

Cape Town Convention Academic Project

Facilitating the study of the Convention on International Interests in Mobile Equipment

ANNOTATION TO PROFESSOR SIR ROY GOODE'S

OFFICIAL COMMENTARY, THIRD EDITION (UNIDROIT, 2013)

CONVENTION ON INTERNATIONAL INTEREST IN MOBILE EQUIPMENT AND PROTOCOL THERE TO ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

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This document sets out an annotation (“**Annotation**”) to Professor Sir Roy Goode’s Official Commentary to the Convention on International Interests in Mobile Equipment and Protocol Thereto on Matters Specific to Aircraft Object, Third Edition (the “**Official Commentary**”). There is a [separate document that sets out all Annotations](#) on a cumulative basis, organised with reference to the order of the Official Commentary.

This document is issued by the Cape Town Convention Academic Project, a joint undertaking of the University of Oxford Faculty of Law and the University of Washington School of Law, pursuant to procedures established by these two institutions.

The facility for the Cape Town Convention Academic Project to issue Annotations has been [endorsed by Professor Sir Roy Goode](#) in a personal, and not in any official, capacity. The Annotations have no official standing and do not constitute part of the Official Commentary, which is the only publication authorised by the 2001 Diplomatic Conference. It deals with questions not addressed or not fully addressed in the Official Commentary. It seeks to provide a neutral and informed analysis for the benefit of those involved with the above-noted convention (“**Convention**”) and protocol (“**Protocol**”).

The format followed in this document is to set out (i) the referenced paragraph(s) and/or illustration(s) in the Official Commentary, (ii) the background and/or issue(s), (iii) the Annotation related to such paragraph(s) and/or illustrations, and (iv) the rationale for such Annotation.

Annotation 2. 4.88, 4.89 and 4.91 - Illustration 7

Background/Issue: In paragraph 4.89 and Illustration 7 of the Official Commentary, reference is made to an Article 39 non-consensual rights or interests having priority over Article 29 registered interests. In particular, illustration 7 is express on that point. Neither paragraph 4.89 nor illustration 7 states that such prevailing non-consensual right or interest are limited to local interests, that is, those that arose and are given priority under the national law of the contracting state where the aircraft object is sold.

Annotation: The statements made, and conclusions reached, in paragraphs 4.89 (and by necessary implication 4.88 (regarding “interested parties” entitled to notices)) and Illustration 7 as regards the priority position of an Article 39 non-consensual right or interest assume that, and are limited to, such a right or interest created in, and recognised as having priority under the laws of, the same contracting state where the aircraft is sold. In Illustration 7, C5’s Convention entitlement is limited to that case.

Rationale: Professor Goode’s makes clear in paragraphs 2.212 and 4.269 that an Article 39 nonconsensual right or interest is not entitled to recognition in another contracting state unless the conflict of laws rules of that state so require. (The same points are made in respect of rights of detention in paragraphs 2.215 and 4.272.) Rather, they enjoy a Convention priority only in, and under the laws of, the Article 39 declaring state. The above conclusions are required to ensure that result.

