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1. The financing and leasing of aircraft, railway rolling stock and satellites have for many years been bedevilled by the fact that because these items of equipment regularly cross national borders the rights and interests of lenders and lessors have been inherently unstable. An interest validly created and perfected in the country of origin may prove invalid or unenforceable abroad, particularly in countries whose laws have a restrictive approach to non-possessory security. Moreover, not all countries possess a legal framework giving adequate protection to creditors in the event of default by debtors.

2. The Convention on International Interests in Mobile Equipment, with its associated Protocols, is one of the most ambitious international commercial law instruments ever to have been fashioned in the field of private transactional law. Its purpose is to provide a stable international legal regime for the protection of secured creditors, conditional sellers and lessors of aircraft objects, railway rolling stock and space assets through a set of basic default remedies and the protection of creditors’ interests by registration in an International Registry, thus securing priority and protection in the event of the debtor’s insolvency. These enhancements of creditors’ remedies are designed to reduce risk and hence the cost of borrowing and the level of exposure fees for credit insurance, and have already had a significant effect in that regard as regards aircraft objects. The creation of a sui generis international interest and of an International Registry in which to register it for priority purposes are both unique in the history of international lawmaking.

3. The Convention and Aircraft Protocol were concluded and opened for signature at Cape Town on 16 November 2001 at the conclusion of a diplomatic Conference hosted by the Government of South Africa and held under the joint auspices of the International Institute for the Unification of Private Law (UNIDROIT) and the International Civil Aviation Organization (ICAO) and attended by representatives from many States and international organisations. The perceived importance of these two instruments is attested by the fact that no fewer than 20 participating States signed them during the closing ceremony. Moreover, a mere twelve years later 57 States and what is now the European Union have ratified or acceded to the Convention and 52 of these the Aircraft Protocol. This is even more striking when account is taken
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of the fact that until recently all these States with the exception of the Republic of Ireland, where the international registry for aircraft objects is based, and Luxembourg, the planned location of the international registry for railway rolling stock, were outside the European Union, Spain’s recent ratification of the Convention will, it is hoped, provide a trigger for accessions by other EU Member States.

4. On 23 February 2007 the next phase of this ambitious project was accomplished with the adoption at a diplomatic Conference in Luxembourg of a second Protocol, the Luxembourg Protocol, relating to railway rolling stock. Hosted by the Government of Luxembourg and held under the joint auspices of UNIDROIT and the Intergovernmental Organisation for International Carriage by Rail (OTIF), who had worked in close collaboration throughout work on the Protocol, this diplomatic Conference too was very well attended, and it is hoped that it will not be long before the Luxembourg Protocol and with it the Convention as it relates to railway rolling stock will enter into force. The trilogy was completed with the adoption of the Space Protocol at a diplomatic Conference in Berlin in March 2012.

5. The Convention and the Luxembourg Protocol were each done in a single original in the English, French and German languages, all texts being equally authentic. As stated in the Final Act of the diplomatic Conference the text was subject to verification by the Secretariat of the Conference under the authority of the President of the Conference within a period of ninety days as to the linguistic changes required to make the texts in the three languages consistent with one another. The opportunity was taken to make certain linguistic changes, so that the text now published on the UNIDROIT website differs slightly from that adopted at the diplomatic Conference, though not, of course, on any matter of substance.

6. This Official Commentary, now in its second edition, has been prepared by the Rapporteur to the Luxembourg diplomatic Conference pursuant to Resolution No. 4 adopted at the Conference.\(^1\) It is in five parts. Part 1 provides a brief history of the Convention and the Aircraft and Luxembourg Protocols. Part 2 contains a review of the Convention and Part 3

\(^1\) For the text of the six Resolutions, see Appendices IV to IX.
a review of the Luxembourg Protocol. This is followed in Parts 4 and 5 by an Article-by-Article analysis of the individual provisions of the Convention and the Luxembourg Protocol respectively. In preparing the Official Commentary the Rapporteur has worked in close collaboration with the two Secretariats and in co-ordination with the Chairman of the Commission of the Whole, the Chairman of the Final Clauses Committee, the Chairman of the Registry Committee and the Chairman and members of the Drafting Committee. The Official Commentary has benefited greatly from numerous helpful observations made by observer organisations, specialist legal practitioners and others on drafts circulated for comment. Further details are contained in the Acknowledgments at the beginning of this volume.