group, the Governing Council decided that the preliminary draft Convention and the preliminary draft Protocol should be further refined by a steering and revisions committee (hereinafter referred to as the **Steering and Revisions Committee**) before and with a view to their submission to governmental experts. It was envisaged in particular that those provisions of the preliminary draft Protocol capable of application to the generality of equipment encompassed by the preliminary draft Convention be moved accordingly and that the preliminary draft Protocol be generally aligned, as to both style and terminology, with the preliminary draft Convention. The business of the Steering and Revisions Committee would be to prepare clean texts of the preliminary draft Convention and the preliminary draft Protocol in English and French such as to permit their prompt transmission to Governments with a view to a meeting of governmental experts, scheduled to be held in Rome from 11 to 22 January 1999 and to be organised jointly by Unidroit and the International Civil Aviation Organization (**I.C.A.O.**), as part of their co-sponsorship of the intergovernmental process in respect of the two texts.

The Steering and Revisions Committee will be meeting in Rome at the seat of Unidroit from 27 to 29 June 1998. In line with the decision taken by the Governing Council, participation will be restricted to representatives of Unidroit, I.C.A.O. and, as core members of the Aircraft Protocol Group, the International Air Transport Association (**I.A.T.A.**) and the Aviation Working Group jointly organised by Airbus Industrie and The Boeing Company as well as those experts necessary in the opinion of Unidroit to deal with special aspects of the texts.

At its meeting the Steering and Revisions Committee will have before it revised texts of both the preliminary draft Convention and the preliminary draft Protocol prepared by Professor R.M. Goode, Chairman of the Study Group (in the case of the preliminary draft Protocol, in collaboration with Mr Wool, as Chairman of the Aircraft Protocol Group) with a view to dealing with the points raised by the Governing Council. The text of the preliminary draft Convention as so revised is set out hereunder. It has been annotated by Professor Goode with a view to explaining the principal features of this revision process. His notes are set out in an Annex to the text of the preliminary draft Convention.

PRELIMINARY DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

(as established by the Study Group at the conclusion of its fourth session, held in Rome from 3 to 7 November 1997, and revised by the Chairman of the Study Group)

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1

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

- (a) “agreement” means a security agreement, a title reservation agreement or a leasing agreement;
- (b) “applicable law” means the law applicable by virtue of the rules of private international law;
- (c) “assignment” means an outright transfer by agreement, whether by way of security or otherwise, which confers on the assignee rights in the international interest;¹
- (d) “associated rights” means all rights to payment or other performance under an agreement or a contract of sale secured by or associated with the object;²
- (e) “buyer” means a buyer under a contract of sale;³
- (f) “chargee” means the grantee of an interest in an object under a security agreement;
- (g) “chargor” means the grantor of an interest in an object under a security agreement;
- (h) “conditional buyer” means the buyer under a title reservation agreement;⁴
- (i) “conditional seller” means the seller under a title reservation agreement;⁴
- (j) “contract of sale” means an agreement for the sale of an object which is not a title reservation agreement;⁵
- (k) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;
- (l) “Intergovernmental Regulator” means the intergovernmental regulator referred to in Article 20(1);
- (m) “international interest” means an interest to which Article 2 applies and which is constituted in conformity with Article 8;⁶
- (n) “leasing agreement” means an agreement by which one person (“the lessor”) grants a right to possession or control of an object (with or without an option to purchase) to another person (“the lessee”) in return for a rental or other payment;⁷
- (o) “object” means a mobile object of a category listed in Article 3(1);
- (p) “obligee” means the chargee under a security agreement, the conditional seller under a title reservation agreement or the lessor under a leasing agreement;

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

(r) “prospective assignment” means an assignment that is intended to be made in the future, whether or not upon the occurrence of an uncertain event;⁸

(s) “prospective international interest” means an interest that is intended to be created or provided for as an international interest in the future, whether or not upon the occurrence of an uncertain event;⁸

(t) “prospective sale” means a sale which is intended to be made in the future, whether or not upon the occurrence of an uncertain event;⁸

(u) “Protocol” means, in respect of any category of object and associated rights to which this Convention applies, the Protocol in respect of that category of object and associated rights;

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

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

(x) [“registrable non-consensual right or interest” means a right or interest registrable pursuant to an instrument deposited under Article 42(1);]

(y) “Registrar” means, in respect of any category of object and associated rights to which this Convention applies, the person designated under Article 20(3);

(z) “Regulations” means regulations made by the Intergovernmental Regulator under Article 20(4);

(aa) “sale” means a transfer of ownership pursuant to a contract of sale;

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

(cc) “security agreement” means an agreement by which a chargor grants or agrees to grant to a chargee an interest in or over an object to secure the performance of any existing or future obligation of the chargor or a third person;⁹

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

(ee) “surety” means any guarantor, surety or other credit insurer under a guarantee (including a demand guarantee and a standby letter of credit) or credit insurance given to the chargee;¹⁰

(ff) “title reservation agreement” means an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement;¹¹

(gg) “unregistered interest” means a consensual [or non-consensual right or] interest [(other than an interest to which Article 42(2) applies)] which has not been registered, whether or not it is registrable under this Convention;¹² and

(hh) “writing” means an authenticated record of information (including information sent by teletransmission) which is in tangible form or is capable of being reproduced in tangible form.

Article 2

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

2. – For the purposes of this Convention, an international interest in mobile equipment is an interest in an object of a category listed in Article 3(1):

- (a) granted by the chargor under a security agreement;
- (b) vested in a person who is the conditional seller under a title reservation agreement; or
- (c) vested in a person who is the lessor under a leasing agreement.

3. – Whether an interest to which the preceding paragraph applies falls within-sub-paragraph (a), (b) or (c) of that paragraph is to be determined by the applicable law. An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).¹³

4. – Except as provided by this Convention, rules of the applicable law shall not apply to interests constituted as international interests under this Convention.¹⁴

Article 3

1. – This Convention applies in relation to a mobile object, and associated rights relating to a mobile object, of any of the following categories:

- (a) airframes;
- (b) aircraft engines;
- (c) helicopters;
- (d) [registered ships;]
- (e) oil rigs;
- (f) containers;
- (g) railway rolling stock;
- (h) space property;
- (i) objects of any other category each member of which is uniquely identifiable.

2. – For the purposes of this Convention, a mobile object is an object which is to be regularly moved from an area under the jurisdiction of one State to an area under the jurisdiction of another State or is to be moved to, or located in an area beyond national jurisdiction, including outer space.¹⁵

Article 4

This Convention shall apply when at the time of conclusion of the agreement creating or providing for the international interest:

- (a) the obligor is located in a Contracting State; or
- (b) the object to which the international interest relates has been registered in a nationality register [, or a State-authorized asset register,] in a Contracting State or otherwise has a close connection, as specified in the Protocol, to a Contracting State.

Article 5

For the purposes of this Convention, a party is located in a State if it is incorporated or registered or has its principal place of business in that State.¹⁶

Article 6

In their relations with each other, the parties may, by agreement in writing, derogate from or vary the effect of any of the provisions of Chapter III, except as stated in Articles 9(3)-(5), 10(2) and (3), 13(1), 14 and 15, or of Article 37(2).

Article 7

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

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

CHAPTER II

CONSTITUTION OF AN INTERNATIONAL INTEREST

Article 8

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

- (a) is in writing;
 - (b) relates to an object in respect of which the chargor, conditional seller or lessor has power to enter into the agreement;
 - (c) enables the object to be identified in conformity with the applicable Protocol;
- and
- (d) in the case of a security agreement, enables the secured obligations to be identified, but without the need to state a sum or maximum sum secured.¹⁷

* The preamble will be drafted in due course.

CHAPTER III

DEFAULT REMEDIES

Article 9¹⁸

1. – In the event of default in the performance of a secured obligation, the chargee may exercise any one or more of the following remedies:

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

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

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

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

5. – In this Article and in Article 10 “interested persons” means:

- (a) the chargor;
- (b) any surety;
- (c) any person entitled to the benefit of any international interest which is registered after that of the chargee;
- (d) any other person having rights subordinate to those of the chargee in or over the object of which notice in writing has been given to the chargee within a reasonable time before exercise of the remedy given by paragraph 1(b) or vesting of the object in the chargee under Article 10(1), as the case may be.

Article 10

1. – At any time after default in the performance of a secured obligation, all the interested persons may agree, or the court may on the application of the chargee order, that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

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

3. – At any time after default in the performance of a secured obligation and before sale of the charged object or the making of an order under paragraph 1, the chargor or any interested person may discharge the security interest by paying the amount secured, subject to any lease granted by the chargee under Article 9(1). Where, after such default, the payment is made in full by an interested person, that person is subrogated to the rights of the chargee.

4. – Ownership or any other interest of the chargor passing on a sale under Article 9(1) or passing under paragraph 1 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 31.

Article 11

In the event of default by the conditional buyer under a title reservation agreement or by the lessee under a leasing agreement, the conditional seller or lessor, as the case may be, may terminate the agreement and take possession or control of any object to which the agreement relates. The conditional seller or lessor may also apply for a court order authorising or directing either of these acts.

Article 12

1. – The parties may provide in their agreement for any kind of default, or any event other than default, as giving rise to the rights and remedies specified in Articles 9 to 11 or 16.

2. – In the absence of such an agreement, “default” for the purposes of Articles 9 to 11 and 16 means a substantial default.

Article 13

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

2. – Any remedy available to the obligee under Articles 9 to 11 which is not there expressed to require application to the court may be exercised without leave of the court except to the extent that the Contracting State where the remedy is to be exercised has made a declaration under Article X or in the Protocol.

Article 14

Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter.

Article 15¹⁹

Any remedy given by this Convention shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the security agreement except where the court determines that such a provision is manifestly unreasonable.

Article 16

1. – A Contracting State shall ensure that an obligee who adduces *prima facie* evidence of default by the obligor may, pending final determination of its claim, obtain speedy judicial relief in the form of one or more of the following orders:

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

2. – Ownership or any other interest of the obligor passing on a sale under the preceding paragraph is free from any other interest over which the chargee's security interest has priority under the provisions of Article 31.

3. – A court of a Contracting State has jurisdiction to grant judicial relief under paragraph 1 where:

- (a) the object is within [or is physically controlled from²⁰] the territory of that State;
- (b) [one of the parties] [the obligor]²¹ is located within that territory; or
- (c) the parties have agreed to submit to the jurisdiction of that court.

4. – A court may exercise jurisdiction under paragraph 1 even if the trial of the claim referred to in that paragraph will or may take place in a court of another State or in an arbitral tribunal.

5. – Nothing in this Article shall limit the availability of any form of interim judicial relief under the applicable law.

Article 17

[1. – A court of a Contracting State to which Article 16(3) applies has general jurisdiction in other proceedings relating to this Convention, but no court may make orders or give judgments or rulings against or purporting to bind the International Registry.

2. – A court of a Contracting State may decline to exercise jurisdiction under Article 16(3)(c) and paragraph 1 of this Article where the exercise of such jurisdiction would be manifestly contrary to the public policy of that State.]²²

[CHAPTER III *bis*

*Article 18*²³

A waiver of sovereign immunity from jurisdiction of the courts specified in Article 17(1) or relating to enforcement of rights and interests relating to an object under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.]

CHAPTER IV

THE INTERNATIONAL REGISTRATION SYSTEM

Article 19

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

[*Article 20*²⁴

1. – The Protocol shall designate an Intergovernmental Regulator ** to exercise the functions assigned to it by this Chapter, Chapter V and the Protocol.

** The present text assumes that the Intergovernmental Regulator and the operators of the International Registry will be different bodies. However, as indicated in the preliminary draft Aircraft Equipment Protocol, an alternative to be considered is a unitary International Registry Authority which would act as both operator and regulator.

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

3. – The Intergovernmental Regulator shall establish the International Registry, designate the Registrar and oversee the International Registry and the operation and administration thereof.

4. – Subject to paragraph 5, the manner in which such oversight is conducted, the responsibilities of the Registrar and operators of registration facilities and the fees to be paid by users of the international registration system shall be prescribed in the Protocol and/or²⁵ in regulations (“the Regulations”) from time to time made by the Intergovernmental Regulator as provided by paragraph 7 and Articles 21, 22 and 25 - 28. ***

5. – The Registrar shall:

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

6. – The Intergovernmental Regulator shall have power to require acts and omissions which are in contravention of this Convention, the Protocol or the Regulations to be rectified.²⁶

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

CHAPTER V

MODALITIES OF REGISTRATION

Article 21

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

*** It was noted by the Aircraft Protocol Group that Article 20(4) is an example of the type of provision which was envisaged as being within Article T(b) and which may therefore find itself modified by the terms of a Protocol

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

Article 22

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

Article 23

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

2. – A registration shall be searchable for the purposes of paragraph 1 at any time when:

(a) the International Registry has assigned to it a sequentially ordered file number; and

(b) the registration, including the file number, may be accessed at the International Registry and at each registration facility in which searches may be made at that time.²⁷

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

4. – Paragraph 3 applies with necessary modifications to the registration of a prospective assignment of an international interest.

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

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

Article 24²⁸

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

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

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

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

Article 25

Registration of an international interest remains effective for the period of time [specified in the Protocol or the Regulations as extended in conformity with Article 24(2)] [agreed between the parties in writing].²⁹

Article 26

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

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

- (a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or
- (b) stating that there is no information in the International Registry relating thereto.

[Article 27

The Registrar shall maintain a list of the categories of non-consensual right or interest declared by Contracting States in conformity with Article 42(2) and the date of each such declaration. Such list shall be recorded and searchable in the name of the declaring State³⁰ and shall be made available as provided in the Protocol and Regulations to any person requesting it.]

Article 28

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

- (a) that it has been so issued; and
- (b) of the facts recited in it, including the date and time of a registration under Article 24.

*Article 29*³¹

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

2. – The courts [of the Contracting State[s] in which the Registrar or the operators of registration facilities, as the case may be, are situated] shall have jurisdiction to resolve any disputes arising under this Article.³²

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

- (a) to the extent that the International Registry expressly waives such immunity; or
- (b) as otherwise provided by agreement with a State in which the International Registry is situated.³³

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

Article 30

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

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

CHAPTER VI

EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES

Article 31

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

2. – The priority of the first-mentioned interest under the preceding paragraph applies:

- (a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and
- (b) even as regards value given by the holder of the first-mentioned interest with such knowledge.

3. – The buyer of an object acquires its interest in it:

- (a) subject to an interest registered at the time of its acquisition of that interest; and
- (b) free from an unregistered interest even if it has actual knowledge of such an interest.

4. – The priority of competing interests under this Article may be varied by agreement between the holders of those interests, but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

5. – Any priority given by this Article to an interest in an object extends to insurance proceeds payable in respect of the loss or physical destruction of that object [and to amounts paid or payable by any Government or State entity in respect of the confiscation, condemnation or requisition of that object.³⁴]

Article 32

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

2. – For the purposes of this Article, “trustee in bankruptcy” includes a liquidator, administrator or other person appointed to administer the estate of the obligor for the benefit of the general body of creditors.

3. – Nothing in this Article affects the validity of an international interest³⁵ against the trustee in bankruptcy where that interest is valid against the trustee in bankruptcy under the applicable law.

CHAPTER VII

ASSIGNMENTS OF INTERNATIONAL INTERESTS AND RIGHTS OF SUBROGATION

Article 33

1. – The holder of an international interest (“the assignor”) may make an assignment of it to another person (“the assignee”) wholly or in part.

2. – An assignment of an international interest shall be valid only if it:

- (a) is in writing;
- (b) enables the international interest and the object to which it relates to be identified;
- (c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be identified.

Article 34

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

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

(b) all associated rights [so far as such rights are assignable under the applicable law]³⁶.

2. – An assignment made in conformity with the preceding paragraph shall take effect subject to:

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

(b) any rights of set-off in respect of claims existing against the assignor and available to the obligor at the time of receipt of a notice of the assignment under Article 36.

3. – The obligor may by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph.³⁷

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

Article 35

The provisions of Chapter V shall apply to the registration of an assignment or prospective assignment of an international interest as if the assignment or prospective assignment were the international interest or prospective international interest and as if the assignor were the grantor of the interest.

Article 36

1. – To the extent that an international interest has been assigned in accordance with the provisions of this Chapter, the obligor in relation to that interest is bound by the assignment, and, in the case of an assignment within Article 34(1)(b), has a duty to make payment or give other performance to the assignee, if but only if:

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

(b) the notice identifies the international interest; and

(c) the obligor does not have [actual] knowledge of any other person's superior right to payment or other performance].³⁸

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

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

Article 37

1. – In the event of default by the assignor under the assignment of an international interest made by way of security, Articles 9, 10 and 12 to 16, in so far as they are capable of application to intangible property, apply as if references:

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

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

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

2. – Where, in the case of an assignment by way of security, the sums collected or received by the assignee of the international interest as the result of the exercise of any remedy provided by virtue of the preceding paragraph exceed the amount secured and any reasonable costs incurred in the exercise of any such remedy, then unless otherwise ordered by the court the assignee shall pay the excess to the holder of the assignment registered immediately after its own or, if there is none, to the assignor of the international interest.

Article 38

Where there are competing assignments of international interests and at least one of the assignments is registered, the provisions of Article 31 apply as if the references to an international interest were references to an assignment of an international interest.

Article 39

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

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

(b) the price payable for the object; or

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

(d) the reasonable costs referred to in Article 9(4).

Article 40

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

*Article 41*³⁹

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

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

[CHAPTER VIII

NON-CONSENSUAL RIGHTS AND INTERESTS

Article 42

1. – A Contracting State may at any time in an instrument deposited with the depositary of the Protocol⁴⁰ list the categories of non-consensual right or interest which shall be registrable under this Convention as regards any category of object as if the right or interest were an international interest and be regulated accordingly.

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

(a) such priority is set out by that State in an instrument deposited with the depositary of the Protocol⁴⁰ and that instrument has been deposited with the depositary prior to the time when the registration of the international interest takes effect; and

(b) the non-consensual right or interest would, under the domestic law of that State, have priority over a registered interest of the same type as the international interest without any act of publication.]

[CHAPTER [IX]

APPLICATION OF CONVENTION TO SALES

Article 43

The Protocol may provide for the application of this Convention, wholly or in part and with such modifications as may be necessary, to the sale or prospective sale of an object.]⁴¹

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

CHAPTER [XI]
[OTHER] FINAL PROVISIONS

Article T

This Convention shall enter into force as regards a category of object:

- (a) at the time of entry into force of the Protocol;
- (b) as a single instrument with that Protocol; and
- (c) as between Contracting States Parties to that Protocol.

Article U

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

Article V

[Insert provision for accelerated procedure to finalise further Protocols]

[Article W

A Contracting State shall declare at the time of ratification, acceptance, approval of, or accession to the Protocol⁴² the relevant court or courts for the purposes of Article 1(k) of this Convention.]⁴³

Article X

1. – A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol⁴⁴ that while the charged object is situated within, or controlled from its territory the chargee shall not grant a lease of the object in that territory.

**** It is thought that Chapter X should be omitted and its contents left to each Protocol, since a particular Protocol may involve amendments even to a Convention which is not itself equipment-specific. See, for example, the exclusion by the preliminary draft Aircraft Equipment Protocol of the Unidroit Convention on International Financial Leasing.

***** To be defined by taking account of the location of the object and the parties.

2. – A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol⁴⁴ that any remedy available to the obligee under Articles 9 to 11 which is not there expressed to require application to the court may only be exercised with leave of the court.

Article Y

A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol⁴⁴ that it will not apply the provisions of Article 16, wholly or in part.

Article Z

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

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

(a) the practical operation of this Convention and the Protocol and their effectiveness in facilitating the asset-based financing and leasing of the objects covered by their terms;

(b) the judicial interpretations given to the terms of this Convention, the Protocol and the Regulations;

(c) the functioning of the International Registry system and the performance of the Registrar and its oversight by the Intergovernmental Regulator; and

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

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

NOTES ON REVISION OF PRELIMINARY DRAFT CONVENTION

General

Most of the revisions consist of transfers from the preliminary draft Aircraft Equipment Protocol noted in the separate note concerning revisions to the preliminary draft Protocol. The numbering of the Articles of the preliminary draft Convention remains unchanged except for the addition of new Articles 39 and 43.

The numbers of the notes follow those inserted in the preliminary draft Convention.

Note

- 1 Transferred from body of text in order to gather all definitions together.
- 2 Old paragraph (i) deleted since it would extend associated rights into international interest itself. It was inserted at suggestion of Space Working Group and can be reconsidered in the context of the forthcoming preliminary draft Space Property Protocol.
- 3 Inserted so as to provide a link with “sale”, which itself has been inserted to link with the new Article 43.
- 4 Inserted to avoid awkwardness of definitions within definitions in “title reservation agreement” and for easier finding.
- 5 See 3.
- 6 Definition of “international interest” revised to make it clear it must be properly constituted.
- 7 Revised along lines suggested by Mr J.Wool.
- 8 Additions made as suggested by Mr J.Wool.
- 9 Definition altered to take account of new definition of “security interest” and avoid definition within definition.
- 10 As 1.
- 11 Definition altered to take account of new definitions as point 4.
- 12 Addition of “whether or not it is registrable” as suggested by Mr J. Wool.
- 13 Last sentence restores what was in an earlier draft and was mistakenly thought to be rendered unnecessary by first sentence.
- 14 Inserted to emphasise autonomous character of an international interest.
- 15 Builds on definition provided in an earlier text.
- 16 Revised to make purpose and effect clearer.
- 17 Addition to make clear that sum or maximum sum secured need not be stated.
- 18/19 Old para. 2 moved to become rule of general application in Art. 15.
- 20 Words in brackets inserted to cover space property.
- 21 Alternative inserted as to allow location of obligee to establish jurisdiction seems too indulgent to obligee. A further question to be considered is whether the jurisdiction should be exclusive or non-exclusive.
- 22 Transferred from preliminary draft Protocol.

- 23 Transferred from preliminary draft Protocol.
- 24 Article 20 incorporates various provisions transferred from preliminary draft Protocol.
- 25 “and/or” to allow prescription by regulations directly without need for provision in Protocol.
- 26 Transferred from preliminary draft Protocol.
- 27 Transferred from preliminary draft Protocol.
- 28 Recasts and simplifies Article 21.
- 29 Alternative inserted to allow parties to select period of registration.
- 30 Transferred from preliminary draft Protocol.
- 31 Simplified version of what was in preliminary draft Protocol.
- 32 Transferred from preliminary draft Protocol.
- 33 Restores wording of an earlier draft making immunity subject to terms of host State agreement.
- 34 Addition in brackets transferred from preliminary draft Protocol.
- 35 The words “or other interest” deleted since paragraph 1 is confined to international interests.
- 36 Words in brackets to be considered.
- 37 Paragraph 3 is new and replaces opening words of old paragraph 2.
- 38 Bracketed words to be considered, as inconsistent with concept underlying Article 31(2)(a) and (3).
- 39 Abbreviated version of what was originally in preliminary draft Protocol.
- 40 It is considered that the Protocol, rather than the Convention as originally stated, should be the source.
- 41 New.
- 42/44 Protocol is relevant source.
- 43 Transferred from preliminary draft Protocol