PART 1

A BRIEF HISTORY OF THE CONVENTION AND AIRCRAFT PROTOCOL

1.1. Following a proposal by Mr T.B. Smith QC, Canadian member of the UNIDROIT Governing Council, in 1988 and a study International Regulation of Security Interests in Mobile Equipment prepared by Professor Ronald C.C. Cuming of the University of Saskatchewan, the Governing Council of UNIDROIT set up a Restricted Exploratory Working Group in 1992 to ascertain the need for and feasibility of uniform rules governing security interests in cross-border transactions in mobile equipment, in particular, aircraft objects, railway rolling stock and space assets. The Group’s Report led to the establishment of a Study Group, a sub-committee of which was entrusted with the task of preparing a first draft. The sub-committee in turn established a Drafting Group to prepare the first set of draft articles. There were several further meetings of the sub-committee and Drafting Group over the ensuing years, and in 1996 a Registration Working Group was established under the chairmanship of Professor Cuming to examine the essential features of modern electronic registration, liability for errors, and the like, and make recommendations. The text of a preliminary draft Convention was presented to the Governing Council of UNIDROIT at its 77th session in February 1998, at which the Council approved the text as suitable for submission to a committee of governmental experts and also endorsed its own provisional decision the previous year to approve a proposal that work should proceed along the lines of a convention applicable to all three categories of equipment and equipment-specific protocols which would supplement and modify the Convention to meet the needs of the particular industry sector concerned.

1.2. In relation to aircraft objects Mr Jeffrey Wool, expert consultant to the UNIDROIT Study Group on matters relating to aviation finance, at the invitation of the Chairman of the Sub-Committee of the Study Group, organised the Aviation Working Group (AWG), a group of major aerospace manufacturers and financial institutions, which undertook pioneering work on the application of the prospective Convention in the aviation context. Also established were the

1 Appendix XIII contains a chronology of the development of the Convention and Protocols and Appendix XIV a list of key documents published by UNIDROIT and ICAO in connection with the development of the Convention and the Aircraft Protocol.
Rail Working Group (RWG)\(^2\) and the Space Working Group (SWG).\(^3\) The AWG subsequently joined forces with the International Air Transport Association (IATA) whose involvement was led by its General Counsel Mr Lorne Clark.

1.3. The Convention and Aircraft Protocol are the product of close collaboration among UNIDROIT and the International Civil Aviation Organization (ICAO) as the sponsoring intergovernmental bodies and IATA and the AWG. The first text of the Convention was prepared by a Study Group established by the Governing Council of UNIDROIT in collaboration, as regards aircraft, with the AWG and IATA. A Protocol relating specifically to aircraft equipment was subsequently prepared by an Aircraft Protocol Group established by invitation of the President of UNIDROIT. The Aircraft Protocol Group included representatives of ICAO, IATA and the AWG. A Steering and Revisions Committee, consisting of representatives of the Governing Council of UNIDROIT and of the ICAO Secretariat, IATA and the AWG, was set up by the UNIDROIT Governing Council to finalise, from a technical perspective, the texts of the Convention and Aircraft Protocol so as to make them suitable for transmission to Governments.

1.4. The two texts were then examined at three successive Joint Sessions of a UNIDROIT Committee of Governmental Experts and the Legal Subcommittee of the ICAO Legal Committee (hereinafter referred to as “Joint Sessions”) held in Rome under the chairmanship of Dr Emilia Chiavarelli from 1 to 12 February 1999, in Montreal from 24 August to 3 September 1999 and in Rome from 20 to 31 March 2000. A Registration Working Group was also established under the chairmanship of Professor Cuming. The project, having reached the stage of intergovernmental negotiations, was also assisted by three task forces/working groups, namely, an Insolvency Working Group, a Public International Law Working Group, and an International Registry Task Force (continuing the work of the Registration Working Group), all of which were set up by the Joint Sessions to assist them in their task. The texts of the two instruments were then considered by the ICAO Legal Committee at its 31\(^{st}\) Session held in Montreal, under the chairmanship of Mr Gilles Lauzon QC, Rapporteur to the 31\(^{st}\) Session, from 28 August to 8 September 2000, when various changes were made.

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\(^2\) For further details see the Official Commentary on the Convention and Luxembourg Protocol, Part 1.

\(^3\) The Space Protocol was adopted at a diplomatic Conference in Berlin in March 2012.
1.5. The amended texts were approved by the Governing Council of UNIDROIT and the Council of ICAO for submission to a diplomatic Conference, which was subsequently held in Cape Town as described in paragraph 3 of the Introduction. Pursuant to Resolution No. 2 of the diplomatic Conference a Preparatory Commission was established to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry and in 2002 took up its work to establish the International Registry for interests in aircraft objects. The Registry became operational on 1st March 2006, when the Convention and Aircraft Protocol entered fully into force.

1.6. The diplomatic Conference to adopt the Convention and Aircraft Protocol were opened in Cape Town on 29 October 2001 under the joint auspices of UNIDROIT and ICAO at the invitation of the Government of the Republic of South Africa, which hosted the Conference, and the two instruments were adopted on 16 November 2001 in two single originals in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. It was decided to allow a period of 90 days to bring about any linguistic alignment of the six texts that might prove necessary. Accordingly the Final Act and testimonium of the two instruments provided that the texts were subject to verification by the Joint Secretariats under the authority of the President of the Conference within a period of 90 days as to the linguistic changes required to bring the texts into conformity with one another. So the texts as finally promulgated differ slightly from those signed at the diplomatic Conference, though not, of course, on any point of substance.