



DIPLOMATIC CONFERENCE TO ADOPT A MOBILE EQUIPMENT CONVENTION AND AN AIRCRAFT PROTOCOL

(Cape Town, 29 October to 16 November 2001)

COMMENTS ON ARTICLES 29 AND 39 OF THE DRAFT CONVENTION

(Presented by Singapore)

1. Article 29 of the draft Convention is silent on the treatment of non-registrable, non-consensual rights or interests in insolvency proceedings of the debtor.
2. Article 39 of the draft Convention only provides for the preservation of priority of declared non-registrable, non-consensual rights or interests over registered international interests, whether in or outside the insolvency of the debtor, under the particular Contracting State.
3. While the situation is clear that priority will be accorded to non-registrable, non-consensual rights or interests in the case when insolvency proceedings against the debtor take place in the same Contracting State in which the subject non-registrable, non-consensual rights arose, the same degree of certainty is absent in a case when the insolvency proceedings of the debtor are commenced in another Contracting State. The status of non-registrable, non-consensual rights and interests will therefore be precarious in cross-border insolvency situations even as between Contracting States.
4. Considering the importance of non-registrable, non-consensual rights and interests as well as the potentially large amounts that may be at stake accompanying these non-registrable, non-consensual rights and interests, e.g. repairer's fees secured by a repairer's lien, it is the view of the Singapore delegation that it is appropriate and necessary to provide under the Convention for the recognition of non-registrable, non-consensual rights and interests in any insolvency proceedings that may be commenced in any Contracting States against the debtor.
5. For the above reasons, the Singapore delegation proposes that draft Article 29 of the Convention be amended by adding a new Article 29(1) *bis*, to read as follows:

“In insolvency proceedings against the debtor in any Contracting State, non-registrable, non-consensual rights and interests relevant to the debtor under this Convention shall be accorded the same priority over registered international interests to the same extent as if the relevant non-registrable, non-consensual rights and interests were declared by the Contracting State in which the insolvency proceedings were commenced.”