INTRODUCTION

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 (see Part 2, paragraph 2.1). 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 government representatives from 68 States and 14 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. Twelve years later the Convention has secured 56 ratifications and the Protocol 50 ratifications.

4. The Luxembourg Protocol relating to railway rolling stock was concluded in Luxembourg on 23 February 2007 and the Space Protocol, to
which this Official Commentary is devoted, in Berlin on 9 March 2012. Neither of these Protocols is yet in force.

5. The Space Protocol was done in a single copy in the English and French languages, each text 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 two 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 has been prepared by the Reporter pursuant to Resolution No. 5 adopted at the Diplomatic Conference in Berlin and annexed to the Final Act.1 It is designed to be an authoritative guide to the Convention and Protocols. It is in no way binding on national courts but it is hoped that they will have due regard to it, particularly since it results from extensive consultation with negotiating governments and participating observer organisations. It will be followed by new editions of the Official Commentaries on the Convention and Aircraft Protocol and the Convention and Luxembourg Protocol.

6. The present Official Commentary is in five parts. Part 1 provides a brief history of the Convention and Protocols. Part 2 contains a review of the Convention and Part 3 a review of the Space Protocol. This is followed in Parts 4 and 5 by an Article-by-Article analysis of the individual provisions of the Convention and the Space Protocol respectively.

7. This revised edition, like the original edition, has benefited greatly from numerous helpful observations made by governments, observer organisations and others on drafts circulated for comment. Further details are contained in the Acknowledgments at the beginning of this volume.

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1 For the text of the five Resolutions, see Appendices IV to VIII.