

## Cape Town Convention Academic Project

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

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### **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 1.      Official Commentary Reference(s): 2.65**

Background/ issue: The Convention does not apply to a pre-existing right or interest unless the

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relevant contracting state has made a declaration under Article 60(1) of the Convention. However, parties may wish to take action to subject pre-existing transactions to the Convention. Confirmation has been sought that, in a pre-existing transaction, each type of Convention debtor, namely, a chargor, a conditional buyer, and a lessee, may create a new international interest in favour of its existing creditor thereby triggering the Convention and permitting, *inter alia*, registration with the international registry and the issuance of an IDERA.

In paragraph 2.65 of the Official Commentary, there is discussion about the power to dispose, and, in particular, an analysis of the ability of a conditional buyer or lessee to grant a second security interest by way of sub-sale or sub-lease, respectively. Paragraph 2.65 does not, however, specifically state whether a conditional buyer and/or lessee has the power to dispose of an aircraft object and grant an “international interest” by way of a security agreement.

Annotation: The implication of paragraph 2.65 is that each type of Convention debtor in a pre-existing transaction may create a new international interest in favour of its existing creditor to which the Convention applies, provided it is constituted after the effective date of the Convention in the contracting state where the debtor is situated. In the case of security given by a chargor, the grant is a second charge over its interest in the aircraft. In the case of security given by a conditional buyer, the grant is a security interest over its equity of redemption (by way of the equivalent of a second charge). In the case of security given by a lessee, the grant is a security interest over its leasehold interest. In all cases, a security interest (international interest) in the aircraft object is created and may be registered in the international registry, the secured obligations may be those out in set in the existing transaction, and an IDERA may be issued. The foregoing addresses neither the priority position of the new international interest vis-à-vis any intervening creditors nor the effect, if any, of insolvency rules (save those overridden by application of the Convention or Aircraft Protocol).

Rationale: In the case of a granting chargor, the Convention expressly supports these conclusions. In the case of a granting conditional buyer or lessee, the logic of Professor Goode’s treatment of the power to dispose requires these conclusions.