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The relationship between transnational commercial law treaties and national law – A framework as applied to the Cape Town Convention

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Treaties relate to and interact with national law in complex and important ways. That relationship directly impacts the extent to which transacting parties can reasonably rely on new and beneficial international norms. This article sets out a core conceptual framework, applicable to modern commercial law treaties, to assist in understanding that relationship. The article starts with threshold questions such as the extent to which a treaty has the prevailing force of law in a contracting state, then turns to the borderline between the scope of treaties and national law, including internal-treaty terms that contemplate application of national law, the question of which national law applies and when, and, finally, application of a treaty by virtue of the national law of non-contracting states. The article then applies this framework to the specific case of the Cape Town Convention and its Aircraft Protocol.

1. Introduction

This article addresses aspects of the relationship between transnational commercial law treaties ('Treaties')[1] and national law. While not comprehensive in scope, it provides a conceptual framework for understanding core features of that relationship. The framework is then applied to the case of the Convention on International Interests in Mobile Equipment ('Convention') and its Aircraft Protocol ('Aircraft Protocol').[2] Focus is on these instruments (together, 'Cape

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[1] More specifically, it focuses on, and references to Treaties herein mean, modern *substantive* commercial law treaties. Many points made in this article would not apply to or be correct in the context of other treaties. By 'modern substantive commercial law treaties', we mean those treaties (i) adopted in or since 1980 (as CISG (defined below) ushered in a new phase of work in this field), (ii) addressing an area or areas of commercial law, and (iii) which are not primary conflict of laws instruments. These Treaties are (a) United Nations Convention on Contracts for the International Sale of Goods, 1980 ('CISG'), (b) UNIDROIT Convention on International Financial Leasing, 1988 ('UNIDROIT Financial Leasing Convention'), (c) UNIDROIT Convention on International Factoring, 1988 ('UNIDROIT Factoring Convention'), (d) the Cape Town Convention, (e) United Nations Convention on the Assignment of Receivables in International Trade, 2001 ('UN Receivables Convention'), and (f) UNIDROIT Convention on Substantive Rules for Intermediated Securities, 2009 ('UNIDROIT Securities Convention').

[2] Section 3(c)-(d) of this article borrows from and is otherwise inspired by the invaluable *Official Commentary to the Cape Town Convention* (Third Edition, UNIDROIT, 2013) by Professor Sir Roy Goode (the 'Official Commentary'), to whom this article is dedicated for, *inter alia*, sharing over the years his deep insights into our topic. In particular, but without limiting the foregoing, we refer, and give full credit, to paras 2.9, 2.58, 2.59, 2.72 – 2.74, and 3.23 – 3.28 of the Official Commentary, and, following Sir Roy's dictum to keep articles and footnotes as light as possible, will not make further precise references thereto.

Town Convention', or, in short, 'CTC'),[3] rather than the other protocols to the Convention,[4] though application of this framework to such protocols would sharpen and deepen our thinking, no doubt leading to refinements.

Section 2 will set out that proposed framework ('Treaty – National Law Framework'). The Treaty – National Law Framework is built around the following five core questions:

1. Under what conditions, and to what extent, do Treaties have the *force of law* in contracting states thereto, separate from the international obligations incurred thereby.
2. To what extent, and with what limitations, if any, do the terms of a Treaty, which have the force of law in a contracting state, *prevail over conflicting law* in that contracting state.
3. To what extent *do the substantive terms of a Treaty*, which have the prevailing force of law in a contracting state, *apply to a transaction* covered thereby and what is the *continuing relevance of national law* in regulating such transactions.
4. To the extent that elements of national law in a contracting state apply to covered transactions, *which national law so applies*, the pertinent question often but not always being *what is the relevant 'applicable law' for these purposes.*
5. To what extent do the terms of a Treaty apply to a transaction by virtue *of national law in a non-contracting state*.

These are complex questions deserving detailed and separate treatment. Given practicalities, we can only skim the surface on these questions; instead, our focus is on placing them in a broader context. Part III will then apply the Treaty – National Law Framework to the CTC. Part IV will set out some concluding comments.

2. Treaty – National Law Framework

We now take up each element of the proposed Treaty – National Law Framework.

(a) Force of Law of Treaties

Under what conditions, and to what extent, do Treaties have the *force of law* in contracting states thereto, separate from the international obligations incurred thereby.

While Treaties bind parties thereto ('contracting states') and create inter-state responsibilities and liability,[5] the threshold question for commercial parties ('transacting parties') seeking to rely on Treaties in their dealings is whether the instrument has the 'force of law' in the relevant contracting state. By that, we mean the following: will national courts and administrative officials enforce and/or apply the Treaty provisions as national law in a transactional setting?

As international and national law operate on different planes, 'entry into force' of a Treaty by a contracting state[6] is a necessary, but not sufficient, condition to its having force of national law.[7] The fact that a contracting state

[3] *Convention on International Interests in Mobile Equipment* and *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment*, each adopted in Cape Town, 16 November 2001.

[4] This article does not address the (i) *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock*, adopted in Luxembourg, 23 February 2007 ('Rail Protocol'), or (ii) *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets*, adopted in Berlin, 9 March 2012 ('Space Protocol'). Neither the Rail Protocol nor Space Protocol is in force.

[5] Vienna Convention on the Law of Treaties, 1969 ('Vienna 1969'), the principal authoritative source of treaty law, at art 26, among others.

[6] A Treaty enters into force for a contracting state on the later of (i) it having expressed its 'consent to be bound' (typically by ratification or accession, hereinafter, for simplicity, 'ratification'), and (ii) the date the Treaty comes into force generally or for that state, in each case as contemplated by that Treaty. Vienna 1969, art 24.

[7] The main points in this Section 2(a) can also be seen in R. Goode, H. Kronke, E. McKendrick, and J. Wool, *Transnational Commercial Law: International Instruments and Commentary* (2nd Ed., Oxford University Press, 2012) 1-2. There are no authoritative sources of information on whether Treaties have the force of law in contracting states. International organizations, including legal depositaries, have traditionally avoided

cannot invoke the provisions of its national law as justification for failure to perform a Treaty[8] is cold comfort where Treaty rights cannot be enforced by transacting parties in national courts.

Whether and the extent to which a Treaty has the force of national law is determined by national law, usually constitutional in nature. An initial question is whether a Treaty needs to be incorporated or transformed into national law by legislation or a further legislative-type act. The label 'monism' has come to refer to systems in which a Treaty may become national law without legislation; the term 'dualism' refers to systems were legislation is required. Many systems have elements of both, and, thus, these categories might usefully be seen as representing a continuum. For example, actions such as laying a Treaty before the legislature, an executive order promulgating or implementing a Treaty, and/or official publication of a Treaty may be needed to ensure that a Treaty has the force of law.

Experience suggests that most contracting states take the action needed to ensure that a Treaty has the force of law.[9] That may be the case given the largely formal nature of the legal activity, established practices performed by expert officials, and the limited fact-specific nature of that legal activity.

(b) Prevailing Nature of Treaties

To what extent, and with what limitations, if any, do the terms of a Treaty, which have the force of law in a contracting state, *prevail over conflicting* law in that contracting state.

As with force of law, international treaty practice has assumed that the terms of a ratified treaty will prevail over conflicting national law ('primacy'), thus aligning the inter-state international obligation with – and this is the core commercial objective – reasonable reliance by transacting parties on the Treaty's terms under national law. But unlike with force of law, that assumption is often incorrect. Given the increasing complexity and scope of Treaties – including their movement into fields such as property rights, insolvency, and dispute resolution – the often intricate nature of national law on the matter of primacy of different legal rules, and the overriding commercial objectives of Treaties, this issue is now acute.[10] It requires more attention in governmental, academic, and commercial circles.

One way to approach the topic is to ask under what circumstances, and covering what subject matter, does a Treaty *not have primacy*, that is, would *not prevail* over conflicting law. Four broad areas warrant discussion.

(i) Insufficient Implementation Action

A Treaty will not prevail over conflicting national law where the government has not taken the action needed to ensure the primacy of that Treaty. This tautology must be included in any fair treatment of this subject, as such governmental inaction is not uncommon. The typical – and wholly avoidable – case is the simple absence of required legislation. Several jurisdictions have a rule that the absence of implementing legislation, while not impacting the force of law of a Treaty, renders its subordinate to conflicting law.

(ii) Operation of Adverse Hierarchical Rules

A Treaty will not prevail over conflicting national law where hierarchical rules operate in favour of such conflicting law. The most common cases involve those systems in which the principle of *lex posteriori* applies,[11] and a

– or through the Treaty have been instructed to avoid – this question as it is thought to encroach on matters of national sovereignty. The same applies, with greater force, to the questions dealt with in Section 2(6).

[8] Vienna 1969, art 27; see art 46 for a restricted exception to this rule.

[9] This is the case as regards fundamental or first order legal action, but often less so as regards subsidiary actions required to implement a Treaty at a regulatory or administrative level.

[10] The issue of primacy is less important, and, thus, has received less attention, where treaties either were driven by political rather than commercial objectives or sought more limited harmonisation objectives.

[11] For our purposes meaning: a later in time law prevails over an earlier in time one, of equally hierarchical rank.

subsequent conflicting law has been enacted, or in which the principle of *lex specialis* applies,[12] and a more specific law exists or is enacted. These cases present practical, predictability-reducing problems, as follows. First, Treaties now cut across a wide range of topics, which are the subject of development in the ordinary course, that is, which are the subject of subsequent law. Secondly, questions arise as to whether a Treaty is, in fact, more or less specific than certain general laws.[13] For example, is a law that governs many aspects of transaction type X, including its treatment in insolvency, more or less specific than a precise insolvency law? Does it matter if the Treaty's insolvency provision is general or specific in nature? Does it matter if the Treaty includes the words 'notwithstanding any rules on insolvency'?

Save in countries where Treaties are *per se* the *highest legal norm*,[14] for the reasons set out in (a) and (b) above, there is an emerging practice favouring the use of express legislation to establish the primacy of a Treaty.[15] Such legislation, containing a clear provision on primacy, is best international practice. It provides the most comfort to transacting parties and legal counsel asked to opine on the critical question of primacy.[16]

(iii) Public Law

A Treaty is a classic private law instrument, centred on the rights and obligations of transacting (and other private) parties. As such, it will not prevail over, indeed the conventional argument is that it does not conflict with, rules of public law. Within that admittedly general category, centred on the relationship between the individual and the state, falls *inter alia* regulatory law. However Treaties increasingly address state duties too, or contain state actions that otherwise affect, such parties. In short, they may expressly or implicitly address what otherwise would be considered public law. It is these borderline cases that merit attention and express discussion during the process of negotiating and ratifying a Treaty. Important questions of primacy may arise in these borderline cases.

(iv) Constitutional Type Law

It is axiomatic that a Treaty does not prevail over constitutional-type law in the case of conflict.[17] Yet, deeper analysis is needed, and little has been written on the subject. Would a specific constitutional provision directly affect the rights and obligations of transacting parties under the Treaty? If so, the contracting state should not be one, as it has undertaken an international obligation that it cannot fulfil. If not, generalised references to the constitutional framework should not be made, as they reduce the sought after predictability under the Treaty. In practice, the main legal issues revolve around concepts of due process, however expressed. Usually the precise issue deals with a Treaty's

[12] For our purposes meaning: a more specific law prevails over a more general one, of equal hierarchical rank.

[13] This issue might, alternatively, be framed as whether or not a 'conflict' exists.

[14] For our purposes meaning: a treaty *per se* prevails over all conflicting law (save, where applicable, constitutional-type law). That is the case in many legal systems. In such countries, a treaty prevails over conflicting non-treaty law that is enacted later in time. Where a treaty is the highest legal norm, the relevant issues are (i) whether all necessary procedural requirements were met to ensure primacy of the treaty, (ii) whether a treaty actually conflicts with national law, and (iii) whether there is a subsequent treaty which conflicts with the first treaty.

[15] See Annex IV, column 4, references to 'Express Legislation' in relation to relevant CTC contracting states.

[16] Logically, express legislation cannot pre-empt the effect of a subsequent law which itself establishes its own primacy. But the inclusion of words to the effect of 'notwithstanding any laws' or the like in the initial legislation is a clear signal of intended primacy. It may well impact future legislative action and the interpretation of conflicting laws.

[17] The constitutions of many states contain explicit references to the prevailing nature of international treaties; however, they most often contain provisos, or have been interpreted to mean, that such international treaties do not prevail over the constitution, in case of conflict.

provision on enforcement and whether it permits procedures thought to be prohibited under constitutional law. Modern Treaties are drafted with care so as to try and avoid that conclusion.

(c) Scope of Treaties and Continuing Relevance of National Law

To what extent *do the substantive terms of a Treaty*, which have the prevailing force of law in a contracting state, *apply to a transaction covered* thereby and what is the *continuing relevance of national law* in regulating such transactions.

We now set out a general classification system designed to identify whether the substantive terms of a Treaty (that is, those other than its references to the national law) apply to an item, or, rather, whether national law does. A simplified depiction of this system is attached hereto as Annex I.

Underpinning and animating this system are the fundamental features of the Treaties: the establishment of international rules, to be viewed and interpreted as such, which, increasingly, are based on *sui generis* concepts derived from the instrument itself. They are typically innovative concepts, reflect best international thinking, and, critically, are designed to promote a transaction type, producing commercial benefits. While comparative assessments of national law might have been relevant to the details and characteristics of the rules, once so created by Treaty, they stand, as intended, as autonomous constructs. We refer to the foregoing as the 'autonomous interpretation principle'.[18] The autonomous interpretation principle is expressed in, and reinforced by, a clause in the Treaties that instructs national courts to avoid national concepts in interpreting the texts. These clauses include a focus on 'the international character' of the Treaty and 'the need to promote uniformity in its application'. The autonomous interpretation principle is not only present in Treaties, it is also articulated by different states' constitutional laws and courts.[19] A summary of the clauses from the Treaties, containing the autonomous interpretation principle, is attached hereto as Annex II.[20]

(i) Transactions within core scope – application of substantive Treaty terms

At the most basic level, a Treaty applies when two conditions are met. Where that occurs, we refer to the transaction (or expressly related legal item) as being within the core scope of a Treaty. First, the subject matter of the Treaty is

[18] This point is succinctly made by M P Van Alstine, 'Dynamic Treaty Interpretation' (1998) 146 *University of Pennsylvania Law Review* 687, 730-31: '…interpretation of a private law convention must proceed on the basis of its 'international character'. This directive serves a separating and elevating function. That is, it suggests an 'autonomous' interpretation free from the influence of national legal concepts and terminology, and even from the domestic interpretive techniques themselves. In doing so, this mandate amounts to an express direction to interpreters to view a convention as occupying an entirely different, elevated international dimension'.

[19] The constitutions of certain states have adopted this reasoning with respect to their domestic legislation. For example, section 233 of South Africa's constitution provides that national courts are to 'prefer any reasonable interpretation of legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law'. Furthermore, in *R v Secretary of State for the Home Department, ex parte Adan* [2001] 2 AC 477, 515-517, Lord Slynn stated: '…it is necessary to determine the autonomous meaning of the relevant treaty provision. This principle is part of the very alphabet of customary international law…In principle therefore there can only be one true interpretation of a treaty…In practice it is left to national courts, faced with a material disagreement on an issue of interpretation, to resolve it. But in doing so it must search, untrammelled by notions of its national legal culture, for the true autonomous and international meaning of the treaty. And there can only be one true meaning'.

[20] Note, in particular, the underlined sections, which illustrate the evolution through (i) additional references to 'predictability' (CTC and the UNIDROIT Securities Convention) versus those to 'good faith' (CISG, UNIDROIT Financial Leasing Convention, UNIDROIT Factoring Convention, and UN Receivables Convention) and (ii) the inclusion of the reference to 'object and purpose as set forth in the preamble' in the Treaties post-CISG (with the exception of UNIDROIT Securities Convention), for purposes of such autonomous interpretation.

present. That will typically involve a transaction type and may require types of parties acting in specified capacities. The object may be a contract or property or both. Secondly, the foregoing must have the requisite connection to a contracting state, usually described as the Treaty's sphere of application. This 'connecting factor' justifies as applicable an international rather than a national rule, given the international element or features in the transaction (or related legal items) or subject matter. There is a general movement towards widening, and, thus, more easily triggering, the requisite internationality element, so that the Treaty applies and resolves issues in a larger number of cases. While factual questions may arise as to whether the required subject matter and connecting factors are present, these items do not raise conceptual concerns. They are or should be settled by clear drafting.

(ii) Penumbra issues – application of substantive Treaty terms or national law, depending on whether a general principle applies

Much follows from the autonomous interpretation principle, including that a penumbra or periphery exists requiring application of a Treaty's substantive terms or those implied thereby – to the exclusion of otherwise applicable national law – to the extent set out below. These are issues that relate to or otherwise directly or indirectly impact core concepts in the Treaty and/or the rights and obligations of transacting parties thereunder ('penumbra issues'). This extended scope is often express: some Treaties contain a clause that requires that, in the first instance, gap-filling ('questions concerning matters governed by [the Treaty] which are not expressly settled in it') is to be done 'in conformity with the *general principles* on which [the Treaty] is based' (emphasis added).[21] In the other Treaties, the same conclusion is implied from the autonomous interpretation principle. If no general principle applies to a penumbra issue, then the gap is filled by the applicable law.

As is evident from a review of Annex II-A, the general principles underlying the text are highly substantive and rich in legal implication for the purposes of gap-filling. That is certainly the case for all Treaties including and since the Cape Town Convention. For such Treaties, the autonomous interpretation principle and related clauses support a wide application of a Treaty's substantive terms and principles to many, if not most, penumbra issues, reflecting the objective and purposes of the Treaty, as required by art 31 of Vienna 1969 (general rule of treaty interpretation).[22]

(iii) Issues outside of scope – application of substantive national law terms

The line between a penumbra issue *without* an applicable general principle, on the one hand, and a matter simply not addressed by a Treaty (that is, a question concerning a matter *not* governed by a Treaty), on the other, may in some cases be so fine as to be unhelpful. In practice that difficulty may not be relevant, as, in either case, national law will furnish the answer. While, as noted above, questions falling in the first category (penumbra issues without general principles) are limited for the Cape Town Convention and post-CTC Treaties, important items remain in the second category (issues truly out of scope). Treaties are not comprehensive codes and do not occupy the whole field of their subject matter. There are significant points – beyond the penumbra issues – on which application of national law is required and helpful.

(iv) Internal Treaty terms – application of substantive national law terms

The more significant role for national law in the Treaty context arises through internal Treaty

[21] See Annex II. The general principles are typically seen with greatest clarity in the preamble. A summary of the preambles to the Treaties is attached hereto as *Annex II-A*.

[22] The rule consists of three elements: the text (provisions), context (preamble and annexes), and object and purpose (usually also in the preamble). In addition to context, subsequent agreement on application or interpretation and practice are also to be taken into account.

terms that expressly refer to such law. A typical Treaty will contain many such references. The prominence of such references to national law – often on sensitive and complex issues – reveals the hybrid nature of Treaties, mixing substance and conflicts features. Further research is needed to catalogue and compare these express references to national law with a view towards identifying patterns and, possibly, unification-related problems requiring more attention during the Treaty-negotiation process. As a starting point, a listing of the references to or application of national (usually phrased as the 'applicable') law in the Treaties is attached hereto as Annex III.[23]

(d) What National Law Applies, including as the 'Applicable Law'

To the extent that elements of national law in a contracting state apply to covered transactions, *what is that national law*, the pertinent question often but not always being *what is the relevant 'applicable law' for these purposes*.

Where national law applies within a Treaty framework, a close examination of the specific issue or, in the case of an express reference to national law, of the particular clause and/or context is required. The baseline rule is generally that reference to the 'applicable law', through express text or practice, is to the national (usually phrased as 'domestic') law selected by the *lex fori*. That avoids problems of *renvoi* which if applicable would reduce the much-valued predictability of the Treaties. Beyond that few general statements can be prudently made, in particular regarding which national law will be selected by the *lex fori*. Well drafted Treaties however should contain precise answers to, or necessary inferences for, each individual question as regards which national law applies.

(e) Application of Treaties Terms and Non-Contracting States

To what extent do the terms of a Treaty apply to a transaction by virtue *of national law in a non-contracting state*.

It is well understood that a Treaty, as such, neither imposes obligations nor confers rights on non-contracting states.[24] Yet many Treaties apply notwithstanding that transacting parties or some transacting parties are located in non-contracting states. In addition, the subject matter of some Treaties – mobile and intangible assets – has traditionally lent itself to application of foreign law by national courts. These two factors, plus the intersection between the Treaties and other treaties with choice of law elements, have produced facts where Treaties or parts thereof apply via the rules of private international law (conflict of laws) of non-contracting states.[25] A factor to be taken into account is the method by which a Treaty has been implemented by a contracting state to whose law a non-contracting state refers. If it has become general national law in that contracting state, its provisions (without *renvoi*) are more likely to be applied in non-contracting states.

3. Application of the Treaty – National Law Framework to the Cape Town Convention

We now apply each element of the proposed Treaty – National Law Framework to the Cape Town Convention.

For purposes of Sections III(1) and (2) below, we refer to, and will draw general conclusions from, the Summary of National Implementation attached hereto as Annex IV ('SNI').[26]

[23] For completeness, the Annex includes areas expressly excluded, since such items being outside a Treaty's scope are governed by national law.

[24] Vienna 1969, art 34. There are limited exceptions to this rule, see Vienna 1969, arts 35-7, but these have not been seen in the commercial context.

[25] See Art 1(1)(b) of the UN Receivables Convention, which provides that if previous assignments were governed by that Treaty, then subsequent assignments are also governed by it, which based on the drafting of the clause lends itself to the assumption that the subsequent assignments may not have the necessary link to a contracting state.

[26] The version of the SNI annexed hereto is an interim draft, updating – solely for purposes of this article – the one released by the Aviation Working Group in May 2013. A revised and further updated version is expected to be released in or by early October 2013. It will be

(a) Force of Law of the Convention

Under what conditions, and to what extent, do Treaties have the force of law in contracting states thereto, separate from the international obligations incurred thereby.

There have been few problems to date in concluding that the CTC has the force of law in its contracting states.[27] The means for establishing such force of law span the full range of executive, legislative and administrative action, almost always taken in line with customary treaty practice in each such state. The nature and specifics of the required government action has understandably mirrored the steps, if any, needed to transform or incorporate treaties into national law.

Problems have been seen however on the matter of whether the CTC's provisions on de-registration and export in general, and the acceptance and enforcement of irrevocable de-registration and export authorizations ('IDERAs') in particular, have affirmative legal effect. The issue arises in jurisdictions which need, but have not promulgated, subsidiary regulations, rules, instructions, or the like. Whether the problem relates, technically, to force of law or the primacy of such provisions,[28] the result is the same: transacting parties may be unable to fully rely on these CTC provisions. While some contracting states have, without further action, effectively implemented these provisions through general CTC legislation and/or the treaty's status as the highest legal norm, best international practice on the implementation of the CTC includes some form of civil aviation rulemaking and/or procedural instructions to give, in equal measure, legal and practical effect to de-registration, export, and IDERA-related provisions of the CTC.[29]

(b) Prevailing Nature of Treaties

To what extent, and with what limitations, if any, do the terms of a Treaty, which have the force of law in a contracting state, prevail over conflicting law in that contracting state.

(i) Insufficient Implementation Action

Significant problems have been faced, and many have been addressed, under the heading of insufficient implementation action by contracting states. A review of column 4 of the SNI gives an indication, though it is not a comprehensive, historical document.[30] Countries that needed legislation to establish the primacy of CTC, and passed such law subsequent to the effective date of its ratification, include Indonesia, Nigeria, Turkey,[31] Kenya,

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further updated on a regular basis (and the most current version can be found on www.awg.aero). For purposes of this article, the difference among the versions is not important, as we use the SNI herein only to illustrate general points. The disclaimer at the beginning of the SNI is fully incorporated by reference in this article and applies with equal force hereto.

[27] Brazil was an exception, as it required an executive order to bring the CTC into force, which was not passed until after the effective date of its ratification (1 March 2012). That order (Presidential Decree no. 8008) was published on 16 May 2013. A similar situation arose, and was addressed (in that case, by legislation), in Kazakhstan.

[28] Where such subsidiary regulation is not formally required, there may remain the non-legal, but sometimes real, issue of the knowledge by administrative officials of the requirements of the CTC. Subsidiary regulation, like civil aviation regulations, staff instructions and similar instruments, have served that educational function.

[29] China is an example of a country that has prepared – indeed has improved and revised – its implementing civil aviation regulations to effect these provisions; the Civil Aviation Administration of China ('CAAC') issued administrative procedures in 2011 (AP-45-AA-2011-02R1) providing a clear framework pursuant to which a creditor could de-register an aircraft under an IDERA.

[30] National legislative historical materials, organised by contracting state, will be included in the Oxford – University of Washington CTC Academic Project's electronic repository. That database, when launched (scheduled for later in 2013), will not contain all such historical materials, but will be expanded over time. The address of the site will be www.ctcap.org.

[31] Though the doctrine of *lex posteriori* applies, and there are *questions*, currently being addressed, about the effect of laws passed subsequent to the CTC implementation law on the primacy of select parts of the CTC.

and Kazakhstan.[32] Countries that have been identified as requiring further legislative (or executive) action to establish or enhance such primacy include India, the United Arab Emirates,[33] South Africa, and Myanmar. All of these countries are taking steps to improve the position on primacy.

(ii) Operation of Adverse Hierarchical Rules

A substantial number of countries required and passed legislation[34] not only to ensure force of law but also primacy. Most contained *express language* on the primacy point, which is now considered best international practice; others relied on legislation coupled with the doctrine of *lex posteriori* and/or *lex specialis*. These countries include the following, as identified by legal experts: Canada, Indonesia, Ireland, Kenya, Malaysia, Malta, New Zealand, Norway (addressing select points), and Singapore.[35]

Many contracting states benefit from the fact that treaties are the *highest legal norms* in their legal system. That has produced a reasonably clear picture of the primacy of the CTC. These include the following countries, as identified by legal experts: Albania, Belarus, Cameroon, Cape Verde, China, Ethiopia, Kazakhstan, Latvia, Luxembourg (which also had express legislation), Mexico, Mongolia, Russia, Senegal, Tajikistan, Togo, Ukraine, and the United States.[36]

The analysis of primacy in some countries includes a hybrid of factors, including the doctrines of *lex posteriori* and/or *lex specialis*. They include Brazil, Colombia, and Panama.

(iii) Public Law

The relationship between the CTC and public law has received limited attention, reflecting the unstated, yet well-understood, different spheres of private law (CTC) and public law (here, mainly regulatory law). The exception[37] is Canada,[38] in which its primacy clause contained a narrow carve-out for limited public law. The contents of that carve-out does not, individually or collectively, present an impediment to the enforceability of CTC rights and remedies in customary aircraft financing transactions.

(iv) Constitutional Type Law

Similarly, constitutional issues have played a limited role in the CTC ratification and implementation processes in general, and regarding the primacy analysis in particular. That is best explained by the declaration required under Article 54(2) of the Convention, in which contracting states set out whether or not leave of the court is required in exercising basic remedies under the Convention. That provision – more precisely, the permitted use, depending on the declaration, of non-judicial remedies – is the one CTC clause that potentially raises such issues in select contracting states. It

[32] The situation was somewhat more complicated in Kazakhstan, as the legislation was needed to ensure force of law, but which instead addressed primacy (though art 4.3 of the Kazakhstan Constitution assigns treaties the highest legal norm).

[33] Experts' opinions differ on the extent of the issue, but all agree that definitively resolving the primacy issue via a clear new decree is advantageous.

[34] For example, Fiji established primacy through express wording in an executive decree, not legislation (Civil Aviation (Amendment) Decree 2013). Pakistan took action via implementing rules, not legislation (Cape Town Convention and Aircraft Protocol (Implementation) Rules 2004).

[35] For each of the foregoing contracting states, see the relevant entry in column 4 of Annex IV.

[36] For each of the foregoing contracting states, see the relevant entry in column 4 of Annex IV. Note that the United States passed implementing legislation regarding practices and procedures of the Federal Aviation Administration relating to its role as an authorising entry point to the International Registry.

[37] During the United States ratification process, a similar issue was discussed, namely, the relationship between (i) the CTC's provision on export as a remedy, and (ii) US export control law. US officials concluded that, following established practice, the former did not impact the latter, and that this was sufficiently clear and understood without express treatment.

[38] See The International Interests in Mobile Equipment (aircraft equipment) Act (Canada), as amended by the Jobs and Growth Act, 2012 (Canada).

is of note that both Mexico[39] and Colombia[40] consulted with their respective constitutional courts prior to ratification. It is understood that South Africa is currently addressing an issue of a constitutional character.

(c) Scope of Treaties and Continuing Relevance of National Law

To what extent *do the substantive terms of a Treaty*, which have the prevailing force of law in a contracting state, *apply to a transaction covered* thereby and what is the *continuing relevance of national law* in regulating such transactions.

We now apply elements of Annex I – the depiction of treaty versus national law – to the precise case of the CTC. As little needs to be said about the core items covered by the CTC, focus is on, with reference to that Annex, (i) penumbra items governed by the CTC general principles and terms implied thereby, (ii) penumbra items for which there are no such general principles and items outside of the extended scope of the CTC which are governed by national law, and (iii) items on which the CTC expressly refers to national law. What follows is illustrative, not comprehensive.

(i) Penumbra items governed by the CTC

The CTC provides international treaty-based law on the creation, registration, enforcement (including on insolvency), and priority of international interests and the assignment of associated rights. It does much of the same for contracts of sale. It provides broad and deep dispute resolution procedures. All of the foregoing is designed to avoid references to conflict of laws and to facilitate asset-based financing and leasing, promote party autonomy, and provide economic benefits. Legal predictability lies at the intersection of most of these points.[41] The CTC seeks to achieve all of the above through an innovative system based on several *sui generis* concepts, starting with the international interest, contract of sale, and assignment. The provisions are necessarily complex, and were drafted to stand together as a balanced and integrated corpus of international rules.

From the preceding paragraph, it is evident that there is an *exceptionally large penumbra or periphery surrounding the core CTC provisions*. There are wide-ranging 'general principles' that, under Article 5(2) of the Convention, *must* be employed to fill gaps before reference to national law.

From the points above, and without suggesting any limitation on articulating other general principles derived from such points, one can reasonably set out the following as *overarching general principles* for gap-filling purposes.

(I) There should be a strong presumption on the enforceability of contract provisions even when the Convention is silent on a topic.[42]

(II) Terms should be implied, when needed, that enhance transactional predictability and reflect international best practices in asset-based financing and leasing.

(III) Terms should be implied, when needed, to provide further details related to the *sui generis* concepts and their legal implications.[43]

[39] In its interpretation of Art 133 of Mexico's Federal Constitution, the Supreme Court of Justice of Mexico has confirmed in respect of Mexico's constitution that international treaties are part of the supreme law of the union and are hierarchically below the Federal Constitution and above general laws, federal laws, and local laws (LXXVII/99, *Amparo en revisión* 1475/98. Semanario Judicial de la Federación (Federal Judicial Weekly), Ninth Epoch, Vol. X, November 1999 at 46).

[40] The accession process involved a review by the Colombian Constitutional Court of the CTC. Following its review, the Constitutional Court declared that the CTC does not violate the Constitution, through ruling C-276 of 5 April, 2006.

[41] The CTC mindfully replaced the phrase 'good faith' with 'predictability'. See also Official Commentary, Goode (n 2) para 2.17.

[42] Official Commentary, Goode (n 2) para 2.9(9).

[43] Emphasis is on implying terms required by the Treaty rather than adding terms by reference to the applicable law, as that would undermine the intent, internal logic, and uniformity of such *sui generis*

(IV) Governments may not impose conditions on or take action that would adversely affect basic CTC rights, including, without restriction, on matters on which the CTC is silent.

To illustrate just one of these general principles – (IV) above – the CTC must be viewed as *pre-empting national law rules that are incompatible with the Convention*, such as those that purport to:

(A) place conditions on the ability to call defaults or exercise remedies, for example, by imposing or requiring a mandatory grace period;[44] and
(B) add to the de-registration, export, and IDERA provisions by permitting the civil aviation authority to act in a quasi-judicial capacity and/or require the debtor's consent to the exercise of IDERA rights.[45]

The CTC must also imply terms regarding the standard for 'reasonable' action and timing, as set out in Article 8 of the Convention and Article IX(3) of the Aircraft Protocol, with deference to the other terms in those articles, and, beyond such terms, to contractually agreed standards, in line with general principle (I) above.

(ii) Penumbra items not governed by the CTC and items outside of CTC scope

Not all penumbra items will be settled by implied terms required by reference to general principles, as the precise issue may not implicate such principles. These items, under Article 5(2) of the Convention, are governed by the applicable law. Examples that fall within this category include the following, which is illustrative, not comprehensive:

(I) the validity of a contractual agreement providing for an international interest, contract of sale, or assignment;[46]
(II) the time at which an agreement is to be considered concluded; and
(III) general issues regarding proceeds (in the standard commercial law sense of the term); [47]

While an argument can be made that the following are penumbra items without general principles, a stronger one is that they are outside the extended scope of the CTC. In either case, the result is the same: they are governed by the national law. The list is illustrative, not comprehensive:

(I) damages for breach of an agreement;
(II) risk of loss of equipment covered by the CTC;
(III) the nature and details of assignments by operation of law;
(IV) the effect of notice provided through the International Registry for purposes of priority disputes not covered by the CTC (e.g., for pre-existing transactions); and
(V) whether an international interest creates a security interest under national law, supplemental to the creation of that CTC international interest.[48]

(iii) Internal treaty terms: items on which the CTC expressly refers to national law

The CTC has a substantial number of express references to and applications of national law. Different phrases are used in such references

concepts. An example of this point, as persuasively argued in this volume by Professor Anna Veneziano, deputy secretary general of UNIDROIT, is that Article 13 (Relief Pending Final Determination) of the Convention is to be 'interpreted autonomously from any legal system'. That provision sets out a *sui generis* concept, not one linked to concepts of interim relief under applicable law.

[44] Official Commentary, Goode (n 2) para 2.9(5).

[45] Official Commentary, Goode (n 2) para 3.36.

[46] Without prejudice to the necessary and sufficient nature of the terms of Article 7 (international interest) of the Convention, Article 32 (assignments) of the Convention, and Article 5 (contracts of sale) of the Aircraft Protocol.

[47] Not in the narrow sense of the term, as set out in Article 1(w) of the Convention. On a related matter, having a separate national law based security agreement addresses the broader set of issues related to general commercial law proceeds.

[48] In most cases, an international interest will simultaneously constitute a national law security or leasing type interest, thus avoiding the need for another document.

and applications. These are internal treaty terms which, to the extent of such references and applications, use national law to address specified items. This list makes use of, builds on, and rephrases similar listings in the Official Commentary. This category addresses the following:

(1) the time at which insolvency proceedings are commenced (Article 1(c) of the Convention);
(2) whether a debtor in possession is considered an insolvency administrator (Article 1(k));
(3) whether a national interest exists for purposes of a declaration regarding internal transactions (Articles 1(n) and (r) and 50);
(4) whether an agreement falling within Article 2(2) is to be recharacterised and the time when it is considered made (Article 2(4));
(5) general gap filling absent general principles (Article 5(2));
(6) what remedies are available additional to those provided by the Convention (Article 12);
(7) the interim remedies retained, in addition to the *sui generis* remedies created for relief pending final determination (Article 13(4));
(8) what procedure must be followed in the exercise of remedies (Article 14), subject however to the mandatory declaration under Article 54(2) as to whether the leave of the court is required where not so provided by the Convention;
(9) acquisition of international interests by legal or contractual subrogation for the purpose of registration (Article 16(1)(c));
(10) the continuance, upon installation on an object, of rights in an item (other than an object) created prior to installation (Article 29(7)(a));
(11) the creation, after removal from an object, of rights in an item (other than an object) previously installed on the object (Article 29(7)(b));
(12) the effectiveness in the debtor's insolvency of an international interest not registered in the International Registry (Article 30(2));
(13) the defences and rights of set-off available to a debtor against an assignee of associated rights (Articles 31(3) and (4));
(14) the priority of competing assignments of associated rights in cases falling outside Articles 36(1) and (2) (Article 36(3));
(15) the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law (Article 38(1), and Article 50(3));
(16) the non-consensual rights and interests which, by declaration, have priority over a registered international interest (Article 39(1)(a));[49]
(17) the rights of detention which, by declarations, are subject to savings clause (Article 39(1)(b));[50]
(18) the formal requirements of a forum selection clause (Article 42(2));
(19) the priority of pre-existing rights and interests (Articles (v) and 60(1));
(20) subject to a declaration by a Contracting State, the parties' ability freely to choose the law governing their relations *inter se* (Article VIII of the Aircraft Protocol);

[49] National law is relevant to two elements under Article 39(1)(a) of the Convention. First, the relevant declaration may retain or restrict, but not expand, such rights and interests under, and to the extent provided for, by national law. See Official Commentary, Goode (n 2) para 2.211. Secondly, whether one contracting state recognises such rights and interests created under the laws of another contracting state is determined by the national law of the former state, not the Convention. See Official Commentary, Goode (n 2) paras 2.212, 2.218 and 3.37.

[50] Similarly, national law is relevant to two elements under Article 39(1)(b) of the Convention. First, the relevant declaration may retain or restrict, *but not expand*, such rights of detention under, and to the extent provided for, by national law. See Official Commentary, Goode (n 2) para 2.216. Secondly, whether one contracting state recognises such rights of detention under the laws of another contracting state is determined by the national law of the former state, not the Convention. See Official Commentary, Goode (n 2) paras 2.212, 2.218 and 3.37.

(21) applicable safety laws and regulations to be complied with in connection with deregistration and export remedies (Article IX(5) of the Aircraft Protocol);[51]
(22) whether an authorised party needs to certify to the registry authority that all senior ranking registered interests have been discharged or their holders have consented to de-registration and export (Article IX(5)(b) of the Aircraft Protocol);
(23) subject to a declaration by a Contracting State, the date earlier than the end of the waiting period, if any, by which time an insolvency administrator must give possession of the aircraft object or cure all defaults (Article XI, Alternative A, para 2(b) of the Aircraft Protocol);
(24) subject to a declaration by a Contracting State, unless and until the creditor is given the opportunity to take possession of an aircraft object after the occurrence of an insolvency-related event it is entitled to apply for any other forms of interim relief available under the applicable law (Article XI, Alternative A, para 5(b) of the Aircraft Protocol);
(25) subject to a declaration by a Contracting State, the provisions in the Aircraft Protocol, Article 10 stating that no obligations of the debtor under the agreement may be modified in insolvency proceedings without the creditor's consent does not affect any authority of the insolvency administrator under the applicable law to terminate the agreement (Article XI, Alternative A, para 11 of the Aircraft Protocol);
(26) subject to a declaration by a Contracting State, upon the occurrence of an insolvency-related event the insolvency administrator or the debtor, as applicable, is to give the creditor the opportunity to take possession in accordance with the applicable law (Article XI, Alternative B, para 2(b) of the Aircraft Protocol);
(27) subject to a declaration by a Contracting State, the applicable law may permit the court to require the taking of any additional step or the provision of any additional guarantee in connection with insolvency remedies (Article XI, Alternative B, para 3 of the Aircraft Protocol);
(28) subject to a declaration by a Contracting State, the 'maximum co-operation' required (in carrying out the provisions of Article XI of the Aircraft Protocol) by courts (Article XII of the Aircraft Protocol);
(29) nothing in the Convention or Protocol affects the liability of the creditor for any breach of the agreement under the applicable law in so far as that agreement relates to an aircraft object (Article XVI(2) of the Aircraft Protocol); and
(30) to the extent specified by a contracting state designating an entry point, the requirements, if any, to be satisfied before information is transmitted to the International Registry (Article XIX, of the Aircraft Protocol the substantive rule derived from Article 18(5) of the Convention).

(iv) What National Law Applies, including as the 'Applicable Law'

To the extent that elements of national law in a contracting state applies to covered transactions, *what is that national law*, the pertinent question often but not always being *what is the relevant 'applicable law' for these purposes*.

The CTC applies the basic rule that references to the applicable law are to the national (domestic) law specified by the *lex fori*, avoiding *renvoi* problems.[52] It expressly extends that rule, unless otherwise agreed, to the related issue of the law applicable by virtue of a permitted contractual choice of law clause, where the forum state made the required declarations.[53] The matter of which law would be applied by the *lex fori* requires an assessment

[51] The same reference to 'applicable aviation safety laws and regulations' is also made in (i) Article X(6)(b), (ii) Article XI, Alternative A, 8(b), and (iii) Article XIII (3), in each case, of the Aircraft Protocol .

[52] Article 5(3) of the Convention.

[53] Article VIII(3).

of the specific clause and context. Here are some examples:[54]

(i) on gap-filling of property law items absent a general principle and its resulting implied terms, the law produced by the relevant conflict of laws rule, that is:
  (a) for aircraft objects (tangible moveables with concepts of nationality), the *lex situs* or the *lex registrii*, and
  (b) for the assignment of associated rights (intangible assets), the *lex situs* (with a deemed *situs* (e.g., location of the debtor)) or the assignor's place or principal place of business;
(ii) on matters relating to de-registration (and several issues relating to export), the state of nationality or registration;
(iii) on matters relating to insolvency, the place of the primary insolvency proceedings; and
(iv) on other matters relating to the exercise of remedies, most notably on procedural requirements, the place where the remedy is exercised.

(v) Application of Treaties' Terms and Non-Contracting States

To what extent do the terms of a Treaty apply to a transaction by virtue *of national law in a non-contracting state*.

The CTC applies to a covered transaction if the debtor (or, regarding a sale, the seller) is situated in a contracting state, or, as regards such a transaction involving an airframe, the aircraft is registered for nationality purposes (under the Chicago Convention) in a contracting state. Where a creditor (or, regarding a sale, the buyer) is situated is not relevant to the application of the CTC; nor, unlike a controversial feature of the CISG,[55] is whether the transaction is governed by the law of a contracting state. Finally, the location of the aircraft object in a contracting state does not trigger application of the CTC.

While many countries have ratified the CTC, and the number, no doubt, will increase in the years to come, there are currently many transactions – and parts of transactions – that fall outside of the CTC. The fact that aircraft transactions are often highly structured and multi-tiered, with several debtors, some, but not all, of whom are situated in contracting states, makes the matter more complex. The foregoing leads to the question, which, being outside of the CTC is fact-specific and a matter of national law, as to whether courts in a non-contracting state will apply the terms of the CTC through its rules of private international law (conflict of laws rules). While that would not implicate the treaty as such, it would result in application of the CTC's substantive terms. The importance of this question is magnified since (i) many aircraft transactions are expressed to be governed by the laws of a contracting state (including those of the United States),[56] and many non-contracting states would enforce that contractual choice of law (*at least* on contractual items); and (ii) many such non-contracting states (a) are parties to the Geneva Convention of 1948, whose terms include application of the law of the state where the aircraft is registered for nationality purposes (under the Chicago Convention) regarding recognition of security rights,[57] and/or (b) might otherwise apply the *lex situs* rule, and, in either case, many such referred-to laws (of the state of aircraft registration or the *lex situs*) will be CTC contracting states.

[54] We are not addressing gap-filling or items outside the scope of the CTC relating to contact matters. In the aviation industry, there is a universal practice of selecting a governing law. If the forum is a contracting state that opted into Article VIII of the Aircraft Protocol, as most did, the law of the selected state would settle such gap-filling questions. If outside the scope of the CTC, then such contractual items would be settled by conflicts analysis, starting with the national law treatment of the contractually selected governing law.

[55] CISG, art 1(1)(b), applying that treaty to transactions when the rules of private international law lead to application of the law of a contracting state, absent an opt-out declaration (art 95), which a number of contracting states thereto have made.

[56] Most international aircraft financing and leasing transactions are governed by New York or English law.

[57] Geneva Convention, art I (1).

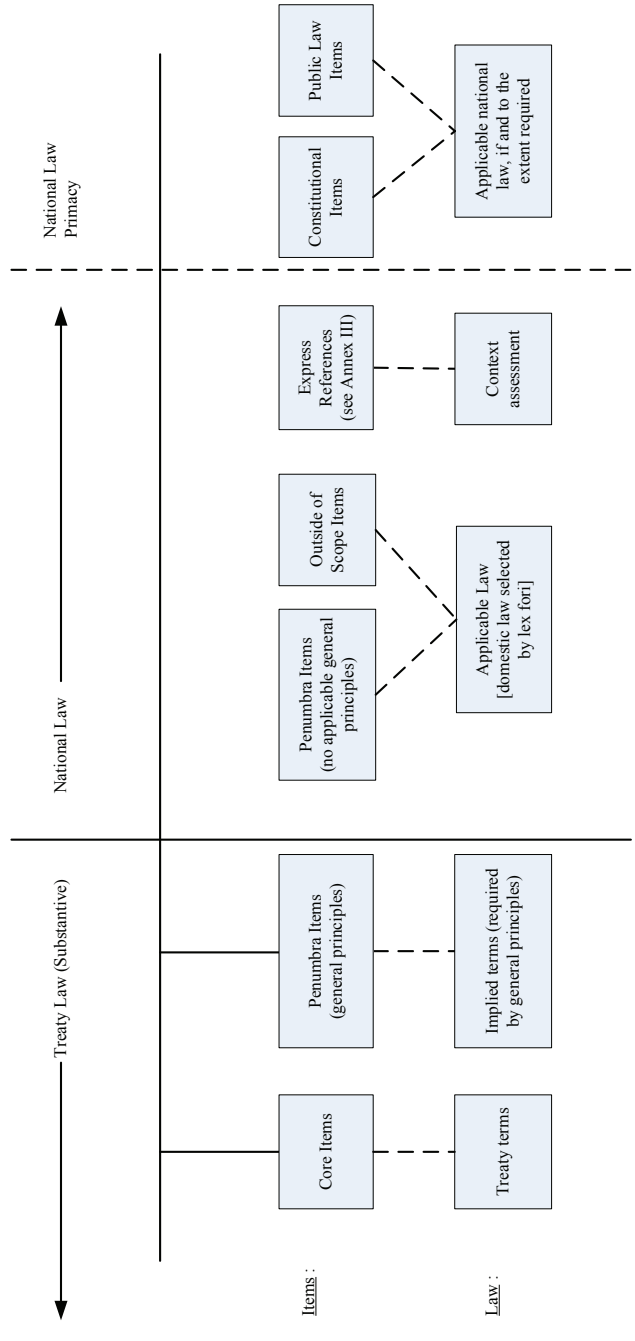
While there have been no judicial cases to date of which we are aware on this item, the topic arises in transactional (and legal opinion) settings. Given the fact-specific nature of the issues, few general comments can be prudently made. It is worth underscoring however that the answer to these intricate questions may depend on, or be impacted by, how the CTC has been implemented in a contracting state (to whose laws the *lex fori* in a non-contracting state refers), in particular whether the rules of the CTC are expressed to govern only those transactions to which the Treaty as such applies or alternatively are of general application.

4. Concluding comments

The Treaty – National Law Framework set out herein provides a starting point for the systematic consideration of complex questions on the relationship and interaction between Treaties and national law. We hope that it leads to more detailed research on, and assessment of, key questions, including how best to identify and address the law applicable to borderline items that straddle international and national law. That would further enhance the legal predictability and economic objectives of all Treaties. Equally, we hope that our work sharpens the focus on issues related to ensuring that Treaties, as intended, have the prevailing force of law in all contracting states, which is essential to such predictability and economic objectives. The application of that Framework to the CTC shows that, while numerous important issues need to be assessed in practice in the coming years, the CTC, with its wide express application and still wider implied terms and the attention given to its effective implementation, embodies a model approach for dealing with international versus national questions.

Annex I

Depiction of treaty versus national law



Annex II

Interpretation and applicable law

United Nations Convention on Contracts for the International Sale of Goods (1980)	UNIDROIT Convention on International Financial Leasing (1988)	UNIDROIT Convention on International Factoring (1988)	United Nations Convention on the Assignment of Receivables in International Trade (2001)	Convention on International Interests in Mobile Equipment and its Aircraft Protocol (2001)	UNIDROIT Convention on Substantive Rules for Intermediated Securities (2009)
Art 7(1): In the interpretation of this Convention, regard is to be had to its international character and the need to promote uniformity in its application and the observance of good faith in international trade. **Art 7(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 law applicable by virtue of the rules of private international law.	**Art 6(1):** In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade. **Art 6(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 law applicable by virtue of the rules of private international law.	**Art 4(1):** In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade. **Art 4(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 law applicable by virtue of the rules of private international law.	**Art 7(1):** In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade. **Art 7(2):** Questions concerning matters governed by this Convention that 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 law applicable by virtue of the rules of private international law.	**Art 5(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. **Art 5(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.	**Art 4:** In the implementation, interpretation and application of this Convention, regard is to be had to its purposes, the general principles on which it is based, its international character and the need to promote uniformity and predictability in its application.

Annex II-A

Comparative chart on preambles

United Nations Convention on Contracts for the International Sale of Goods (1980)	UNIDROIT Convention on International Financial Leasing (1988)	UNIDROIT Convention on International Factoring (1988)	United Nations Convention on the Assignment of Receivables in International Trade (2001)	Convention on International Interests in Mobile Equipment and its Aircraft Protocol (2001)	UNIDROIT Convention on Substantive Rules for Intermediated Securities (2009)
1. Bearing in mind the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order, 2. considering that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States, [and] 3. being of the opinion that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade.	1. Recognising the importance of removing certain legal impediments to the international financial leasing of equipment, while maintaining a fair balance of interests between the different parties to the transaction, 2. aware of the need to make international financial leasing more available, 3. conscious of the fact that the rules of law governing the traditional contract of hire need to be adapted to the distinctive triangular relationship created by the financial leasing transaction, [and] 4. recognising therefore the desirability of formulating certain uniform rules relating primarily to the civil and commercial law aspects of international financial leasing.	1. Conscious of the fact that international factoring has a significant role to play in the development of international trade, [and] 2. recognising therefore the importance of adopting uniform rules to provide a legal framework that will facilitate international factoring, while maintaining a fair balance of interests between the different parties involved in factoring transactions.	1. Reaffirming their conviction that international trade on the basis of equality and mutual benefit is an important element in the promotion of friendly relations among States, 2. considering that problems created by uncertainties as to the content and the choice of legal regime applicable to the assignment of receivables constitute an obstacle to international trade, 3. desiring to establish principles and to adopt rules relating to the assignment of receivables that would create certainty and transparency and promote the modernization of the law relating to assignments of receivables, while protecting existing	**Convention** 1. Aware of the need to acquire and use mobile equipment of high value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner, 2. recognising the advantages of asset-based financing and leasing for this purpose and desiring to facilitate these types of transaction by establishing clear rules to govern them, 3. mindful of the need to ensure that interests in such equipment are recognised and protected universally, 4. desiring to provide broad and mutual economic benefits for all interested parties, 5. believing that such rules must reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions,	1. Conscious of the growth and development of global capital markets and recognising the benefits of holding securities, or interests in securities, through intermediaries in increasing the liquidity of modern securities markets, 2. recognising the need to protect persons that acquire or otherwise hold intermediated securities, 3. aware of the importance of reducing legal risk, systemic risk and associated costs in relation to domestic and cross-border transactions involving intermediated securities so as to facilitate the flow of capital and access to capital markets, 4. mindful of the need to enhance the international compatibility of legal systems as well as the soundness of domestic and international rules relating to intermediated securities, 5. desiring to establish a common legal framework for the holding and disposition of intermediated securities, 6. believing that a functional approach in the formulation of rules to accommodate the

			assignment practices and facilitating the development of new practices, 4. desiring also to ensure adequate protection of the interests of debtors in assignments of receivables, [and] 5. being of the opinion that the adoption of uniform rules governing the assignment of receivables would promote the availability of capital and credit at more affordable rates and thus facilitate the development of international trade.	6. conscious of the need to establish a legal framework for international interests in such equipment and for that purpose to create an international registration system for their protection, [and] 7. taking into consideration the objectives and principles enunciated in existing Conventions relating to such equipment. **Protocol** 1. Considering it necessary to implement the Convention on International Interests in Mobile Equipment (hereinafter referred to as "the Convention") as it relates to aircraft equipment, in the light of the purposes set out in the preamble to the Convention, 2. mindful of the need to adapt the Convention to meet the particular requirements of aircraft finance and to extend the sphere of application of the Convention to include contracts of sale of aircraft equipment, [and] 3. mindful of the principles and objectives of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944,	various legal traditions involved would best serve the purposes of this Convention, 7. having due regard for non-Convention law in matters not determined by this Convention, 8. emphasising the importance of the integrity of a securities issue in a global environment for intermediated holding in order to ensure the exercise of investors' rights and enhance their protection, 9. emphasising that this Convention is not intended to harmonise or otherwise affect insolvency law except to the extent necessary to provide for the effectiveness of rights and interests governed by this Convention, 10. recognising that this Convention does not limit or otherwise affect the powers of Contracting States to regulate, supervise or oversee the holding and disposition of intermediated securities or any other matters expressly covered by the Convention, except in so far as such regulation, supervision or oversight would contravene the provisions of this Convention, [and] 11. mindful of the importance of the role of intermediaries in the application of this Convention and the need of Contracting States to regulate, supervise or oversee their activities.

Annex III

References to or application of national law in the treaties

	United Nations Convention on Contracts for the International Sale of Goods (1980)	UNIDROIT Convention on International Financial Leasing (1988)	UNIDROIT Convention on International Factoring (1988)	United Nations Convention on the Assignment of Receivables in International Trade (2001)	Convention on International Interests in Mobile Equipment and its Aircraft Protocol (2001)	UNIDROIT Convention on Substantive Rules for Intermediated Securities (2009)
Gap filling *Where the Convention is silent on a matter governed by the Convention, what law applies?*	Article 7(2)	Article 6(2)	Article 4(2)	Article 7(2)	Article 5(2)	No such provision.
Scope *How is the scope of each Convention limited, such that national law applies?*	Articles: 2, 3(2), 4, 5, 94, 95 and 96	Articles: 1(4), 7(5), 19 and 20	Articles: 3, 6(3), 12, 17 and 18.	Articles: 4, 8(3), 9(2), 10(5), 40, 41 and 45(3)	Convention Articles: 5(2), 13(4), 29(7), 30(2), 36(3), 38(1), 39(1)(b) and 60(1) Protocol Articles: VIII, XI Alternative A (11) and XVI(2)	Articles: 5, 6, 8, 9(3), 11(5), 12(8), 13, 14(2), 14(3), 15(2), 16, 18(3), 18(4), 20(1), 21(2), 21(3), 24(4), 26(1), 27, 31(2), 34(4), 35, 36(2), 38 and 39
Substantive *When is the substantive national law referred to or applied?*	Articles: 28, 42(1) and 54	Articles: 4(2), 7(2), 7(3) and 8(4)		Articles: 5(i), 10(1), 22, 27, 28, 29, 30, 40(4)	Convention Articles: 1(c), 1(k), 1(n), 1(r), 2(4), 12, 14, 16(1)(c), 31(3), 39(1)(a) and 42(2) Protocol Articles: IX(5), IX(5)(b), X(6)(b), XI Alternative A (2)(b), XI Alternative A (5)(b), XI Alternative A (8)(b), XIII(3), XI Alternative B (2)(b), XI Alternative B (3), XII and XIX	Articles: 1(k), 1(l), 1(m), 1(n), 1(o), 1(p), 7, 9(1), 10(2), 12(1), 15(1)(e), 18(5), 19(5), 19(7), 22(3), 23(2)(d), 24(3), 25(3), 25(5), 26(3), 28, 29, 31(3)(h) and 36(1)(b)(iii)

ANNEX IV

INTERIM UPDATE OF AVIATION WORKING GROUP DOCUMENT

Cape Town Convention on International Interests in Mobile Equipment and its Aircraft Protocol

Summary of National Implementation

This summary is based on information made available to the Aviation Working Group by counsel in ratifying countries. No responsibility, duty, or liability is accepted by the Aviation Working Group (or any of its members or its legal counsel) or any such counsel to any person regarding this summary or the information provided herein or omitted, which may contain errors. No person is permitted to rely on any part of this document. Instead, parties should retain their own counsel.

This summary is based on legal elements rather than actual practice, i.e. the summary indicates the legal rule and not whether the relevant institutions (courts and civil aviation authorities) in a country have enforced or will enforce that rule. The latter is a matter of compliance with the Cape Town Convention, which is outside the scope of this summary.

This summary will be updated from time to time based on a review of further information received from counsel in ratifying countries[1], the provision of which is encouraged.

[1] Any such further information should be sent to [CTC-implementation@awg.aero]

Cape Town Convention and its Aircraft Protocol – Summary of National Implementation

Introduction

AWG has undertaken a project to summarise the implementation of the Convention on International Interests in Mobile Equipment (the ***Convention***) and its Aircraft Protocol (the ***Protocol***) in countries that have ratified or acceded to these instruments (together, the ***Treaty***).

The approach is to summarise whether such countries have effectively implemented the Treaty. By 'effective implementation', AWG means that:
(i) a strong, commercially oriented set of declarations were made by a country when ratifying or acceding to the Treaty, and
(ii) the Treaty has the force of law, and to the extent of any conflict, prevails over other law, in that country.

As an objective proxy for whether such declarations were made, we summarise whether a country made the '**Qualifying Declarations**', as set out in the OECD Sector Understanding on Export Credits for Civil Aircraft (2011) (hereinafter referred to as the 'ASU').

AWG contacted local lawyers and asked them to complete an implementation questionnaire, and if applicable, an IDERA questionnaire. AWG has undertaken not to disclose the identities of local lawyers that have provided responses to these questionnaires.

Some of the information contained in this Summary Chart is sourced directly from the OECD and UNIDROIT websites. While other information consists of assessments made by AWG on the basis of input provided by local lawyers, AWG is not expressing a view on the accuracy of the input, and, thus, the resulting assessment. See the disclaimer box on the covering page to this document.

Methodology

This Summary Chart includes all countries that have ratified or acceded to the Treaty and lists them alphabetically. Countries that have ratified or acceded to the Convention but not to the Protocol are not included. Content is organised into seven columns:

Column 1: lists the ratifying/acceding country and the date the Treaty entered into force in that country. This information is from the UNIDROIT website (www.unidroit.org).

Column 2: indicates whether a country is on the official OECD list, having the effect of eligibility for the Cape Town Discount pursuant to the terms of the ASU (the ***Cape Town Discount***). This column contains four possible responses:

'**Yes'** (the country is on the OECD list (http://www.oecd.org/tad/exportcredits/ctc.htm); only borrowers in such countries are currently eligible for a Cape Town Discount);
'**No**' (based on information in columns 3 and 4, the country does not appear to have satisfied the requirements for a Cape Town Discount). A country is in this category if (i) it did not make one or more of the required declarations, (ii) it has made a declaration prohibited by Article 3 of Annex I of Appendix II to the ASU, and/or (iii) the Treaty does not prevail over any conflicting law;
'**Not yet considered by OECD**' (based on information in columns 3 and 4, the country appears to satisfy the requirements for a Cape Town Discount but is not as of this date on the OECD list); or
'**Inconclusive**' (columns 3 and/or 4 do not contain sufficient information to generate a response).

Column 3: addresses whether the Qualifying Declarations have been made by that country. Where a country has not made one or more required declarations or has made a declaration prohibited by Article 3 of Annex I of Appendix II to the ASU, such information is underlined and in bold. Information in this column is based on the declarations listed (but not assessed) on the UNIDROIT website.

Column 4: indicates whether, in the view of local lawyers, the Treaty prevails over any conflicting law of the relevant country. This column contains three possible responses:

'**Yes'** (the Treaty conclusively prevails over conflicting national laws);
'**No**' (the Treaty does not prevail over one or more national laws); or
'**Inconclusive**' (the responses received from local lawyers are not aligned, do not conclusively state whether the Treaty is prevailing law, or we have not received any responses from local lawyers in such country).

The above summary is based on legal elements rather than actual practice, i.e. the summary indicates the legal rule and not whether the relevant institutions (courts and civil aviation authorities) in a country have enforced or will enforce the rule. The latter is a matter of compliance with the Treaty, which is outside the scope of this summary.

Where possible, the AWG has attempted to short-hand the legal reasoning underlying a 'Yes' finding. It has done so by use of these references:

'**Express Legislation**' (the Treaty prevails by virtue of express wording in legislation or a decree);
'**Lex Specialis**' (the Treaty prevails since it is more specific than otherwise applicable, conflicting general legal rules);
'**Lex Posteriori**' (the Treaty prevails since it is latter in time than otherwise applicable, conflicting general legal rules);
'**Higher Legal Norm**' (the Treaty is a higher legal norm and prevails over otherwise conflicting domestic legal rules, whether through constitutional or similar provisions, or judicial decisions).

Please note that in most countries all law, including treaty-based law, is subject to constitutional requirements and limitations. We have not identified such requirements or limitations as problems unless they have been so identified by local counsel as an impediment to the enforceability of Treaty rights or remedies. Further views of local counsel should be sought on this matter.

Column 5: indicates how the Treaty has been implemented into national law. This is essentially a procedural matter, with further details provided to the extent there have been problems or procedural issues.

Column 6: if a country has made the requisite declaration under Article XIII of the Protocol, this column states '**applicable**' and the IDERA Summary Chart document will open by clicking on the word 'applicable'. If a country has not made the relevant declaration, the column entry states '**not applicable**'.

Column 7: includes (a) additional information that requires a note, affecting the content of the other columns, (b) additional information that does not strictly fall into any of the other columns and in some cases includes updates in relation to the other columns, and (c) ***indicates whether no or only one set of local counsel have replied to the implementation questionnaire, thereby further limiting the reliability (and in the case of no response, scope) of the information in respect of such country.***

Definitions

ASU means the Sector Understanding on Export Credits for Civil Aircraft which entered into force on 1 February 2011;

AWG means the Aviation Working Group;

Brussels I Regulation means Council Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

Convention means the Convention on International Interests in Mobile Equipment which entered into force on 1 April 2004;

EU means the European Union;

IDERA Questionnaire means the questionnaire that was prepared by the AWG and sent to local lawyers in countries that have made the declaration under Article XIII of the Protocol;

Implementation Questionnaire means the questionnaire that was prepared by the AWG and sent to local lawyers in countries that have ratified or acceded to the Treaty;

Protocol means the Protocol to the Convention on Matters Specific to Aircraft Equipment which entered into force on 1 March 2006;

Qualifying Declarations means the declarations set out in Annex I of Appendix III to the ASU;

Rome I Regulation means EC Regulation 593/2008 on the Law Applicable to Contractual Obligations;

Treaty means the Convention and Protocol together; and

UNIDROIT Summary Report means the summary report prepared by the UNIDROIT Secretariat in June 2010 in respect of the seminar held in Rome on 26 November 2009 entitled "The European Community and the Cape Town Convention".

Notes on European Qualifying Declarations and implementation in light of the EU rules

In the chart below, please refer to the following notes where indicated by annotation:

* The internal arrangements of the EU and the declarations made by the EU under the Protocol prohibit its member states from making a declaration under Protocol Article VIII. However, for the purposes of the ASU and the Qualifying Declarations made thereunder, the terms of the Rome I Regulation are considered (and agreed by the ASU participants) to be "substantially similar" to Protocol Article VIII, the applicable standard as set out in Article 4 of Annex I of Appendix III to the ASU. See guidance given in Annex III of the UNIDROIT Summary Report.

** The internal arrangements of the EU and the declarations made by the EU under the Protocol prohibit its member states from making a declaration under Protocol Article XI. However, an EU member state may amend its national law to reflect the terms of Protocol Article XI, the applicable standard (Alterative A with a maximum 60 calendar day waiting period) under Article 4 of Annex I of Appendix III to the ASU. See guidance given in Annex III of the UNIDROIT Summary Report.

*** The internal arrangements of the EU and the declarations made by the EU under the Treaty prohibit its member states from making a declaration under Convention Article 13 and Protocol Article X. However, an EU member state may amend its national law such that together with EU law (the Brussels I Regulation), it is "substantially similar" to Protocol Article X, the applicable standard under Article 4 of Annex I of Appendix III to the ASU. See guidance given in Annex III of the UNIDROIT Summary Report.

CONTENTS

Country **Date of ratification/ accession** **Date of entry into force of the Cape Town Convention**	**2. Eligibility for the Cape Town discount** **(please visit** http://www.oecd.org/tad/exportcredits/ctc.htm **for the official OECD list)**	**3. Did the country make Qualifying Declarations under the ASU** **(please visit** http://www.unidroit.org/english/implement/i-main.htm **for UNIDROIT list of declarations – note however that UNIDROIT does not express any view on whether a state has made all qualifying declarations)**	**4. Does the Treaty take priority over conflicting national law**	**5. Method by which the Treaty acquires force of law**	**6. IDERA** **(where such Declaration was made, click on word 'Applicable' and see separate chart)**	**7. Additional comments**
Afghanistan Date of accession: 25 July 2006 Date of entry into force: 1 November 2006	**No**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) - 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**No** Absent an express provision stating otherwise, an international treaty will not prevail over national law in Afghanistan. No such express provision has been effected in respect of the Treaty. The Law of Civil Aviation of Afghanistan 2003 (the ***Civil Aviation Law***) setting out rules in respect of civil aviation and air transport will prevail over the Treaty.	The Treaty was signed by Afghanistan and ratified on 25 July 2006. Pursuant to Article 7 of the Constitution of Afghanistan (the ***Constitution***), the government is under obligation to abide by treaties and conventions signed by Afghanistan.	Applicable	Response received from one counsel only. There is a tension/ inconsistency between the information set out in column 4 (national law prevails) and column 5 (requirement to abide by the Treaty).
Angola Date of accession: 30 April 2006 Date of entry into force: 1 August 2006	**Yes** **See column 7**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) - 10/30 days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	Inconclusive	Inconclusive	Applicable	No replies to date.

Country **Date of ratification/ accession** **Date of entry into force of the Cape Town Convention**	**2. Eligibility for the Cape Town discount** **(please visit** http://www.oecd.org/tad/exportcredits/ctc.htm **for the official OECD list)**	**3. Did the country make Qualifying Declarations under the ASU** **(please visit** http://www.unidroit.org/english/implement/i-main.htm **for UNIDROIT list of declarations – note however that UNIDROIT does not express any view on whether a state has made all qualifying declarations)**	**4. Does the Treaty take priority over conflicting national law**	**5. Method by which the Treaty acquires force of law**	**6. IDERA** **(where such Declaration was made, click on word 'Applicable' and see separate chart)**	**7. Additional comments**
Bahrain Date of accession: 27 November 2012 Date of entry into force: 1 March 2013	**No**	**No** Protocol Article VIII **(not made)** Protocol Article XI **(not made)** Protocol Article XIII **(not made)** Convention Article 54(2) – non judicial remedies permitted Protocol Art X (not made) Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	Inconclusive	Inconclusive	Not applicable No declaration under Article XIII of the Protocol was made.	No replies to date.
Bangladesh Date of accession: 15 December 2008 Date of entry into force: 1 April 2009	**Inconclusive**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) - 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Inconclusive** Principles of Lex Specialis and Lex Posteriori apply, subject to column 5.	The Treaty was signed and ratified by the executive. Article 145A of the Constitution of Bangladesh requires that, prior to ratification by the executive, a treaty must be laid before Parliament for discussion. It remains unclear whether Parliament has discussed the Treaty, and whether the Treaty therefore has a force of law in Bangladesh.	Applicable	Response received from one counsel only.

Brazil Date of accession: 30 November 2011 Date of entry into force: 1 March 2012	**Not yet considered by OECD** **See column 7**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 30 calendar days Protocol Article XIII (made) Convention Article 54(2) – leave of court required (except re Protocol Article XIII) Protocol Art X (made) - 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Lex Specialis Lex Posteriori	The Treaty has been implemented, and thus has a force of law, by virtue of the Presidential Decree (number 8008), published on 16 May 2013.	Applicable	Specific IDERA rules are also needed.
Cameroon Date of accession: 19 April 2011 Date of entry into force: 1 August 2011	**No**	**No** Protocol Article VIII **(not made)** Protocol Article XI **(not made)** Protocol Article XIII **(not made)** Convention Article 54(2) – non judicial remedies permitted Protocol Art X (not made) Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Higher Legal Norm Section 45 of the Cameroonian Constitution provides that ratified treaties are superior to national legislation.	The Treaty has a force of law in Cameroon by virtue of its ratification pursuant to the Cameroonian Constitution, laws N° 2010-008 and 2010-009 dated July 29, 2010 authorizing the President of the Republic to ratify both the Protocol and the Treaty of Cape Town.	Not applicable given that no declaration under Article XIII of the Protocol was made.	Response received from one counsel only.

Country **Date of ratification/ accession** **Date of entry into force of the Cape Town Convention**	**2. Eligibility for the Cape Town discount** **(please visit** http://www.oecd.org/tad/exportcredits/ctc.htm **for the official OECD list)**	**3. Did the country make Qualifying Declarations under the ASU** **(please visit** http://www.unidroit.org/english/implement/i-main.htm **for UNIDROIT list of declarations – note however that UNIDROIT does not express any view on whether a state has made all qualifying declarations)**	**4. Does the Treaty take priority over conflicting national law**	**5. Method by which the Treaty acquires force of law**	**6. IDERA** **(where such Declaration was made, click on word 'Applicable' and see separate chart)**	**7. Additional comments**
Canada Date of ratification: 21 December 2012 Date of entry into force: 1 April 2013	**Being considered by OECD**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) - 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Express Legislation Lex Specialis (for Quebec only) The Federal CTC Act specifically provides that, subject to certain exceptions (see column 7), the Federal CTC Act prevails over any inconsistent law to the extent of the inconsistency. All of the provincial implementing statutes in Canada's common law provinces contain express primacy provisions without any exceptions. In Quebec, a civil law jurisdiction, specific legislation takes priority over general legislation.	The Treaty has a force of law in Canada on a federal level pursuant to the implementing legislation, which together with legislation passed in 2005, received Royal Assent on 14 December 2012 (the ***Federal CTC Act***). The Treaty has a force of law in 10 of Canada's 13 provinces and territories pursuant to implementing legislation passed since 2004. Of the remaining three provinces and territories, Prince Edward Island and Yukon passed their implementing legislation in May 2013 and are awaiting the submission of revised Canadian declarations. New Brunswick plans to introduce their legislation in the fall of 2013 and it is expected to pass before year end.	Applicable	The Treaty primacy clause is subject to a few narrow 'public law' exceptions which, individually and collectively, do not present an impediment to enforceability of Treaty rights and remedies in customary aircraft financing transactions. For a debtor located in the provinces of New Brunswick, Prince Edward Island, or Yukon, the Treaty's provisions in respect of which, under the Canadian Constitution, the provinces have legislative competence (which exclude such provisions dealing with insolvency, de-registration and export), shall not apply pending revised Canadian declarations for Prince Edward Island and Yukon and the passage of Treaty implementing legislation in New Brunswick.

Cape Verde Date of accession: 26 September 2007 Date of entry into force: 1 January 2008	**Not yet considered by OECD** **See column 7**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) - 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Higher Legal Norm Article 12º, nr 2 and 4, of the Constitution of Cape Verde provides that ratified treaties are superior to national legislation. **See column 7**	The Treaty has the force of law in Cape Verde. It has been ratified through Decree 4/2007 by the Government of Cape Verde and published in the Official Journal no. 17 of 7 May 2007.	Applicable	Response received from one counsel only. A point was raised by local counsel as to whether certain rules introduced to implement the Treaty should now be approved by a specific act of the government.
China Date of ratification: 3 February 2009 Date of entry into force: 1 June 2009	**No** **See column 7**	**No** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – leave of court required Protocol Art X (made) - 10/30 calendar days **Made a prohibited declaration under Article 3 of Annex I of Appendix II to the ASU in respect of Convention Article 54(1) – see column 7**	**Yes** Higher Legal Norm Pursuant to Article 142(2) of the General Principles of Civil Law of the People's Republic of China, the provisions of an international treaty to which China is a party will prevail over any inconsistent provision of national law.	The Treaty was ratified at the 5th Session of the Standing Committee of the Eleventh National People's Congress on 28 October 2008 and came into effect in China on 1 June 2009.	Applicable	AWG has requested that Article 3(c) of Annex 1 be deleted as a qualifying declaration on the basis that lease as a remedy does not materially reduce risk and on the basis that most financial institutions do not view the remedy of a lease as material to its risk calculations. The OECD has yet to agree to this requested change. If they do, the response set out in column 2 will read "Not yet considered by OECD" and the response set out in column 3 will read "Yes" instead of "No". China has amended its IDERA procedures to make process more efficient. The Treaty was ratified and is in force for mainland China but not for Hong Kong and Macau.

Country **Date of ratification/ accession** **Date of entry into force of the Cape Town Convention**	**2. Eligibility for the Cape Town discount** **(please visit** http://www.oecd.org/tad/exportcredits/ctc.htm **for the official OECD list)**	**3. Did the country make Qualifying Declarations under the ASU** **(please visit** http://www.unidroit.org/english/implement/i-main.htm **for UNIDROIT list of declarations – note however that UNIDROIT does not express any view on whether a state has made all qualifying declarations)**	**4. Does the Treaty take priority over conflicting national law**	**5. Method by which the Treaty acquires force of law**	**6. IDERA** **(where such Declaration was made, click on word 'Applicable' and see separate chart)**	**7. Additional comments**
Colombia Date of accession: 19 February 2007 Date of entry into force: 1 June 2007	**No**	**No** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 days Protocol Article XIII **(not made)** Convention Article 54(2) – leave of court required Protocol Art X (made) - **30 days** Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Lex Specialis Lex Posteriori **See column 7**	As required by the Colombian Constitution, the Treaty was (i) passed by the Colombian Congress (Law 967 of 2005) and (ii) reviewed by the Constitutional Court, which made a declaration that the Treaty, in light of the declarations made, does not violate the Constitution and (iii) ratified by the Colombian government.	Not applicable given that no declaration under Article XIII of the Protocol was made.	A point was raised by local counsel that certain regulations of the Aeronautical Rules issued by AEROCIVIL will need to be adjusted to conform to the principles of the Treaty.
Congo Date of ratification: 25 January 2013 Date of entry into force: 1 May 2013	**No**	**No** Protocol Article VIII **(not made)** Protocol Article XI **(not made)** Protocol Article XIII **(not made)** Convention Article 54(2) – non-judicial remedies permitted Protocol Art X (not made) [Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU]	Inconclusive	Inconclusive	Not applicable given that no declaration under Article XIII of the Protocol was made.	No replies to date.

Cuba Date of ratification: 28 January 2009 Date of entry into force: 1 May 2009	**No**	**No** Protocol Article VIII **(not made)** Protocol Article XI **(not made)** Protocol Article XIII **(not made)** Convention Article 54(2) – leave of Tribunal required Protocol Art X **(not made)** Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	Inconclusive	Inconclusive	Not applicable given that no declaration under Article XIII of the Protocol was made.	No replies to date.
Ethiopia Date of ratification: 21 November 2003 Date of entry into force: 1 March 2006	**Yes**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 30 working days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 5/20 working days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Higher Legal Norm	The Treaty has a force of law pursuant to its ratification by Ethiopia, and article 9(4) of the Ethiopian Constitution provides that all international treaties ratified by Ethiopia are an integral part of law of Ethiopia.	Applicable	Response received from one counsel only.
European Union Date of accession: 28 April 2009 Date of entry into force: 1 August 2009	Not applicable (see individual member state analysis).	The European Union as a regional economic integration organisation (not a Contracting State) has acceded to, the Convention (pursuant to Article 48 of the Convention) and the Protocol (pursuant to Article XXVII of the Protocol).	Not applicable (see individual member state analysis).	The Treaty was given force of law by Council Decision of 6 April 2009 on the accession of the European Community to the Convention on international interests in mobile equipment and its Protocol on matters specific to aircraft equipment, adopted jointly in Cape Town on 16 November 2001 (2009/370/EC).	Not applicable (see individual member state analysis).	

Country **Date of ratification/ accession** **Date of entry into force of the Cape Town Convention**	**2. Eligibility for the Cape Town discount** **(please visit** http://www.oecd.org/tad/exportcredits/ctc.htm **for the official OECD list)**	**3. Did the country make Qualifying Declarations under the ASU** **(please visit** http://www.unidroit.org/english/implement/i-main.htm **for UNIDROIT list of declarations – note however that UNIDROIT does not express any view on whether a state has made all qualifying declarations)**	**4. Does the Treaty take priority over conflicting national law**	**5. Method by which the Treaty acquires force of law**	**6. IDERA** **(where such Declaration was made, click on word 'Applicable' and see separate chart)**	**7. Additional comments**
Fiji Date of accession: 5 September 2011 Date of entry into force: 1 January 2012	**Yes**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Express Legislation The Decree states in section 9 that in the event of any inconsistency between the Decree and any other law, the provisions of the Decree prevail to the extent of the inconsistency.	The Treaty has the force of law pursuant to The Civil Aviation (Convention on International Interests in Mobile Equipment) Decree 2012, dated 8 August 2012 (the ***Decree***).	Applicable	Response received from one counsel only.
India Date of accession: 31 March 2008 Date of entry into force: 1 July 2008	**Inconclusive**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 2 calendar months Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) - 10/30 working days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Inconclusive** In the event of a direct conflict between an international treaty and Indian national law, Indian national law would prevail. Indian counsel do not fully agree on the extent of such conflict given the judicial technique of seeking conflict avoidance. AWG is consulting with such counsel on these matters.	In accordance with articles 51, 53, 73, 253 and paragraph 1 of article 246 of the Indian Constitution, the Treaty has the force of law in India following the effective date of India's accession.	Applicable	In 2012, several creditors were unable to secure the timely de-registration / export of aircraft from India. While these transactions were not governed by the Treaty (as they were 'pre-existing transactions', entered into prior to the effective date of the Treaty), actions taken raise concerns. On 14 March 2013, a lessor in a transaction partially governed by the Treaty obtained a court order to deregister an aircraft (*Corporate Aircraft Funding Company LLC v Union of India & Ors. W.P(C) 792/2012*). To date, that aircraft has not been deregistered.

						AWG, with the Indian airlines, is consulting with the Indian government in connection with, inter alia, its policy relating to implementation of, and compliance with, the Treaty.
Indonesia Date of accession: 16 March 2007 Date of entry into force: 1 July 2007	**Yes**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) - 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Express Legislation Lex Specialis Article 82 of the New Aviation Law (as defined in column 5) states that the Treaty shall prevail over any inconsistent provision of national law.-	The Treaty was ratified pursuant to a Presidential decree, number 8 of 2007. On January 12 2009, Indonesia promulgated Law No. 1 of 2009 regarding Aviation (the ***New Aviation Law***). **See column 7**	Applicable	The New Aviation Law supplemented the presidential decree which effected the ratification of the Treaty in order to ensure that the Treaty has priority over national law.
Ireland Date of accession: 29 July 2005 Date of entry into force: 1 March 2006	**No**	**No** Protocol Article VIII (made) Protocol Article XI **(not made)** – national law not amended to reflect the terms of declaration Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (partially made and not requiring 10/30 calendar days) Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU **See column 7**	**Yes** Express Legislation	The International Interests in Mobile Equipment (Cape Town Convention) Act 2005 (the ***Convention Act***) gave force of law to the Treaty in Ireland.	Applicable	Irish national insolvency law will continue to apply unless and until Irish national law is amended to incorporate the remedies on insolvency set out in the Treaty. Ireland has announced its intention to amend its national law to reflect the terms of Alternative A. The declarations made by Ireland were made prior to the formulation of the guidance set out in Annex III of the UNIDROIT Summary Report. See, in particular, the declarations made by Ireland under Protocol Articles VIII and X.

Country **Date of ratification/ accession** **Date of entry into force of the Cape Town Convention**	**2. Eligibility for the Cape Town discount** **(please visit** http://www.oecd.org/tad/exportcredits/ctc.htm **for the official OECD list)**	**3. Did the country make Qualifying Declarations under the ASU** **(please visit** http://www.unidroit.org/english/implement/i-main.htm **for UNIDROIT list of declarations – note however that UNIDROIT does not express any view on whether a state has made all qualifying declarations)**	**4. Does the Treaty take priority over conflicting national law**	**5. Method by which the Treaty acquires force of law**	**6. IDERA** **(where such Declaration was made, click on word 'Applicable' and see separate chart)**	**7. Additional comments**
Jordan Date of ratification: 31 August 2010 Date of entry into force: 1 December 2010	**Not yet considered by OECD**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Higher Legal Norm Primacy of Treaty arising through a line of cases, e.g. Case number 2007/2353, issued on 8 April 2008 by the Court of Cassation.	The Treaty has a force of law in Jordan pursuant to ratification through the Royal Decree of the King of Jordan, which approved the Council of Ministers' Decision No. 4088 dated 24 April 2007.	Applicable	Response received from one counsel only.
Kazakhstan Date of accession: 21 January 2009 Date of entry into force: 1 May 2009	**Yes**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Higher Legal Norm Article 4.3 of the Constitution of the Republic of Kazakhstan provides that ratified international treaties prevail over any inconsistent national law.	The Treaty has a force of law in Kazakhstan by virtue of ratification through the Law of Republic of Kazakhstan No. 29-V 3PK dated 5 July 2012 (the ***Law***). **See column 7**	Applicable	The Law passed subsequent to the accession by Kazakhstan ratified the Treaty in order to ensure that the Treaty has priority over national law.

Kenya Date of ratification: 13 October 2006 Date of entry into force: 1 February 2007	**Being considered by OECD**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Express Legislation Section 5 of the Act provides that the Act shall prevail in case of any inconsistency between it and any other law with respect to international interests in aircraft objects. See column 7	The Treaty was ratified by the Government of Kenya on 2 October 2006. The International Interests in Aircraft Act (the ***Act***) was passed and has been in effect since 9 March 2013. Article 2(6) of the Constitution of Kenya (2010) provides that ratified international treaties shall constitute part of domestic law.	Applicable	The Act passed after ratification of the Treaty by Kenya ensures that the Treaty has priority over national law. The Act has been formally in force since the Supreme Court validated the results of the general election in March 2013. However, it remains uncertain whether the Treaty has the prevailing force of law for transactions which closed between 1 February 2007 and 9 March 2013 due to lack of domestic legislation during that period.
Latvia Date of accession: 8 February 2011 Date of entry into force: 1 June 2011	**No**	**No** Protocol Article VIII – **(not made)** Protocol Article XI – **(not made)** Protocol Article XIII – **(not made)** Convention Article 54(2) – non judicial remedies permitted Protocol Article X – (not made) Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Higher Legal Norm Section 13 of the National Law "On International Treaties of the Republic of Latvia" provides that international treaties approved by Parliament rank in priority to other national laws.	The Treaty has a force of law in Latvia pursuant to the National Law "On Convention on International Interests in Mobile Equipment and Protocol to the Convention in International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment" (the ***Convention Law***) adopted by Parliament in December 2010.	Not applicable given that no declaration under Article XIII of the Protocol was made.	
Luxembourg Date of accession: 27 June 2008 Date of entry into force: 1 October 2008	**Yes**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Express Legislation Higher Legal Norm Article 49bis of the Luxembourg Constitution of 17 October 1868, as amended, provides that any adopted international laws or conventions supersede any Luxembourg law, decree or regulation.	The Treaty has a force of law following its ratification by a law on 28 May 2008.	Applicable	Response received from one counsel only. The declarations made by Luxembourg were made prior to the formulation of the guidance set out in Annex III of the UNIDROIT Summary Report. See, in particular, the declarations made by Luxembourg under Protocol Articles VIII, X and XI.

Country **Date of ratification/ accession** **Date of entry into force of the Cape Town Convention**	**2. Eligibility for the Cape Town discount** **(please visit** http://www.oecd.org/tad/exportcredits/ctc.htm **for the official OECD list)**	**3. Did the country make Qualifying Declarations under the ASU** **(please visit** http://www.unidroit.org/english/implement/i-main.htm **for UNIDROIT list of declarations – note however that UNIDROIT does not express any view on whether a state has made all qualifying declarations)**	**4. Does the Treaty take priority over conflicting national law**	**5. Method by which the Treaty acquires force of law**	**6. IDERA** **(where such Declaration was made, click on word 'Applicable' and see separate chart)**	**7. Additional comments**
Madagascar Date of accession: 10 April 2013 Date of entry into force: 1 August 2013	**Inconclusive**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	Inconclusive	Inconclusive	Applicable	No replies to date.
Malaysia Date of accession: 2 November 2005 Date of entry into force: 1 March 2006	**Yes**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 40 working days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 working days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Express Legislation Section 7(2) of the Act states that if any conflict or inconsistency arises between the provisions of the Act and other national legislation in respect of matters governed by the Treaty then the provisions of the Act shall prevail to the extent of the conflict or inconsistency.	The Treaty has the force of law in Malaysia pursuant to section 2 of the International Interests in Mobile Equipment (Aircraft) Act 2006 (the ***Act***).	Applicable	

Malta Date of accession: 1 October 2010 Date of entry into force: 1 February 2011	**Not yet considered by OECD**	**Yes** Protocol Article VIII* (not made as not permissible – but the terms of the Rome I Regulation are considered (and agreed by the ASU participants to be) "substantially similar") Protocol Article XI** (not made as not permissible – but national law as implemented *reflects the terms* of Alternative A – 30 calendar days) Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X*** (not made as not permissible – but national law as implemented *reflects the terms* of declaration – 10/30 calendar days) Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU **See column 7**	**Yes** Express Legislation Article 46(2) of the Aircraft Registration Act provides that the Treaty shall prevail over any other law in case of conflict.	The Treaty has the force of law pursuant to article 46 of the Aircraft Registration Act, 2010, Chapter 503 (the ***Aircraft Registration Act***) and was implemented by virtue of the First Schedule to the Aircraft Registration Act.	Applicable	Malta's implementing national law (the Aircraft Registration Act) is posted on the UNIDROIT website. The provisions relating to (i) Article X of the Protocol are reflected in Article 20 of the First Schedule to the Aircraft Registration Act, and (ii) Article XI of the Protocol are reflected in Article 23 of the First Schedule to the Aircraft Registration Act.
Mexico Date of accession: 31 July 2007 Date of entry into force: 1 November 2007	**No**	**No** Protocol Article VIII (made) Protocol Article XI – Alt B – **and further qualified** Protocol Article XIII **(not made)** Convention Article 54(2) – leave of court required Protocol Art X **(not made)** Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Higher Legal Norm	The Treaty was approved by the Mexican Senate and entered into by the President. Pursuant to article 133 of the Mexican Constitution, the Treaty thereby forms part of the supreme law of Mexico. The Mexican Supreme Court has interpreted that Article to result in the primacy of treaties.	Not applicable given that no declaration under Article XIII of the Protocol was made.	Mexico is currently considering modifying its declarations.

Country **Date of ratification/ accession** **Date of entry into force of the Cape Town Convention**	**2. Eligibility for the Cape Town discount** **(please visit** http://www.oecd.org/tad/exportcredits/ctc.htm **for the official OECD list)**	**3. Did the country make Qualifying Declarations under the ASU** **(please visit** http://www.unidroit.org/english/implement/i-main.htm **for UNIDROIT list of declarations – note however that UNIDROIT does not express any view on whether a state has made all qualifying declarations)**	**4. Does the Treaty take priority over conflicting national law**	**5. Method by which the Treaty acquires force of law**	**6. IDERA** **(where such Declaration was made, click on word 'Applicable' and see separate chart)**	**7. Additional comments**
Mongolia Date of accession: 19 October 2006 Date of entry into force: 1 February 2007	**No** **See column 7**	**No** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – **60 working days** Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 working days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Higher Legal Norm Article 2.2 of the Civil Code of Mongolia provides that ratified international treaties prevail over any inconsistent provision of the Civil Code. Article 2.2 of the Civil Aviation Law of Mongolia provides that ratified international treaties prevail over any inconsistent provision of the Civil Aviation Law.	The Treaty has been acceded to by Mongolian Parliament. Pursuant to the Mongolian Constitution, the Treaty has a force of law in Mongolia and is effective as domestic legislation.	Applicable	Response received from one counsel only. The only declaration which prevents the qualifying declarations having been made is the reference to "working days" instead of "calendar days" in relation to Protocol Article XI.
Mozambique Date of accession: 18 July 2013 Date of entry into force: 1 November 2013	**Inconclusive**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	Inconclusive	Inconclusive	Applicable	No replies to date.

Myanmar Date of accession: 3 December 2012 Date of entry into force: 1 April 2013	**Inconclusive**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 30 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	Inconclusive	Inconclusive	Applicable	No replies to date.
Kingdom of the Netherlands (only for Aruba, Curacao, Sint Maarten, Bonaire, Sint Eustatius and Saba (the latter three being the *Caribbean Netherlands*) Date of accession: 17 May 2010 Date of entry into force: 1 September 2010 (for Aruba only) 10 October 2010 for Curacao, Sint Maarten and the Caribbean Netherlands	**No**	**No** Protocol Article VIII (made) Protocol Article XI **(not made)** Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Higher Legal Norm The terms of the Treaty will prevail over any national law in Aruba, Curacao, Sint Maarten, and Bonaire and the Caribbean Netherlands in case of a conflict. Article 5.1 of the Status of the Kingdom of the Netherlands stipulates that the legislative power concerning 'Kingdom matters' is regulated in the Constitution. Article 94 of the Constitution states that the national laws of the territorial units of the Kingdom are not applicable in the event that they are inconsistent with ratified international conventions.	The Treaty was ratified by the Parliaments and governments of all territorial units of the Kingdom of the Netherlands and applies in respect of Aruba, Curacao, Sint Maarten, and Caribbean Netherlands, but not European Netherlands. Pursuant to Article 93 of the Constitution, provisions of a treaty which are intended to be 'self-executing' have direct force in these jurisdictions upon being published.	Applicable	The Kingdom of the Netherlands has ratified the Treaty only for Aruba, Curacao, Sint Maarten and Caribbean Netherlands, and not for the Netherlands proper.

Country **Date of ratification/ accession** **Date of entry into force of the Cape Town Convention**	**2. Eligibility for the Cape Town discount** **(please visit** http://www.oecd.org/tad/exportcredits/ctc.htm **for the official OECD list)**	**3. Did the country make Qualifying Declarations under the ASU** **(please visit** http://www.unidroit.org/english/implement/i-main.htm **for UNIDROIT list of declarations – note however that UNIDROIT does not express any view on whether a state has made all qualifying declarations)**	**4. Does the Treaty take priority over conflicting national law**	**5. Method by which the Treaty acquires force of law**	**6. IDERA** **(where such Declaration was made, click on word 'Applicable' and see separate chart)**	**7. Additional comments**
New Zealand Date of accession: 20 July 2010 Date of entry into force: 1 November 2010	**Yes**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (not made) Made a declaration prohibited under Article 3 of Annex I of Appendix II to the ASU in respect of Convention Article 55 but not problematic since also made a Qualifying Declaration under Convention Article 54(2)	**Yes** Express Legislation Section 106 of the Civil Aviation Act 1990 (as inserted by the Civil Aviation Cape Town Act) provides that the Civil Aviation Cape Town Act will prevail over any other law in New Zealand that applies to a matter to which the Treaty applies. The Civil Aviation Cape Town Act made a number of consequential amendments to other New Zealand enactments to make it clear that the Treaty has priority over the provisions of those other enactments.	The Treaty has the force of law pursuant to the Civil Aviation (Cape Town and Other Matters) Amendment Act 2010 (the ***Civil Aviation Cape Town Act***), which incorporates the Treaty into national law.	Applicable	The accession does not extend to Tokelau.
Nigeria Date of ratification: 16 December 2003 Date of entry into force: 1 March 2006	**Yes** **See column 7**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 30 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Lex Specialis Lex Posteriori Primacy of the Treaty arising through a line of cases, e.g. Abacha v. Fawehinmi (2000) 6 NWLR Part 660, page 228.	Section 73(2) of the Civil Aviation Act 2006 (the ***Act***) provides that the Treaty shall, from the commencement of the Act (14 November 2006), have the force of law in Nigeria.	Applicable	Actions taken in respect of a transaction governed by the Treaty raise questions of compliance with the Treaty's deregistration and export provisions.

Norway Date of accession: 20 December 2010 Date of entry into force: 1 April 2011	**Yes**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (not made) Made a declaration prohibited under Article 3 of Annex I of Appendix II to the ASU in respect of Convention Article 55 but also made a Qualifying Declaration under Convention Article 54(2)	**Yes** Express Legislation Lex Specialis This is further supported by (1) an additional paragraph G in chapter III of the existing Aviation Act (of 1993) according priority to the Treaty over conflicting provisions of the Aviation Act, and (2) amendments to the Norwegian Enforcement Act, effectively allowing enforcement in accordance with the Treaty *or* the Enforcement Act.	The Treaty has a force of law in Norway pursuant to the Act no. 58 on International Interests in Mobile Equipment of 12 November 2010.	Applicable	
Oman Date of accession: 21 March 2005 Date of entry into force: 1 March 2006	**Yes** **See column 7**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	Inconclusive	Inconclusive	Applicable	No replies to date.

Country **Date of ratification/ accession** **Date of entry into force of the Cape Town Convention**	**2. Eligibility for the Cape Town discount** **(please visit** http://www.oecd.org/tad/exportcredits/ctc.htm **for the official OECD list)**	**3. Did the country make Qualifying Declarations under the ASU** **(please visit** http://www.unidroit.org/english/implement/i-main.htm **for UNIDROIT list of declarations – note however that UNIDROIT does not express any view on whether a state has made all qualifying declarations)**	**4. Does the Treaty take priority over conflicting national law**	**5. Method by which the Treaty acquires force of law**	**6. IDERA** **(where such Declaration was made, click on word 'Applicable' and see separate chart)**	**7. Additional comments**
Pakistan Date of accession: 22 January 2004 Date of entry into force: 1 March 2006	**Yes**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Express Legislation Lex Specialis Lex Posteriori See column 7, which addresses a case whose outcome may result in a conflict between the Constitution of Pakistan and the Treaty.	Pakistan acceded to the Treaty through the promulgation of the Cape Town Convention and Aircraft Protocol (Implementation) Rules 2004 on 22 January 2004 (the ***Convention Rules***). The Convention Rules have the status of delegated legislation.	Applicable	Pending litigation in Pakistan (not in Treaty context) is dealing with effect of Article 10A of the 18th Amendment to the Constitution of Pakistan, and which will address the conflict between the codified right to a fair trial and self-help remedies (*Federation of Pakistan v Muhammad Umer Rathore* and Civil Petition No. 291 of 2009 by the Supreme Court of Pakistan).
Panama Date of ratification: 28 July 2003 Date of entry into force: 1 March 2006	**Yes**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Lex Specialis	The Treaty has a force of law in Panama pursuant to the Law 29 of 26 March 2003 (the ***Law***).	Applicable	Response received from one counsel only.

Russian Federation Date of accession: 25 May 2011 Date of entry 1 September 2011	**Not yet considered by OECD** **See column 7**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (not made) Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Higher Legal Norm Clause 15(4) of the Constitution of the Russian Federation provides that if an international treaty to which the Russian Federation has acceded to establishes rules different from those provided for in any domestic law, the rules established by the international treaty shall apply.	The Treaty has the force of law pursuant to Clause 15(4) of the Constitution of the Russian Federation, which provides that recognised principles of international law and international treaties that apply to the Russian Federation form part of the domestic legal system. The accession to the Treaty was achieved through enactment of the Federal Law of the Russian Federation No. 361-FZ dated 23 December 2010 (the ***Convention Act***), in accordance with Article 5 of the Federal Law No. 101-FZ "On International Treaties of the Russian Federation" dated 15 July 1995 (***International Treaties Law***). A separate act has been adopted in respect of declarations under Article VIII and XIII of the Protocol (Federal Law of the Russian Federation No. 60-FZ dated 5 June 2012 "On declaration of the Russian Federation in connection with the Protocol to the Convention in International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment" (the ***Law on Additional Declarations***)). It entered into force on 18 June 2012.	Applicable	Implications, if any, of the declaration under Article 39 and practicalities of deregistration and export (upon effectiveness of declaration under Article XIII of the Protocol) are being assessed.
Rwanda Date of accession: 28 January 2010 Date of entry into force: 1 May 2010	**Yes** **See column 7**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	Inconclusive	Inconclusive	Applicable	No replies to date.

Country **Date of ratification/ accession** **Date of entry into force of the Cape Town Convention**	**2. Eligibility for the Cape Town discount** **(please visit** http://www.oecd.org/tad/exportcredits/ctc.htm **for the official OECD list)**	**3. Did the country make Qualifying Declarations under the ASU** **(please visit** http://www.unidroit.org/english/implement/i-main.htm **for UNIDROIT list of declarations – note however that UNIDROIT does not express any view on whether a state has made all qualifying declarations)**	**4. Does the Treaty take priority over conflicting national law**	**5. Method by which the Treaty acquires force of law**	**6. IDERA** **(where such Declaration was made, click on word 'Applicable' and see separate chart)**	**7. Additional comments**
Saudi Arabia Date of ratification: 27 June 2008 Date of entry into force: 1 October 2008	**No**	**No** Protocol Article VIII **(not made)** Protocol Article XI **(not made)** Protocol Article XIII **(not made)** Convention Article 54(2) – non judicial remedies permitted Protocol Art X (not made) Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	Inconclusive	Inconclusive Articles 20 and 70 of the Law of the Council of Ministers require a Royal Decree to ratify a treaty and incorporate it into Saudi Arabia's laws. The status of the Royal Decree is unclear.	Not applicable given that no declaration under Article XIII of the Protocol was made.	Response received from one counsel only.

Senegal Date of ratification: 9 January 2006 Date of entry into force: 1 May 2006	**Yes**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 30 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Higher Legal Norm	The Treaty is enforceable in Senegal as it was ratified, enacted by the President, and published in the official bulletin of Senegal as required by the Senegalese Constitution.	Applicable	Response received from one counsel only.
Singapore Date of accession: 28 January 2009 Date of entry into force: 1 May 2009	**Yes**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 30 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (not made) Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Express Legislation Section 3(2) of the Aircraft Equipment Act expressly states that if a provision of the Aircraft Equipment Act is inconsistent with any other law, the provision of the Aircraft Equipment Act prevails over conflicting domestic law.	The Treaty was implemented by the International Interests in Aircraft Equipment Act, No. 5 of 2009 (the ***Aircraft Equipment Act***).	Applicable	Singapore made a subsequent declaration which took effect on 1 November 2010 in respect of Protocol Article VIII.

Country **Date of ratification/ accession** **Date of entry into force of the Cape Town Convention**	**2. Eligibility for the Cape Town discount** **(please visit** http://www.oecd.org/tad/exportcredits/ctc.htm **for the official OECD list)**	**3. Did the country make Qualifying Declarations under the ASU** **(please visit** http://www.unidroit.org/english/implement/i-main.htm **for UNIDROIT list of declarations – note however that UNIDROIT does not express any view on whether a state has made all qualifying declarations)**	**4. Does the Treaty take priority over conflicting national law**	**5. Method by which the Treaty acquires force of law**	**6. IDERA** **(where such Declaration was made, click on word 'Applicable' and see separate chart)**	**7. Additional comments**
South Africa Date of ratification: 18 January 2007 Date of entry into force: 1 May 2007	**Inconclusive**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 30 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Inconclusive** Lex Specialis Lex Posteriori Questions have been raised regarding the priority of the Treaty. These include the need for legislation and/or civil aviation regulations, issues associated with subsequently passed company law legislation relating to creditor's rights against a debtor under a business rescue, and constitutional type questions potentially impacting the procedure for the exercise of remedies.	South Africa adopted the Treaty into national law by enactment of the Convention on International Interests in Mobile Equipment Act 4 of 2007 (the ***Convention Act***).	Applicable	The South African Civil Aviation Authority is considering adopting specific regulations relating to the implementation and practical application of the Treaty.

Tajikistan Date of accession: 31 May 2011 Date of entry into force: 1 September 2011	**Yes**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Higher Legal Norm	The Treaty has a force of law in Tajikistan pursuant to accession to the Convention through Decree of the Lower Chamber of the Parliament of the Republic of Tajikistan #428 dated 25 May 2011 and accession to the Protocol through Decree of the Lower Chamber of the Parliament of the Republic of Tajikistan # 429 dated 25 May 2011. Pursuant to the Constitution and the Law on International Treaties of the Republic of Tajikistan (the ***International Treaties Law***), effective international treaties form part of the national legal system	Applicable	
Togo Date of ratification: 27 January 2010 Date of entry into force: 1 May 2010	**Not yet considered by OECD**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 30 working days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 working days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Higher Legal Norm Pursuant to Article 140 of the Togolese Constitution, ratified international treaties prevail over any conflicting national legal norm.	The Treaty has a force of law in Togo by virtue of its ratification through Law No. 2009-026 dated 6 November 2009.	Applicable	Response received from one counsel only.
Turkey Date of ratification: 23 August 2011 Date of entry into force: 1 December 2011	**Not yet considered by OECD** **See column 7**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Express Legislation Lex Specialis Lex Posteriori Article 90 of the Turkish Constitution provides for primacy of international treaties over conflicting national laws.	The Treaty has a force of law in Turkey pursuant to Article 90 of the Turkish Constitution No. 2709 dated 7 November 1982. The Treaty has been duly ratified by the Turkish National Assembly on 29 June 2010 in accordance with paragraph 1 of Article 90 of the Constitution. Further, an 'adjustment law' came into force on 12 July 2012 as Article 68/A of the Turkish Civil Aviation Law No. 2920 (the ***Adjustment Law***)	Applicable	Turkish Civil Aviation Authority has adopted formal instructions in respect of recordation of IDERAs, and deregistration and export pursuant to IDERA. Clarification being sought on relationship between the Treaty and the subsequently passed financial leasing law (which requires a contractual grace period).

Country **Date of ratification/ accession** **Date of entry into force of the Cape Town Convention**	**2. Eligibility for the Cape Town discount** **(please visit** http://www.oecd.org/tad/exportcredits/ctc.htm **for the official OECD list)**	**3. Did the country make Qualifying Declarations under the ASU** **(please visit** http://www.unidroit.org/english/implement/i-main.htm **for UNIDROIT list of declarations – note however that UNIDROIT does not express any view on whether a state has made all qualifying declarations)**	**4. Does the Treaty take priority over conflicting national law**	**5. Method by which the Treaty acquires force of law**	**6. IDERA** **(where such Declaration was made, click on word 'Applicable' and see separate chart)**	**7. Additional comments**
Ukraine Date of ratification: 31 July 2012 Date of entry into force: 1 November 2012	**Not yet considered by OECD**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (not made) Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Higher Legal Norm Pursuant to the Law No. 1906-IV the Treaty has priority over other laws except for the Constitution of Ukraine.	The Treaty has the force of law in Ukraine following its entry into force on 1 November 2012, pursuant to the Constitution of Ukraine and the Law on Ukraine's International Treaties No. 1906-IV dated 29 June 2004 (the ***Law No. 1906-IV***).	Applicable	
United Arab Emirates Date of accession: 29 April 2008 Date of entry into force: 1 August 2008	**Inconclusive** **See column 7**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 60 calendar days Protocol Article XIII (made) Convention Article 54(2) – leave of court required Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Inconclusive** While the principles of Lex Specialis and Lex Posteriori and some elements of Higher Legal Norm apply in favour of primacy of the Treaty, which was brought into effect in accord with customary treaty practice, there is some uncertainty given the hierarchy of different types of legislation and sequence of events relating to the passage of the initial decree and the related accession and ratification of the Treaty.	Federal Decree No.32 of 2006 ratified the accession of the United Arab Emirates to the Treaty.	Applicable	Further decree/legislation desirable to confirm the priority of the Treaty.

United Republic of Tanzania Date of ratification: 30 January 2009 Date of entry into force: 1 May 2009	**Inconclusive**	**Yes** Protocol Article VIII (made) Protocol Article XI (made) – Alt A – 30 calendar days Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted Protocol Art X (made) – 10/30 calendar days Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Inconclusive**	The Treaty has a force of law in Tanzania by virtue of its ratification through the Civil Aviation (the Protocol to Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment) (Implementing) Regulations 2011 (the ***Cape Town Regulations***) made under the Government Notice No. 100 of 2012.	Applicable	Response received from one counsel only.
United States of America Date of ratification: 28 October 2004 Date of entry into force: 1 March 2006	**No** **See column 7**	**No** Protocol Article VIII (made) Protocol Article XI **(not made)** Protocol Article XIII (made) Convention Article 54(2) – non judicial remedies permitted in accordance with United States law Protocol Art X (not made) Made no declarations prohibited under Article 3 of Annex I of Appendix II to the ASU	**Yes** Higher Legal Norm Supremacy clause of the United States Constitution (art.VI, cl. 2) provides that all treaties ratified by the United States shall be the supreme law of the land.	The Treaty has direct effect in the United States. In addition, the United States Congress passed the Treaty through the Cape Town Implementation Act 2004 on 9 August 2004 (the ***Act***) in respect of select matters impacting the practices and procedures of the Federal Aviation Administration.	Applicable	The only qualifying declaration not made is in relation to Article XI. However, Section 1110 of the United States Bankruptcy Code is substantially similar to Alternative A, with a waiting period of 60 calendar days.

Cape Town Treaty – Irrevocable De-registration and Export Request Authorisation (*IDERA*)

This summary is based on information made available to the Aviation Working Group by counsel in ratifying countries which have made a declaration under Protocol, art XXX(1) in respect of Protocol, art XIII. No responsibility, duty, or liability is accepted by the Aviation Working Group (or any of its members or its legal counsel) or any such counsel to any person regarding this summary or the information provided herein or omitted, which may contain errors. No person is permitted to rely on any part of this document. Instead, parties should retain their own counsel.

This summary is based on legal elements rather than actual practice, i.e. the summary indicates the legal rule and not whether the relevant institutions (courts and civil aviation authorities) in a country have enforced or will enforce that rule. The latter is a matter of compliance with the Cape Town Convention, which is outside the scope of this summary.

Column 2, which asks if there is legislation or regulation applicable to IDERA is not intended to and does not express a view as to whether such regulation or legislation is required. For example, in some countries the effect of the Treaty and/or its implementation results in mandatory procedure applicable to the recordation and/or enforcement of IDERAs. A further version of this summary may specify whether ratifying countries need such regulation or legislation as a matter of law.

This summary will be updated from time to time based on a review of further information received from counsel in ratifying countries[2], the provision of which is encouraged.

Definitions

Convention means the Convention on International Interests in Mobile Equipment which entered into force on 1 April 2004;

EU means the European Union;

Protocol means the Protocol to the Convention on Matters Specific to Aircraft Equipment which entered into force on 1 March 2006; and

Treaty means the Convention and Protocol together.

[2] Any such further information should be sent to [CTC-implementation@awg.aero]

Country	1. Did the country make a Declaration under Article XIII of the Protocol	2. Legislation or regulations establishing or setting out rules in relation to IDERAs	3. Specified procedures relating to recordation of IDERAs	4. Specified procedures relating to enforcement [deregistration and export of aircraft] under IDERAs	5. Additional Comments
Afghanistan	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs. The Ministry of Transport and Civil Aviation of Islamic Republic of Afghanistan (***MOTCA***) is responsible for registration and deregistration of aircraft and is the 'registry authority'.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	Response received from one counsel only.
Albania	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs. The Civil Aviation Authority (***CAA***) is responsible for administering the register of civil aircraft and is the 'registry authority'.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	
Angola	**Yes**				No response received.
Bahrain	**No**				
Bangladesh	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs. Registration of aircraft can be made by operators to the Chairman of the Civil Aviation Authority of Bangladesh (the ***CAAB***).	No domestic legislation or specified procedures govern the enforcement of IDERAs.	Response received from one counsel only.
Belarus	**No**				
Brazil	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	
Cameroon	**No**				
Canada	**Yes**	No specified domestic legislation or regulations are required to govern IDERAs (they are consistent with existing Canadian law).	Transport Canada Aviation is currently preparing a Staff Instruction to aircraft registry officials setting procedures for filing of and enforcement/de-registration using IDERAs, which will be a public document and should be finalised in June 2013.	See column 4	No response received.

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Cape Verde	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs. The Civil Aviation Authority is responsible for recording registration of aircraft, IDERAs and is the 'registry authority'.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	Response received from one counsel only.
China	**Yes**	The rules on IDERAs are provided in the Administrative Procedures for the De-registration of Nationality of Civil Aircraft According to IDERA of 17 July 2009, as amended on 17 June 2011(the ***IDERA Procedures***).	The recordation must be made with the Civil Aviation Administration of China (the ***CAAC***) by an operator using the form attached to the IDERA Procedures. The IDERA must be submitted in Chinese. CAAC will record the IDERA within 20 working days. The recordation is evidenced by the CAAC official countersigning the IDERA and inserting the recordation date.	Article 3 of the IDERA Procedures set out the process for enforcement of an IDERA. An authorised party or its certified designee shall follow the following formalities in exercising their enforcement rights: (i) submit an Application for Civil Aircraft Nationality De-registration (AP-45-01), (ii) identity (authorisation) documents of the authorised party, (iii) court order issued under Art XIII of Convention and Art X of Protocol, and (iv) other documents as may be required by CAAC. Upon receipt of complete documentation CAAC will de-register the aircraft within 5 working days after its acceptance of the deregistration application.	
Colombia	**No**				
Congo	**No**				
Cuba	**No**				

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Ethiopia	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs. The Ethiopian Civil Aviation Authority (the ***ECAA***) is responsible for recording registration of aircraft in Ethiopia, recording of IDERAs and is the 'registry authority'.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	Response received from one counsel only.
European Union	**N/A**				
Fiji	**Yes**				No response received.
India	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs. Directorate General of Civil Aviation (the ***DGCA***) is the 'registry authority'. DGCA accepts but does not formally record IDERAs.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	
Indonesia	**Yes**	Regulation of the Directorate General of Civil Aviation (the ***DGCA***) No. 166 of 2009 regarding Staff Instruction No. 47-02 on the Irrevocable Deregistration and Export Request Authorization issued in June 2009 (the ***DGCA Regulation***) sets out rules in relation to IDERAs.	The recordation must be made with the DGCA by an operator or a registered owner using the Form DAAO (Director of Airworthiness and Aircraft Operation) 47-03 and the form of IDERA as determined by the DGCA (substantially in the form attached to the DGCA Regulation). The IDERA must be submitted in both Indonesian and English languages. The recordation is evidenced by the DGCA official countersigning the IDERA and inserting the recordation date. See column 5	The DGCA Regulation does not provide specified procedures in relation to enforcement pursuant to an IDERA.	DGCA practices regarding recordation may vary from those set out in the DGCA Regulation.

Country	1. Did the country make a Declaration under Article XIII of the Protocol	2. Legislation or regulations establishing or setting out rules in relation to IDERAs	3. Specified procedures relating to recordation of IDERAs	4. Specified procedures relating to enforcement [deregistration and export of aircraft] under IDERAs	5. Additional Comments
Ireland	**Yes**	The Convention Act and the International Interests in Mobile Equipment (Cape Town Convention) (Declarations) Order 2005 (S.I. No. 927/2005) regulate IDERAs. The Irish Aviation Authority (the ***IAA***) has also issued two notices setting out further details in relation to IDERAs. These are the Aeronautical Notice number A.98 dated 30 April 2006 named "Irrevocable De-Registration and Export Request Authorisation (IDERA) – Interim position and requirements" (the ***Notice***) and the Aeronautical Notice number A.102 dated 21 June 2009 named "Irrevocable De-Registration and Export Request Authorisation (IDERA)" (the ***A102 Notice***).	The 'registered owner' must submit the IDERA to the IAA using the form scheduled to the Notice. The 'registered owner' is the person named as the registered owner of the aircraft on the register of civil aircraft maintained by the IAA. The registered owner must be (i) Irish citizen, (ii) EU citizen, or (iii) a company incorporated in Ireland or EU where 2/3 of the board of directors are either Irish or EU citizens. The applicant must submit it in ink and in duplicate to the IAA. Correctly submitted IDERAs are processed within 10 working days. The IAA will stamp as recorded the IDERA and return one stamped original to the party that submitted the IDERA for recordation.	The A102 Notice provides that the IAA will honour a request for the deregistration of an aircraft where (i) the request is submitted in the de-registration form of the annex to the A102 Notice by an approved signatory the authorised party on the recorded IDERA; (ii) the authorised party certifies that all registered interests ranking in priority to the applicant have been discharged or that the holders of such interests have consented to the deregistration; and (iii) the authorised party certifies that all mandatory actions connected with the deregistration under national law have been taken. The IAA also requires evidence that the aircraft is in the possession of the authorised party and that it has been grounded. The A102 Notice sets out the mandatory documents that must be submitted to the IAA with the request for deregistration. Provided the IAA is satisfied with the above, it will take a minimum of five working days to evaluate a de-registration request. Once de-registered, the IAA will provide a certificate of deregistration and notify the 'registered owner', the authorised party and the importing authority, usually by e-mail and on the same day.	

Country	1. Did the country make a Declaration under Article XIII of the Protocol	2. Legislation or regulations establishing or setting out rules in relation to IDERAs	3. Specified procedures relating to recordation of IDERAs	4. Specified procedures relating to enforcement [deregistration and export of aircraft] under IDERAs	5. Additional Comments
Jordan	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs. The Jordanian Civil Aviation Regulatory Commission (the ***CARC***), which registers aircraft, also records IDERAs and is the 'registry authority'.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	Response received from one counsel only.
Kazakhstan	**Yes**	The Regulations on State Registration of Civil Aircraft of the Republic of Kazakhstan, Rights Thereto and Transactions Therewith, as well as forms of Documents Certifying Rights Thereto approved by the Order of the Minister of Transport and Communications of the Republic of Kazakhstan dated 18 September 2012, No. 613 sets out rules relating to IDERAs (the ***Regulations***).	Pursuant to the Regulations, the Civil Aviation Committee (***CAC***) of the Ministry of Transport and Communications of the Republic of Kazakhstan is responsible for recordation of IDERAs and is the 'registry authority'. Clause 46 of the Regulations sets out the recordation procedure. Either the operator or the owner must execute an IDERA in the form attached to Annex 10 of the Regulations. The IDERA must be submitted in Russian and Kazakh. The CAC records it within 2 working days.	Clauses 49-53 of the Regulations set out the procedures for enforcing IDERAs. An application for deregistration must contain, *inter alia*, a certification that the authorised party has given at least 10 day prior notice to all concerned parties in writing (if enforcing party is not applying for deregistration based on a judicial act). If documents are in order, the CAC deregisters the aircraft within 10 working days. The owner or the operator of the aircraft will be notified by the CAC of the deregistration and shall provide aircraft documentation, including certificate of registration, within 10 days of such notice. Pursuant to Article 159 of the Civil Code of Kazakhstan, a recorded IDERA may be invalidated by the court if it establishes that the recordation of the IDERA was invalid (i.e. fraud, exceeding authority etc).	

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Kenya	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs. The Kenya Civil Aviation Authority (***KCAA***) is responsible for recording IDERAs and is the 'registry authority'.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	
Latvia	**No**				
Luxembourg	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs. The Civil Aviation Directorate (the ***CAD***) is responsible for regulating and recording IDERAs and is the 'registry authority'.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	
Madagascar	**Yes**				No response received.
Malaysia	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs. The Department of Civil Aviation (the ***DCA***) is responsible for registering IDERAs and is the 'registry authority'.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	
Malta	**Yes**	The Aircraft Registration Act 2010 (the ***Act***) regulates IDERAs.	The Authority for Transport in Malta (the ***TM***) is responsible for recording IDERAs, whereas the Maltese Director General of Civil Aviation (the ***DG***) has competence to register and deregister aircraft in Malta. Article 25(2) of the First Schedule to the Act states that the IDERA form to be submitted needs to be 'substantially in the form in the Second Schedule' to the Act.	Enforcement provisions are set out in Articles 15(2) and 15(4) of the First Schedule to the Act and the Information and Advisory Notice No. 17 (issued by the DG). In addition to the list of documents usually needed for de-registration, the authorised party also needs to show it has provided 'reasonable prior notice in writing' of the proposed de-registration to the debtor or any guarantor, and to any other person having rights in and to the aircraft.	Response received from one counsel only.

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			IDERA recordation must be executed either by the owner or operator. Evidence of recordation can be obtained by means of a transcript of the National Aircraft Register, or the original IDERA, which is stamped and returned to the authorised party.	Evidence of de-registration can be obtained by way of a transcript of the Aircraft National Register.	
Mexico	**No**				
Mongolia	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs. The Civil Aviation Authority of Mongolia (***CAA***) records IDERAs and is the 'registry authority'.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	Response received from one counsel only.
Mozambique	**Yes**				No response received.
Myanmar	**Yes**				No response received.
Kingdom of the Netherlands (only for Aruba, Curacao, Sint Maarten, Bonaire, Sint Eustatius and Saba (the latter three being *Caribbean Netherlands*)	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs. If the transaction is structured using an entity in a Caribbean Netherlands territory (Bonaire, Sint Eustatius and Saba) where the Treaty is in force, the IDERA will have to be filed with the European Netherlands registry – the Aircraft Registry CAA. With respect to the other territorial units, the Department of Civil Aviation of Aruba (Directie Luchtvaart Aruba) has responsibility over the matter in Aruba and the Curacao Civil Aviation Authority (Curacaose Burgerluchtvaart Authoriteit) is responsible for IDERAs in Curacao and St Maarten.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	

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New Zealand	**Yes**	Sections 109 to 112 (inclusive) of the New Zealand Civil Aviation Act 1990 (the ***Civil Aviation Act***) set out rules in respect of IDERAs.	The Civil Aviation Authority of New Zealand (***NZCAA***) is responsible for recording and regulating IDERAs. Forms CAA 24047/09 and 24047/09A must be executed by the registered owner (in practice this is the operator as definition of 'owner' is an entity lawfully entitled to possession for 28 days or longer) of the aircraft in favour of the authorised party.	The Civil Aviation Act does not set out a particular procedure for enforcing an IDERA other than requiring submission of the prescribed form CAA 24047/05 for de-registration to the Director of the NZCAA. If documentation is in order the Director of the NZCAA must revoke the certificate of registration within 5 working days. Once deregistered a fax notification is issued.	
Nigeria	**Yes**	No specified domestic legislation or regulations govern IDERAs	No regulatory framework or specified procedures for recording IDERAs. The Nigerian Civil Aviation Authority (the ***NCAA***) is responsible for recording and regulating IDERAs and is the 'registry authority'.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	
Norway	**Yes**	There is no specified Norwegian law in addition to the Act no. 58 on International Interests in Mobile Equipment of 12 November 2011 (the ***Act***).	No regulatory framework or specified procedures for recording IDERAs. The Norwegian Civil Aviation Registry (the ***NCAR***) is responsible for recording IDERAs and is the 'registry authority'.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	
Oman	**Yes**				No response received.

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Pakistan	**Yes**	The Cape Town Convention and Aircraft Protocol (Implementation) Rules 2004 (the ***Convention Rules***) set out the rules in relation to IDERAs.	The Civil Aviation Authority of Pakistan (***CAA***) is responsible for recording and regulating IDERAs and is the 'registry authority'. The operator shall execute the IDERA using the form provided in the Schedule to the Convention Rules. The aircraft registry recognises both operators and owners; if the aircraft is leased the operator should execute the IDERA, and if the aircraft is operated by its owner then the owner is to execute the IDERA.	Rule 16 of the Convention Rules sets out the procedure for de-registration of an aircraft.	See pending litigation in column 7 of the Summary Chart.
Panama	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs. The Civil Aeronautics Authority (the ***AAC***) is responsible for recording IDERAs and is the 'registry authority'.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	Response received from <u>one</u> counsel only.
Russian Federation	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	Declaration is effective on 1 August 2013.
Rwanda	**Yes**				<u>No response</u> received.
Saudi Arabia	**No**				
Senegal	**Yes**	The rules relating to IDERAs are provided in administrative guidance "ANACS – RAS N°03" and "ANACS – RAS N°03 Procedures d'Application".	The National Civil Aviation and Meteorology Agency of Senegal (***ANACIM***) is responsible for recording and regulating IDERAs. Operators should execute IDERAs using the form "Formulaire de Radiation d'un Aeronef au Registre d'Immatriculation". A fee associated with recordation of the IDERA is payable. The amount depends on the weight of the aircraft.		Insufficient information received from local counsel.

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Singapore	**Yes**	The International Interests in Aircraft Equipment Act, No. 5 of 2009 (the ***Aircraft Equipment Act***) sets out rules in relation to IDERAs.	The detailed procedure for recording an IDERA is set out in Advisory Circular (AC 1-5(0)) from CAAS. The Civil Aviation Authority of Singapore (the ***CAAS***) is responsible for recording and regulating IDERAs and there exists a prescribed form of IDERA, which is attached to the Aircraft Equipment Act. The 'Registered Owner' is the party executing the IDERA. The term has a wide definition and includes both operator and owner because either can register an aircraft in Singapore. Recordation requires two original IDERAs. Upon recordation, CAAS returns the second original to the sender.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	
South Africa	**Yes**	The Convention Act and the Civil Aviation Act 13 of 2009 (the ***Civil Aviation Act***) incorporates the Treaty and establishes the Civil Aviation Authority (the ***CAA***), which records IDERAs.	No regulatory framework or specified procedures for recording IDERAs. The CAA is responsible for recording IDERAs and is the 'registry authority'.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	
Tajikistan	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs. The Main Civil Aviation Department of the Ministry of Transport (the ***CAA***) is responsible for aircraft registration in Tajikistan, and is the 'registry authority'.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	

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Togo	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs. The National Agency of Civil Aviation (***NACA***) records IDERAs and is the 'registry authority'.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	Response received from one counsel only.
Turkey	**Yes**	The Turkish authorities have adopted a Regulation on Registration by the Directorate General of Civil Aviation (***DGCA***) of Irrevocable Deregistration and Removal Request Authorisation Certificate (the ***Regulation***), which outlines specific rules and procedures in relation to IDERAs.	Specified procedures for recording IDERAs are set out in the Regulation. The DGCA is responsible for recording and regulating IDERAs, which must be completed in accordance with the procedure set out in the Regulation. As Turkey has an operator based system, the operator needs to execute the IDERA using the form annexed to the to the Regulation. The IDERA needs to be issued before a notary. The Regulation provides for a maximum 15 business day registration period following filing. Once recorded, the operator is provided with a confirmation of recordation.	Section 1 of Article 13 to the Regulation requires that (i) the petition is based on an IDERA previously submitted to the DGCA, and (ii) that the petitioning party that it is authorised to make the application with the DGCA. Section 2 of Article 13 sets out the minimum documentation required to enforce an IDERA, and includes an International Registry Search Certificate. DGCA evaluation pursuant to an enforcement submission is processed within 5 business days. Following de-registration, the DGCA issues an official letter to all affected parties informing them of such de-registration.	
Ukraine	**Yes**	No specified domestic legislation or regulations govern IDERAs.	No regulatory framework or specified procedures for recording IDERAs.	No domestic legislation or specified procedures govern the enforcement of IDERAs.	

Country	1. Did the country make a Declaration under Article XIII of the Protocol	2. Legislation or regulations establishing or setting out rules in relation to IDERAs	3. Specified procedures relating to recordation of IDERAs	4. Specified procedures relating to enforcement [deregistration and export of aircraft] under IDERAs	5. Additional Comments
United Arab Emirates	**Yes**	The General Civil Aviation Authority of the United Arab Emirates (the ***GCAA***) has published a Civil Aviation Advisory Publication No. 58 issued by the GCAA with effect from 27 December 2011 – "Guidance on Aircraft Registry Requirements" (***CAAP 58***) providing guidance notes in relation to IDERAs. The CAAP 58 is currently under review.	The GCAA is responsible for recording IDERAs. The form appended to the Treaty, as well as to the CAAP 58, shall be used for recordation of an IDERA. CAAP 58 provides little guidance in relation to recordation of IDERAs but the relevant documentation is usually submitted 7-14 days before the desired recordation date. The Register of Civil Aviation is both an operator and an owner registry (either must be a UAE national/UAE based). Following recordation, the relevant GCAA official countersigns the IDERA.	Paragraph 11 of CAAP 58 sets out detailed instructions on enforcement of IDERAs, which include, *inter alia*, reasons for de-registration and certification that all registered interests ranking in priority have been discharged or that holders of such interests consent to the de-registration. Paragraph 7 of the CAAP 58 sets out general de-registration procedures.	The GCAA relies extensively on original and notarised documents in relation to recordation of IDERA and enforcement thereof (most documents must be notarised and/or be originals).
United Republic of Tanzania	**Yes**	The Civil Aviation (the Protocol to Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment) (Implementing) Regulations 2011 (the ***Cape Town Regulations***) set out rules in relation to IDERA.	The Tanzania Civil Aviation Authority (***TCAA***) is responsible for recording and regulating IDERAs, and section 5 sets out the recordation procedure. The Cape Town Regulations contain a prescribed form of IDERA. In addition to submitting an IDERA for recordation, the operator also needs to apply for registration of the aircraft.	Section 16 of the Cape Town Regulations sets out the procedure in relation to enforcement of IDERAs. The only document required is the underlying IDERA but also, in addition, the party requesting deregistration and export otherwise than pursuant to a court order shall give 'reasonable prior notice in writing to (a) debtor and any guarantor, and (b) any other person having rights in or over the aircraft'. Section 7 of the Cape Town Regulations requires the TCAA to grant the order for deregistration no more than 5 business days from the date of the request.	Response received from one counsel only.

Country	1. Did the country make a Declaration under Article XIII of the Protocol	2. Legislation or regulations establishing or setting out rules in relation to IDERAs	3. Specified procedures relating to recordation of IDERAs	4. Specified procedures relating to enforcement [deregistration and export of aircraft] under IDERAs	5. Additional Comments
United States of America	**Yes**	A regulation (14 CFR Part 47 § 47.13 and 14 CFR Part 47 § 47.47) and several administrative guidance documents issued by the Federal Aviation Administration (***FAA***) set out rules in relation to IDERAs.	No regulatory framework or specified procedures for recording IDERAs, however, pursuant to administrative guidance, the FAA requires that an originally signed IDERA, in a form substantially the same as that set forth in the Annex to the Protocol, is submitted by the registered owner of the aircraft. The FAA also requires the IDERA to describe its related security instrument in sufficient detail to allow the FAA to identify the relationship between the two documents.	The FAA sets out a specific procedure for deregistration of an aircraft when the holder of an IDERA is seeking to enforce it. It includes supplying the FAA with the following: (i) describing the aircraft to be deregistered, (ii) stating the reason for cancellation, (iii) listing the name of the country to which the aircraft is exported, (iv) including the title of the signer, and (v) including a certification that all registered interests ranking in priority have consented to the deregistration. The party seeking to enforce should also clearly mark the deregistration request with the word 'Export'.	