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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 (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 law-making, as is the two-instrument structure of Convention and Protocol, with the latter not merely supplementing but controlling the former.

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. The Convention has now been ratified by 79 States and the Protocol by 75 States, and also by what is now the European Union.
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4. The Convention and the Aircraft Protocol were each done in a single original in the English, Arabic, Chinese, French, Russian and Spanish 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 six 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.

5. In addition to the official texts, the Joint Secretariat produced a Consolidated Text which reproduces in relation to aircraft objects the combined effect of the Convention and the Aircraft Protocol. The Consolidated Text, while not subject to signature or ratification procedures, is designed as a useful working tool for those involved in aviation finance and it has been prepared with great care to ensure full conformity with the Convention and Aircraft Protocol. There is no reason why it should not be cited in contracts. However, the legally operative instruments are the Convention and the Aircraft Protocol, and in the event of any inconsistency between the Consolidated Text and the Convention and Aircraft Protocol it is the latter instruments to which effect is to be given.

6. The Luxembourg Protocol relating to railway rolling stock was concluded in Luxembourg on 23 February 2007 and the Space Protocol in Berlin on 9 March 2012. Neither of these Protocols is yet in force.

7. This is the fourth edition of the Official Commentary prepared pursuant to Resolution No. 5 adopted at the Cape Town diplomatic Conference and annexed to the Final Act and first published in 2002. It has undergone substantial expansion and revision and is designed to be an authoritative guide to the Convention and Aircraft Protocol. 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

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1 The Consolidated Text is reproduced in Appendix V. Appendix X contains a Table of Concordance of the two instruments and the Consolidated Text.
2 For the text of the five Resolutions, see Appendices V to IX.
participating observer organisations, including in particular the Aviation Working Group and its Legal Advisory Panel and ICAO.

8. The primary impetus for a new edition of this Official Commentary is the arrival or impending arrival of a new Protocol, in this case the proposed Protocol on mining, agricultural and construction equipment, which is to come before a diplomatic Conference for review and adoption in Pretoria in November 2019 - a happy choice of venue since it was the Government of South Africa that so successfully hosted the first diplomatic Conference. Since each additional Protocol leads to a new Official Commentary on both the Convention and that Protocol and this must be up-to-date, it is necessary to revise the Official Commentary on the Convention and the Aircraft Protocol (the only Protocol currently in force) so that the two Official Commentaries say the same thing on provisions not particular to the new Protocol. But a new edition is also timely because of technological and other advances by the International Registry, the adoption by the Council of ICAO this year of the draft 8th edition of the Registry regulations expected to come into force by early 2020, the significant increase in the number of ratifications since the third edition and the need to address a host of new issues confronting the aviation industry and its lawyers in practice. The result is a substantially revised and expanded Official Commentary which includes the following new material:

- the draft eighth edition of the International Registry regulations, as approved by the Council of ICAO subject only to minor editorial changes by the ICAO Secretariat and reproduced by kind permission of ICAO, and issues arising in relation to the registration system;
- the Contracting States which are to be considered the relevant States in the declarations system;
- the nature of trusts and the application of the Convention and Protocol to transactions entered into by trustees, agents or other representatives;
- the nature and treatment of accessions and other attachments;
- the procedure to obtain discharge of an improperly registered non-consensual right or interests, the remedies for wrongful registrations and the enhanced safeguards made by changes to the Registry regulations;
- the relationship between Articles 42 and 43 of the Convention and the 2015 Hague Convention on Choice of Court Agreements;
• a brief update of EU law governing jurisdiction (Brussels I) (recast) and insolvency (the Insolvency Regulation 2015 (recast) and an expansion of the choice of law analysis;
• the relationship between Article 13 and Article 14 of the Convention and the effect of excluding Article 13(2);
• the application of rules of procedure under Article 14 and their relationship to declarations under Article 54(2).

This new edition is up-to-date to January 2019.

I am indebted to many individuals and organisations for their constructive thoughts and assistance in other ways and particularly to those named in the Acknowledgments page, who have been most generous with their time.

Roy Goode
Oxford
1 January 2019