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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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THE SYSTEM OF DECLARATIONS UNDER THE CONVENTION ON
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT AND THE PROTOCOL
THERE TO ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT:

AN EXPLANATORY MEMORANDUM FOR THE ASSISTANCE OF STATES
AND REGIONAL ECONOMIC INTEGRATION ORGANISATIONS
IN THE COMPLETING OF DECLARATIONS

(prepared by the Secretariat of UNIDROIT, as Depositary)

Rome, December 2005

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I. BACKGROUND

1. On 4 June 2002 the Secretariat of the International Institute for the Unification of Private Law (UNIDROIT) was, as Depositary, requested by Mr Charles M. Diop, Secretary to the African Civil Aviation Commission (AFCAC), to provide him with an introductory text model for declaration, for inclusion in a standard administrative package that his Organisation was putting together with a view to assisting African States in the early ratification of the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*) and the Protocol thereto on Matters specific to Aircraft Equipment (hereinafter referred to as the *Aircraft Protocol*), opened to signature in Cape Town on 16 November 2001. This document has been prepared by the Secretariat of UNIDROIT pursuant to that request and with a view to assisting States in general and Regional Economic Integration Organisations in their implementation of the Convention and the Aircraft Protocol.

II. INTRODUCTION

2. During the development of the Convention and the Aircraft Protocol it emerged that the solutions advocated in certain of their provisions may run so counter to the legal traditions of certain States as to make them potentially unacceptable to those States. This could, for example, be the case with the default provisions permitting the exercise of extra-judicial remedies and the question as to whether their exercise is considered acceptable by certain States. Given, however, the commercial importance that the matters concerned were seen as having in the overall context of making the benefits of asset-based financing and leasing more widely available under the new international regimen, it was found opportune to afford Contracting States the possibility of making choices in respect of these matters under the Convention and the Aircraft Protocol via a system of declarations. The system of declarations provided for under the Convention and the Aircraft Protocol is accordingly to be seen as an essential element in the decision to be taken by Contracting States regarding the policy objectives, and in particular the commercial policy objectives, that they see fit to pursue in the matter of the acquisition of high-value mobile equipment, and in the first instance aircraft equipment.

3. Moreover, the preamble to the Convention lays stress on the importance of the *autonomy of the parties* in the application of its provisions, in particular regarding the exercise of extra-judicial remedies. The autonomy of the parties is to be seen as a key element in rendering the new international regimen for asset-based financing and leasing provided under the Convention and the Aircraft Protocol more economically effective. Under the philosophy underlying the Convention and the Aircraft Protocol, it provides a necessary condition for the improvement of the context in which asset-based financing and leasing transactions are mounted.

4. It is necessary to distinguish between the declarations provided for under the Convention and the Aircraft Protocol in two respects, first, as between those that are optional and those that are mandatory in nature and, secondly, as regards the former as between those that are opt-in and those that are opt-out in nature. With the exception of the declarations provided for under Article 54(2) of the Convention and Articles 48(2) of the Convention and XXVII(2) of the Aircraft Protocol – which are not addressed to States but to Regional Economic Integration Organisations – all the declarations provided for under the Convention and the Aircraft Protocol are optional in nature.

5. Opt-in declarations are those which a Contracting State is required to lodge in order for a provision of the Convention as implemented by the Aircraft Protocol to have effect within that State. Opt-out declarations, on the other hand, are those which a Contracting State is required to lodge in order for a provision of the Convention as implemented by the Aircraft Protocol *not* to have effect within that State.

6. Certain optional declarations are neither opt-in nor opt-out. These are those under Article 53 of the Convention, under which States may define the relevant “court” or “courts” for the purposes of the application of Article 1 and Chapter XII, and Articles 52(1) of the Convention and XXIX(1) of the Aircraft Protocol, which are addressed only to States in which different systems of law are applicable. The provisions of the Convention which are opt-in in nature are Articles 39, 40 and 60 and the provisions of the Aircraft Protocol which are similarly opt-in in nature are Articles VIII, X, XI, XII, XIII and XIX, whereas certain of the Convention’s provisions in their application to internal transactions are (by virtue of Article 50(1)) opt-out in nature as are also Articles 8(1)(b) (by virtue of Article 54(1)), 8(1), 9(1) and 10 (by virtue of Article 54(2)) and 13 and 43 (by virtue of Article 55) of the Convention and Articles XXI (by virtue of Article XXX(5)) and XXIV(1) (by virtue of Article XXIV(2)) of the Aircraft Protocol.

7. The considerable number of provisions contained in the Convention and the Aircraft Protocol and the complexity of these provisions mean that particular care needs to be exercised in respect of the *system of declarations* provided for under these two instruments. Through the Depository¹ and, via that body, the Registrar² of the International Registry, where registrations and searches concerning the rights provided for under the Convention and the Aircraft Protocol are to be made, Contracting States need to be able to count on the reliability of the information contained in, and communicated under such declarations, in the interest of safeguarding legal certainty.

8. The purpose of this document is accordingly to ensure, first, that each State Party/Contracting State or Regional Economic Integration Organisation is in a position to ascertain whether it has correctly understood all the declarations that it is authorised to make under the Convention and the Aircraft Protocol and, secondly, that each State Party/Contracting State or Regional Economic Integration Organisation that decides to make one or more declarations does so in full compliance with the terms of the Convention and the Aircraft Protocol.

¹ Cf. § 12, *infra*.

² *Idem*.

9. With a view to assisting States and Regional Economic Integration Organisations in this process, the Secretariat of UNIDROIT, as Depositary, has considered it useful to prepare for each declaration that such States and Organisations may lodge under the Convention and the Aircraft Protocol a declaration form that may be used by them in drafting their own declarations. These forms are set out hereunder, with explanatory footnotes, where this has been judged useful, and arranged, first, according to those declarations that may be made by States under the Convention (cf. Section III), secondly, those that may be made by States under the Aircraft Protocol (cf. Section IV), thirdly, those that may be made by Regional Economic Integration Organisations under the Convention (cf. Section V) and those that may be made by Regional Economic Integration Organisations under the Aircraft Protocol (cf. Section VI).

III. SYSTEM OF DECLARATIONS UNDER THE CONVENTION (FOR STATES)

(a) *Introduction*

10. Under Article 62 of the Convention, instruments of ratification, acceptance, approval or accession are to be deposited with UNIDROIT. Under Article 56(2) of the Convention any declaration or subsequent declaration³ or any withdrawal of a declaration made under the Convention is to be notified in writing to UNIDROIT, as Depositary.

11. Under Article 62 of the Convention, UNIDROIT, as Depositary, has the duty *inter alia* of providing the Supervisory Authority and the Registrar (established in accordance with Article 17 of the Convention) with a copy of each instrument of ratification, acceptance, approval or accession and each declaration or withdrawal or amendment of a declaration. UNIDROIT further has the duty of informing these persons of the date on which each such instrument and each such declaration or withdrawal or amendment of a declaration are deposited, so that the information contained therein may be easily and fully available (cf. Article 62(2)(c)).

12. Under Article 23 of the Convention, the Registrar is required to maintain a list of declarations and withdrawals of declarations and of the categories of non-consensual right or interest communicated to the Registrar by the Depositary as having been declared by Contracting States in conformity with Articles 39 and 40 with the date of each such declaration or withdrawal of a declaration.

13. Under Article 56 of the Convention, no reservations may be made thereto but declarations authorised by Articles 39, 40, 50, 52, 53, 54, 55, 57³, 58⁴ and 60 may be made in accordance with those provisions.

14. The declarations that will be treated in this section and for which declaration forms are provided hereunder concern the declarations that may be made under Article 39 (Rights having priority without registration), Article 40 (Registrable non-consensual rights or interests), Article 50 (Internal transactions), Article 52 (Territorial units), Article 53 (Determination of courts), Article 54 (Declarations regarding remedies), Article 55 (Declarations regarding relief pending final determination) and Article 60 (Transitional provisions).

15. It is useful at this stage to recall that, *with the exception of the mandatory declaration provided for under Article 54(2)*, all the declarations under the Convention that are the subject of these declaration forms are optional, with the result that States Parties/Contracting States are under no *obligation* to complete any of these forms for their ratification, acceptance, approval or accession to be effective. However, where a State Party/Contracting State *does* decide to make one or more declarations under the Convention, it is important that it bear in mind that in respect of certain provisions the declaration forms set out hereunder provide *alternative* forms for certain of the declarations authorised under the Convention, in line with the different possibilities permitted under the provisions in question. This is the case with Forms Nos 1 and 2, for example, the

³ Article 57 is only concerned with the *subsequent declarations* needing to be notified to the Depositary. It is true that this Article is also part of the declarations regimen provided for under the Convention but it is not intended to modify the substantive rules of the Convention. For this reason, it will not be treated in this document.

⁴ Article 58 is only concerned with the *withdrawal of declarations* needing to be notified to the Depositary. It is true that this Article is also part of the declarations regimen provided for under the Convention but it is not intended to modify the substantive rules of the Convention. For this reason, it will not be treated in this document.

former of which deals with the case where a State wishes to make a *specific* declaration under Article 39(1)(a) and the latter with the case where that State rather wishes to make a *general* declaration under the same provision. It accordingly follows that States using the relevant declaration forms should take care to ensure that in such cases they select only one of the alternative forms. Likewise, in one case in particular, that is the declarations that a Contracting State may make under Article 55 (not to apply the provisions of Article 13 or Article 43 or both, wholly or in part), it is essential that it takes care to ensure that its declaration concerning one of these Articles is consistent with its declaration concerning the other.

16. As has been mentioned above, the Registrar has the duty of maintaining a list of the declarations and withdrawals of declarations and of the categories of non-consensual right or interest communicated to it by the Depositary as having been declared by Contracting States in conformity with Articles 39 and 40, with the date of each such declaration or withdrawal of a declaration. Given that States' declarations under the Convention are bound to play an essential part in the future operation of the international registration system and given the complexity of the issues involved in these declarations, and in particular the important consequences that will therefore flow from a State's precise choice of words in the framing of each such declaration, the interest of guaranteeing efficiency in the operation of the international registration system militates strongly in favour of the employment of the minimum number of languages possible in the framing of such declarations. **Especial significance therefore attaches to the decision taken by the UNIDROIT Governing Council at its 81st session, held in Rome on 24 and 25 September 2002, to urge Contracting States to the Convention when submitting declarations thereunder to ensure that they do so in one or other of the Institute's working languages, English and French, a decision that was confirmed by the General Assembly of UNIDROIT member States, at its 56th session, held in Rome on 6 December 2002, when it passed a Resolution inviting all Contracting States to submit such declarations as they might decide to lodge under the Convention in one or other of the working languages of the Institute (cf. the text of this Resolution, reproduced in the Appendix to this document).**

(ii) Form No. 2 (*general opt-in declarations under Article 39(1)(a)*)⁸

(Name of the State)

declares that all categories of non-consensual right or interest which under its law have / and will in the future have (*strike out the words "and will in the future have" if not wishing to extend the declaration to categories to be created after the deposit of the declaration pursuant to Article 39(2)*) priority over an interest in an object equivalent to that of the holder of a registered international interest shall have priority over a registered international interest, whether in or outside insolvency proceedings.

⁸ A Contracting State should use this form if it wishes to lodge a *general* declaration that *all* categories of non-consensual right or interest which under its law have priority over the equivalent of a registered international interest are to have priority over a registered international interest, whether in or outside insolvency proceedings; compare with Form No. 1.

(iv) *Form No. 4 (general opt-in declarations under Article 39(1)(b))*¹⁰

(Name of the State)

declares that nothing in the Convention shall affect its right or that of any entity of that State, any intergovernmental Organisation or other private provider of public services to arrest or detain an object under its laws for payment of amounts owed to any such entity, Organisation or provider directly relating to the services provided by it in respect of that object or another object.

¹⁰ A Contracting State should use this form if it wishes *generally* to provide that nothing in the Convention is to affect the right of any entity or entities, intergovernmental Organisation or other provider of public services under its laws to arrest or detain an object for payment of amounts owed to such entity or entities, intergovernmental Organisation or provider; compare with Form No. 3.

(v) *Form No. 5 (general opt-in declarations under Article 39(4))*

(Name of the State)

declares that a right or interest of a category covered by a declaration made under Form No. 1 / Form No. 2 (*strike out whichever is inapplicable*) shall have priority over an international interest registered prior to the date of the deposit of its instrument of ratification, acceptance, approval or accession.

(viii) *Form No. 8 (general opt-out declarations under Article 50)*¹³

(*Name of the State*)

declares that the Convention shall not, subject to Article 50(2) thereof, apply to a transaction which is an internal transaction in relation to itself with regard to all types of object.

¹³ A Contracting State should use this form if it wishes to exclude the application of the Convention, with the exception of those provisions referred to in Article 50(2), in respect of *all* objects which are the subject of a transaction that is an internal transaction in relation to that State; compare with Form No. 7.

(ix) *Form No. 9 (specific declarations under Article 52)* ¹⁴

(Name of the State)

declares that the Convention is to apply to the following of its territorial units (*list the relevant territorial unit or units*) ¹⁵

.....
.....
.....
.....

¹⁴ A Contracting State should use this form if it wishes the Convention to apply to *less than all* its territorial units; compare with Form No. 10.

¹⁵ A State extending the application of the Convention to others of its territorial units than those listed in Form No. 9 may make separate declarations for each such other unit or units under each of the declarations authorised under the Convention; cf. Article 52(4).

(x) *Form No. 10 (general declarations under Article 52)*¹⁶

(*Name of the State*)

declares that the Convention is to apply to all its territorial units.^{17 18}

¹⁶ A Contracting State should use this form if it wishes the Convention to apply to *all* its territorial units; compare with Form No. 9.

¹⁷ A Contracting State having made such a declaration may modify the latter by submitting another declaration at any time; cf. Article 52(1) *in fine*.

¹⁸ Where a Contracting State has not made any declaration under Article 52(1) the Convention will automatically apply to all territorial units of that State; cf. Article 52(3).

(xii) *Form No. 12 (opt-out declarations under Article 54(1))*

(Name of the State)

declares 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.

(xvi) *Form No. 16 (opt-out declarations providing for partial application of Article 43 under Article 55)* ^{23 24}

(Name of the State)

declares that it will not apply the following provisions of Article 43 (*list the relevant provisions*)

.....
.....
.....
.....

..... and that it will apply the remaining provisions of that Article in the following conditions (*list the relevant conditions*).....

.....
.....
.....

²³ A Contracting State should use this form if it wishes Article 43 to apply only *in part*; compare with Form No. 17.

²⁴ Cf. Note 20, *supra*.

(xvii) *Form No. 17 (opt-out declarations providing for the total exclusion of the application of Article 43 under Article 55)*^{25 26}

(Name of the State)

declares that it will not apply any of the provisions of Article 43 and that the following other forms of interim relief will be available under its law *(list the relevant other forms of interim relief)*

.....
.....
.....
.....
.....
.....
.....
.....

²⁵ A Contracting State should use this form if it wishes to exclude the application of *all* provisions of Article 43; compare with Form No. 16.

²⁶ Cf. Note 20, *supra*.

(xviii) *Form No. 18 (opt-in declarations under Article 60(1))*

(Name of the State)

declares that the Convention will apply to a pre-existing right or interest for the purpose of determining priority, including the protection of any existing priority, on *(specify the date chosen)* ²⁷.....

but only to the following extent and in the following manner *(specify the extent and the manner of its application to such a right or interest)* ²⁸

.....
.....
.....
.....
.....
.....
.....

²⁷ Such date cannot be earlier than three years after the date on which the declaration becomes effective; cf. Article 60(3).

²⁸ For instance, whether the declaration is limited to certain types of pre-existing right or interest or to pre-existing rights or interests that already enjoy priority under the Contracting State's law.

IV. SYSTEM OF DECLARATIONS UNDER THE AIRCRAFT PROTOCOL (FOR STATES)

(a) *Introduction*

17. Under Article XXXVII of the Aircraft Protocol, instruments of ratification, acceptance, approval or accession are to be deposited with UNIDROIT. Under Article XXXII(2) of the Aircraft Protocol any declaration or subsequent declaration or any withdrawal of a declaration made under the Aircraft Protocol is to be notified in writing to UNIDROIT, as Depositary.

18. Under Article XXXVII of the Aircraft Protocol, UNIDROIT, as Depositary, has the duty *inter alia* of providing the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession and each declaration or withdrawal or amendment of a declaration. UNIDROIT further has the duty of informing these persons of the date on which each such instrument and each such declaration or withdrawal or amendment of a declaration are deposited, so that the information contained therein may be easily and fully available (Article XXXVII (2)(c)).

19. Declarations made under the Convention (cf. Section III, *supra*), including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60, shall be deemed also to have been made under the Aircraft Protocol, unless otherwise stated (cf. Article XXXI of the Aircraft Protocol).

20. Under Article XXXII of the Aircraft Protocol, no reservations may be made thereto but declarations authorised by Articles XXIV, XXIX, XXX, XXXI, XXXIII²⁹ and XXXIV³⁰ may be made in accordance with those provisions.

21. The declarations that will be treated in this section and for which declaration forms are provided hereunder concern Article VIII (Choice of law), Article X (Modification of provisions regarding relief pending final determination), Article XI (Remedies on insolvency), Article XII (Insolvency assistance), Article XIII (De-registration and export request authorisation), Article XIX(1) (Designated entry points), Article XXI (Modification of jurisdiction provisions), Article XXIV(2) (Relationship with the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft) and Article XXIX (Territorial units).

22. States should take particular care when making declarations concerning Articles X and XI of the Aircraft Protocol. Declarations in respect of Article XI will, given the subject-matter of that Article, be of particular importance.

23. It is useful at this stage to recall that all the declarations under the Aircraft Protocol that are the subject of these declaration forms are optional, with the result that States Parties/Contracting States are under no *obligation* to complete any of these forms for their ratification, acceptance, approval or accession to be effective. However, where a State

²⁹ Article XXXIII is only concerned with the *subsequent declarations* needing to be notified to the Depositary. It is true that this Article is also part of the declarations regimen provided for under the Aircraft Protocol but it is not intended to modify the substantive rules of the Aircraft Protocol. For this reason, it will not be treated in this document.

³⁰ Article XXXIV is only concerned with the *withdrawal of declarations* needing to be notified to the Depositary. It is true that this Article is also part of the declarations regimen provided for under the Aircraft Protocol but it is not intended to modify the substantive rules of the Aircraft Protocol. For this reason, it will not be treated in this document.

Party/Contracting State *does* decide to make one or more declarations under the Aircraft Protocol, it is important that it bear in mind that in respect of certain provisions the declaration forms set out hereunder provide *alternative* forms for certain of the declarations authorised under the Aircraft Protocol, in line with the different possibilities permitted under the provisions in question. This is notably the case with Forms Nos 20 and 21, for example, the former of which deals with the case where a State wishes to make a declaration that it will apply Article X only *in part* and the latter with the case where that State rather wishes to make a declaration that it will apply that Article *in its entirety*. It accordingly follows that States using the relevant declaration forms should take care to ensure that in such cases they select only one of the alternative forms.

24. As has been mentioned above, the Registrar has the duty of maintaining a list of the declarations and withdrawals of declarations communicated to the Registrar by the Depositary as having been declared by Contracting States, with the date of each such declaration or withdrawal of a declaration. Given that States' declarations under the Aircraft Protocol are bound to play an essential part in the future operation of the international registration system and given the complexity of the issues involved in these declarations, and in particular the important consequences that will therefore flow from a State's precise choice of words in the framing of each such declaration, the interest of guaranteeing efficiency in the operation of the international registration system militates strongly in favour of the employment of the minimum number of languages possible in the framing of such declarations. **Especial significance therefore attaches to the decision taken by the UNIDROIT Governing Council at its 81st session, held in Rome on 24 and 25 September 2002, to urge Contracting States to the Aircraft Protocol when submitting declarations thereunder to ensure that they do so in one or other of the Institute's working languages, English and French, a decision that was confirmed by the General Assembly of UNIDROIT member States, at its 56th session, held in Rome on 6 December 2002, when it passed a Resolution inviting all Contracting States to submit such declarations as they might decide to lodge under the Aircraft Protocol in one or other of the working languages of the Institute (cf. the text of this Resolution, reproduced in the Appendix to this document).**

(b) *Declaration forms for use by States under the Aircraft Protocol*

(xix) *Form No. 19 (opt-in declarations under Article XXX(1) in respect of Article VIII)*

(Name of the State)

declares that it will apply Article VIII.

(xx) *Form No. 20 (opt-in declarations under Article XXX(2) in respect of Article X providing for only partial application of the latter)* ³¹

(Name of the State)

declares that it will apply only the following provisions of Article X (*specify the relevant provisions*)

.....
.....
.....
.....
.....
.....
.....

and (*where these include Article X(2)*) that the number of working days to be used for the purposes of the time-limit laid down in Article X(2) shall be

.....

³¹ A Contracting State should use this form if it wishes to apply only *certain* provisions of Article X; compare with Form No. 21.

(xxi) *Form No. 21 (opt-in declarations under Article XXX(2) in respect of Article X providing for the application of the entirety of the latter)*³²

(Name of the State)

declares that it will apply Article X in its entirety and that the number of working days to be used for the purposes of the time-limit laid down in Article X(2) shall be.....
.....

³² A Contracting State should use this form if it wishes to apply *all* provisions of Article X; compare with Form No. 20.

(xxii) *Form No. 22 (specific opt-in declarations under Article XXX(3) in respect of Article XI providing for the application of Alternative A in its entirety to certain types of insolvency proceeding)*³³

(Name of the State)

declares that it will apply Article XI, Alternative A in its entirety to the following types of insolvency proceeding (*specify the relevant types of insolvency proceeding*)

.....
.....
.....
.....
.....
.....
.....
.....

and that the waiting period for the purposes of Article XI(3) of that Alternative shall be

³³ A Contracting State should use this form if it wishes to apply *Alternative A* of Article XI (compare with Form No. 24) and if it wishes to apply that Alternative to only *certain* types of insolvency proceeding (compare with Form No. 23).

(xxiii) *Form No. 23 (general opt-in declarations under Article XXX(3) in respect of Article XI providing for the application of Alternative A in its entirety to all types of insolvency proceeding)*³⁴

(Name of the State)

declares that it will apply Article XI, Alternative A in its entirety to all types of insolvency proceeding and that the waiting period for the purposes of Article XI(3) of that Alternative shall be

.....

³⁴ A Contracting State should use this form if it wishes to apply *Alternative A* of Article XI (compare with Form No. 24) and if it wishes to apply that Alternative to *all* types of insolvency proceeding (compare with Form No. 22).

(xxiv) *Form No. 24 (specific opt-in declarations under Article XXX(3) in respect of Article XI providing for the application of Alternative B in its entirety to certain types of insolvency proceeding)*³⁵

(Name of the State)

declares that it will apply Article XI, Alternative B in its entirety to the following types of insolvency proceeding (*specify the relevant types of insolvency proceeding*)

.....
.....
.....
.....
.....
.....
.....
.....

and that the time-period for the purposes of Article XI(2) of that Alternative shall be

and shall commence not earlier than the time when the insolvency administrator or the debtor receives the creditor's request under Article XI(2) of that Alternative.³⁶

³⁵ A Contracting State should use this form if it wishes to apply *Alternative B* of Article XI (compare with Form No. 22) and if it wishes to apply that Alternative to only *certain* types of insolvency proceeding (compare with Form No. 25).

³⁶ It is recommended that Contracting States using this form should retain the words "and shall commence ... under Article XI(2) of that Alternative", since, under Article XI(2) of Alternative B, the insolvency administrator or the debtor is not required to take any action unless and until requested to do so by the creditor.

(xxv) *Form No. 25 (general opt-in declarations under Article XXX(3) in respect of Article XI providing for the application of Alternative B in its entirety to all types of insolvency proceeding)*³⁷

(Name of the State)

declares that it will apply Article XI, Alternative B in its entirety to all types of insolvency proceeding and that the time-period for the purposes of Article XI(2) of that Alternative shall be and shall commence not earlier than the time when the insolvency administrator or the debtor receives the creditor's request under Article XI(2) of that Alternative.³⁸

³⁷ A Contracting State should use this form if it wishes to apply *Alternative B* of Article XI (compare with Form No. 22) and if it wishes to apply that Alternative to *all* types of insolvency proceeding (compare with Form No. 24).

³⁸ Cf. Note 36, *supra*.

(xxvi) *Form No. 26 (opt-in declarations under Article XXX(1) in respect of Article XII)*

(Name of the State)

declares that it will apply Article XII.

(xxvii) *Form No. 27 (opt-in declarations under Article XXX(1) in respect of Article XIII)*

(Name of the State)

declares that it will apply Article XIII.

(xxviii) *Form No. 28-A (opt-in declarations under Article XIX(1) providing for the designation of entry points for compulsory use as transmitters of registration information for airframes and helicopters, and for optional use as transmitters of registration information for aircraft engines, to the International Registry)*^{39 40 41}

(Name of the State)

designates the following entity or entities (*list the relevant entity or entities*)

.....
.....
.....

in its territory as the entry point or entry points through which there shall be transmitted, and in respect of aircraft engines may be transmitted, to the International Registry information required for registration other than registration of a notice of a national interest or a right or interest under Article 40 of the Convention in either case arising under the laws of another State.

³⁹ Article XIX(1) authorises a Contracting State at any time to “designate” an entity or entities in its territory as the entry point or points for the transmission to the International Registry of the information required for registrations, with two exceptions. Such designation was intended by the authors of the Convention and the Aircraft Protocol to be via the lodging of a declaration by the State in question and to be governed by the provisions of the Convention and the Aircraft Protocol regarding declarations in general.

⁴⁰ Designation by a Contracting State of an entity or entities in its territory as the entry point or points for the transmission to the International Registry of the information required for registrations may *not*, however, be made compulsory for aircraft engines, for which there is no system of nationality registration.

⁴¹ A Contracting State should use this form only if it wishes the designated entry point or points to serve as both (a) the *compulsory* transmitter or transmitters to the International Registry of registration information *not* relating to aircraft engines, *and* (b) an *optional* transmitter or transmitter of registration information in relation to aircraft engines. If use of the designated entry point is not to cover aircraft engines Form no. 28-B should be used. If use of the designated entry point is not compulsory for any category of registration information, use Form no. 29.

(xxix) *Form No. 28-B (opt-in declarations under Article XIX(1) providing for the designation of entry points for compulsory use as transmitters of registration information for airframes and helicopters to the International Registry)* ^{42 43 44}

(Name of the State)

designates the following entity or entities (*list the relevant entity or entities*)

.....
.....
.....

in its territory as the entry point or entry points through which there shall be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or a right or interest under Article 40 of the Convention in either case arising under the laws of another State, and other than information required for registration in respect of aircraft engines.

⁴² Article XIX(1) authorises a Contracting State at any time to “designate” an entity or entities in its territory as the entry point or points for the transmission to the International Registry of the information required for registrations, with two exceptions. Such designation was intended by the authors of the Convention and the Aircraft Protocol to be via the lodging of a declaration by the State in question and to be governed by the provisions of the Convention and the Aircraft Protocol regarding declarations in general.

⁴³ Designation by a Contracting State of an entity or entities in its territory as the entry point or points for the transmission to the International Registry of the information required for registrations may *not*, however, be made compulsory for aircraft engines, for which there is no system of nationality registration.

⁴⁴ A Contracting State should use this form if it wishes the designated entry point or points to serve as the *compulsory* transmitter or transmitters of registration information for the purposes of the relevant registrations to the International Registry, but not to serve as the optional transmitter or transmitters of registration information in relation to aircraft engines. Where the latter is to be included Form no. 28-A should be used; where use of the designated entry point is not compulsory for any category of registration information, use Form no. 29.

(xxx) *Form No. 29 (opt-in declarations under Article XIX(1) providing for the designation of entry points for optional use as transmitters of registration information to the International Registry)*^{45 46}

(Name of the State)

designates the following entity or entities (*list the relevant entity or entities*)

.....
.....
.....
.....
.....

in its territory as the entry point or entry points through which there may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or a right or interest under Article 40 of the Convention in either case arising under the laws of another State.

⁴⁵ Article XIX(1) authorises a Contracting State at any time to “designate” an entity or entities in its territory as the entry point or points for the transmission to the International Registry of the information required for registrations, with two exceptions. Such designation was intended by the authors of the Convention and the Aircraft Protocol to be via the lodging of a declaration by the State in question and to be governed by the provisions of the Convention and the Aircraft Protocol regarding declarations in general.

⁴⁶ A Contracting State should use this form if it wishes the designated entry point or points to serve as an *optional* transmitter or as *optional* transmitters of registration information for the purposes of the relevant registrations to the International Registry. Where use of the designated entry point is to be both (a) compulsory for registration information not relating to aircraft engines *and* (b) optional for registration information relating to aircraft engines, Form no. 28-A should be used. Where use of the designated entry point is to be compulsory but is not to cover aircraft engines, use Form no. 28-B.

(xxx1) *Form No. 30 (opt-out declarations under Article XXX(5) providing for partial application of Article XXI)*⁴⁷

(Name of the State)

declares that it will not apply Article XXI as regards the following *(specify which part of Article XXI is not to be applied)*

.....
.....
.....
.....

and that it will apply that Article under the following conditions *(specify the relevant conditions)*⁴⁸

.....
.....
.....
.....
.....
.....

or apply the following other forms of interim relief *(list the relevant other forms of interim relief)*.....

.....
.....
.....
.....
.....

⁴⁷ A Contracting State should use this form if it wishes to apply Article XXI only *in part*; compare with Form No. 31.

⁴⁸ The words “under the following conditions” are intended to be interpreted as referring to the cases in which the State in question will apply Article XXI.

(xxx1) *Form No. 31 (opt-out declarations under Article XXX(5) providing for the exclusion of the application of Article XXI in its entirety)*⁴⁹

(Name of the State)

declares that it will not apply Article XXI, wholly or in part.

⁴⁹ A Contracting State should use this form if it wishes to exclude Article XXI *in its entirety*. If Article XXI is to be *partially* applied, use Form No. 30.

(xxxiii) *Form No. 32 (opt-out declarations under Article XXIV(2))*

(Name of the State)

declares that it will not apply Article XXIV.

(xxxiv) *Form No. 33 (specific declarations under Article XXIX)* ⁵⁰

(*Name of the State*)

declares that the Aircraft Protocol is to apply to the following of its territorial units (*list the relevant territorial unit or units*) ⁵¹

.....
.....
.....
.....
.....

⁵⁰ A Contracting State should use this form if it wishes the Aircraft Protocol to apply to *less than all* its territorial units; compare with Form No. 34.

⁵¹ A State extending the application of the Aircraft Protocol to others of its territorial units than those listed in Form No. 33 may make separate declarations for each such other unit or units under each of the declarations authorised under the Aircraft Protocol; cf. Article XXIX(4).

(xxxv) *Form No. 34 (general declarations under Article XXIX)* ⁵²

(*Name of the State*)

declares that the Aircraft Protocol is to apply to all its territorial units. ^{53 54}

⁵² A Contracting State should use this form if it wishes the Aircraft Protocol to apply to *all* its territorial units; compare with Form No. 33.

⁵³ A Contracting State having made such a declaration may modify the latter by submitting another declaration at any time; cf. Article XXIX(1) *in fine*.

⁵⁴ Where a Contracting State has not made any declaration under Article XXIX(1) the Aircraft Protocol will automatically apply to all territorial units of that State; cf. Article XXIX(3).

V. SYSTEM OF DECLARATIONS UNDER THE CONVENTION (FOR REGIONAL ECONOMIC INTEGRATION ORGANISATIONS)

(a) *Introduction*

25. Under Article 48(1) of the Convention, Regional Economic Integration Organisations which are constituted by sovereign States and have competence over certain matters governed by the Convention may sign, accept, approve or accede to that instrument in the same way as States and, where they do so, under Article 48(3), all references in the Convention to “Contracting State” or “Contracting States” or “State Party” or “State Parties” are to apply equally to such Organisations where the context so requires.

26. Under Article 48(2) of the Convention, such a Regional Economic Integration Organisation must lodge a declaration with the Depositary at the time of its signature, acceptance, approval or accession, specifying the matters governed by the Convention in respect of which competence has been transferred to that Organisation by its member States. Pursuant to the same provision, such an Organisation is also under an obligation to notify the Depositary promptly of any changes to the distribution of competence, including any new transfers of competence, specified in its declaration.

27. Thus, once a Regional Economic Integration Organisation has signed, accepted, approved or acceded to the Convention and lodged such a declaration with the Depositary in accordance with Article 48(1) and (2), that Organisation in effect takes over the role of its member States for the purposes of the making of the declarations authorised under the Convention as regards those matters in respect of which competence has been transferred to it, as specified in its declaration.

28. The declaration that will be treated in this section and for which a declaration form is provided hereunder concerns the declaration that may be made under Article 48(2) (Regional Economic Integration Organisations).

29. It should be noted that the declaration to be made by Regional Economic Integration Organisations under Article 48(2) is mandatory in nature.

30. The Registrar has the duty of maintaining a list of the declarations and withdrawals of declarations communicated to the Registrar by the Depositary as having been declared by Contracting States, and therefore also by Regional Economic Integration Organisations that have accepted, approved or acceded to the Convention, with the date of each such declaration or withdrawal of a declaration. Given that States and such Organisations’ declarations under the Convention are bound to play an essential part in the future operation of the international registration system and given the complexity of the issues involved in these declarations, and in particular the important consequences that will therefore flow from a State or Organisation’s precise choice of words in the framing of each such declaration, the interest of guaranteeing efficiency in the operation of the international registration system militates strongly in favour of the employment of the minimum number of languages possible in the framing of such declarations. **Especial significance therefore attaches to the decision taken by the UNIDROIT Governing Council at its 81st session, held in Rome on 24 and 25 September 2002, to urge Contracting States to the Convention (and therefore also Regional Economic Integration Organisations) when submitting declarations thereunder to ensure that they do so in one or other of the Institute’s working languages, English and French,**

a decision that was confirmed by the General Assembly of UNIDROIT member States, at its 56th session, held in Rome on 6 December 2002, when it passed a Resolution inviting all Contracting States to submit such declarations as they might decide to lodge under the Convention in one or other of the working languages of the Institute (cf. the text of this Resolution, reproduced in the Appendix to this document).

VI. SYSTEM OF DECLARATIONS UNDER THE AIRCRAFT PROTOCOL (FOR REGIONAL ECONOMIC INTEGRATION ORGANISATIONS)

(a) *Introduction*

31. Under Article XXVII(1) of the Aircraft Protocol, Regional Economic Integration Organisations which are constituted by sovereign States and have competence over certain matters governed by the Aircraft Protocol may sign, accept, approve or accede to that instrument in the same way as States and, where they do so, under Article XXVII(3), all references in the Aircraft Protocol to “Contracting State” or “Contracting States” or “State Party” or “State Parties” are to apply equally to such Organisations where the context so requires.

32. Under Article XXVII(2) of the Aircraft Protocol, such a Regional Economic Integration Organisation must lodge a declaration with the Depository at the time of its signature, acceptance, approval or accession, specifying the matters governed by the Aircraft Protocol in respect of which competence has been transferred to that Organisation by its member States. Pursuant to the same provision, such an Organisation is also under an obligation to notify the Depository promptly of any changes to the distribution of competence, including any new transfers of competence, specified in its declaration.

33. Thus, once a Regional Economic Integration Organisation has signed, accepted, approved or acceded to the Aircraft Protocol and lodged such a declaration with the Depository in accordance with Article XXVII(1) and (2), that Organisation in effect takes over the role of its member States for the purposes of the making of the declarations authorised under the Aircraft Protocol as regards those matters in respect of which competence has been transferred to it, as specified in its declaration.

34. The declaration that will be treated in this section and for which a declaration form is provided hereunder concerns the declaration that may be made under Article XXVII(2) (Regional Economic Integration Organisations).

35. It should be noted that the declaration to be made by Regional Economic Integration Organisations under Article XXVII (2) is mandatory in nature.

36. The Registrar has the duty of maintaining a list of the declarations and withdrawals of declarations communicated to the Registrar by the Depository as having been declared by Contracting States, and therefore also by Regional Economic Integration Organisations that have accepted, approved or acceded to the Aircraft Protocol, with the date of each such declaration or withdrawal of a declaration. Given that States and such Organisations’ declarations under the Aircraft Protocol are bound to play an essential part in the future operation of the international registration system and given the complexity of the issues involved in these declarations, and in particular the important consequences that will therefore flow from a State or Organisation’s precise choice of words in the framing of each such declaration, the interest of guaranteeing efficiency in the operation of the international registration system militates strongly in favour of the employment of the minimum number of languages possible in the framing of such declarations. **Especial significance therefore attaches to the decision taken by the UNIDROIT Governing Council at its 81st session, held in Rome on 24 and 25 September 2002, to urge Contracting States to the Aircraft Protocol (and therefore also Regional Economic Integration Organisations) when submitting declarations thereunder to ensure that they do so in one or other of the Institute’s working languages, English and French,**

a decision that was confirmed by the General Assembly of UNIDROIT member States, at its 56th session, held in Rome on 6 December 2002, when it passed a Resolution inviting all Contracting States to submit such declarations as they might decide to lodge under the Aircraft Protocol in one or other of the working languages of the Institute (cf. the text of this Resolution, reproduced in the Appendix to this document).

RESOLUTION (56) 1

**adopted by the General Assembly of UNIDROIT member States
(Rome, 6 December 2002)**

THE GENERAL ASSEMBLY,

WHEREAS depositary functions under the Convention on International Interests in Mobile Equipment (hereinafter referred to as *the Convention*) and the Protocol thereto on Matters specific to Aircraft Equipment (hereinafter referred to as *the Protocol*) have been conferred upon the Institute by the diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol, held in Cape Town from 29 October to 16 November 2001,

CONSCIOUS of the need to make urgent provision for the human and financial implications of these depositary functions in such a way as to enable the Institute to perform such functions in an efficient and timeous manner,

CONSIDERING the importance of the complex system of declarations authorised under the Convention and the Protocol for the effective operation of the International Registry for aircraft equipment due, under Resolution No. 2 adopted by the Cape Town diplomatic Conference, to be fully operational at the latest by the time of the entry into force of the Convention and the Protocol,

INVITES

1. UNIDROIT member States to provide the Institute, on a voluntary basis, pending adoption of the budget for the 2004 financial year, with the necessary human and financial resources to perform its depositary functions under the Convention and the Protocol with the maximum urgency.

2. All Contracting States to the Convention and the Protocol to submit such declarations as they may decide to lodge thereunder in one or other of the working languages of the Institute.