

**TEXT OF THE [PRELIMINARY] DRAFT [UNIDROIT] CONVENTION ON
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT**

*as reviewed by the restricted ad hoc Drafting Group, constituted by the second Joint Session, in the light of the Joint Session's second reading, at its meeting held in Rome from 25 to 27 November 1999*¹

**[PRELIMINARY] DRAFT [UNIDROIT] CONVENTION ON INTERNATIONAL
INTERESTS IN MOBILE EQUIPMENT**

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PREAMBLE

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use mobile equipment of high value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner,

RECOGNISING the advantages of asset-based financing and leasing for this purpose and desiring to facilitate these types of transaction by establishing clear rules to govern them,

MINDFUL of the need to ensure that interests in such equipment are recognised and protected universally,

DESIRING to provide broad economic benefits for all interested parties,

BELIEVING that such rules must reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions,

CONSCIOUS of the need to establish a legal framework for international interests in such equipment and for that purpose to create an international registration system for their protection,

[RECOGNISING that a Convention on asset-based financing must allow Contracting States the flexibility to make special declarations under the Convention concerning matters affecting important national policies,]²

HAVE AGREED upon the following provisions:

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1 *Definitions*

In this Convention, except where the context otherwise requires, the following words are employed with the meanings set out below:

- (a) “agreement” means a security agreement, a title reservation agreement or a leasing agreement; [(k)]
- (b) “assignment” means a consensual transfer, whether by way of security or

² This clause of the preamble, while not adopted by the Drafting Committee, is transmitted to Plenary, in square brackets, with a view to seeking the advice of that body as to the desirability of its inclusion in the preamble.

otherwise, which confers on the assignee rights in the international interest; [(g)]

(c) “associated rights” means all rights to payment or other performance by a debtor under an agreement or a contract of sale secured by or associated with the object; [(s)]

(d) “buyer” means a buyer under a contract of sale; [(a)]

(e) “chargee” means a grantee of an interest in an object under a security agreement; [(q)]

(f) “chargor” means a grantor of an interest in an object under a security agreement; [(j)]

(g) “commencement of the insolvency proceedings” means the time from which an insolvency administrator is authorised to administer the reorganisation or liquidation; [(cc)]

(h) “conditional buyer” means a buyer under a title reservation agreement; [(b)]

(i) “conditional seller” means a seller under a title reservation agreement; [(mm)]

(j) “contract of sale” means a contract for the sale of an object which is not an agreement as defined in (a) above; [(n)]

(k) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State; [(ll)]

(l) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement; [(p)]

(m) “debtor” means a chargor under a security agreement, a conditional buyer under a title reservation agreement, a lessee under a leasing agreement or a person whose interest in an object is burdened by a registrable non-consensual right or interest; [(r)]

(n) “insolvency administrator” means a person or body,³ including one appointed on an interim basis, authorised to administer the reorganisation or liquidation; [(c)]

(o) “insolvency proceedings” means collective judicial or administrative proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court for the purposes of reorganisation or liquidation; [(gg)]

(p) “interested persons” means:

(i) the debtor;

(ii) any person who, for the purpose of assuring performance of any of the obligations in favour of the creditor, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;

(iii) any other person having rights subordinate to those of the creditor in or over the object; [(dd)]

(q) “international interest” means an interest to which Article 2 applies; [(x)]

³ The words “person or body” are to be understood as including a debtor in possession under the applicable insolvency law.

(r) “International Registry” means the international registration facilities established for the purposes of this Convention or of any Protocol; [(ii)]

(s) “leasing agreement” means an agreement by which a lessor grants a right to possession or control of an object (with or without an option to purchase) to a lessee in return for a rental or other payment; [(m)]

(t) “lessee” means a lessee under a leasing agreement; [(ee)]

(u) “lessor” means a lessor under a leasing agreement; [(e)]

(v) “non-consensual right or interest” means a right or interest conferred by law to secure the performance of an obligation; [(t)]

(w) “object” means an object of a category to which Article 2 applies; [(f)]

(x) “proceeds” means money or non-money proceeds of an object arising from the loss or physical destruction of the object or its confiscation, condemnation or requisition; [(ff)]

(y) “prospective assignment” means an assignment that is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain; [(h)]

(z) “prospective international interest” means an interest that is intended to be created or provided for in an object as an international interest in the future, upon the occurrence of a stated event (which may include the debtor's acquisition of an interest in the object), whether or not the occurrence of the event is certain; [(y)]

(aa) “prospective sale” means a sale which is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain; [(oo)]

(bb) “Protocol” means, in respect of any category of object and associated rights to which this Convention applies, the Protocol in respect of that category of object and associated rights; [(hh)]

(cc) “registered” means registered in the International Registry pursuant to Chapter V; [(aa)]

(dd) “registered interest” means an international interest or a registrable non-consensual right or interest registered pursuant to Chapter V; [(w)]

(ee) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to an instrument deposited under Article 37; [(u)]

(ff) “Registrar”⁴ means, in respect of any Protocol, the person designated by the Protocol or appointed under Article 16(2)(b); [(i)]

(gg) “regulations” means regulations made, by the Supervisory Authority pursuant to the Protocol; [(jj)]

(hh) “sale” means a transfer of ownership of an object pursuant to a contract of

⁴ It was noted by the Drafting Committee that it would be desirable to seek a better definition of this term in due course. This definition should indicate that the term was designed to include not only a natural person but also a legal person.

sale; [(nn)]

(ii) “secured obligation” means an obligation secured by a security interest; [(bb)]

(jj) “security agreement” means an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an object to secure the performance of any existing or future obligation of the chargor or a third person; [(ll)]

(kk) “security interest” means an interest created by a security agreement; [(kk)]

(ll) “Supervisory Authority” means, in respect of any Protocol, the Supervisory Authority referred to in Article 16(1); [(d)]

(mm) “title reservation agreement” means an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement; [(o)]

(nn) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which Article 38 applies) which has not been registered, whether or not it is registrable under this Convention; [(z)] and

(oo) “writing” means a record of information (including information communicated by teletransmission) which is in tangible form or is in electronic⁵ form and is capable of being reproduced in tangible form on a subsequent occasion and which indicates by reasonable means the person initiating the record and that person’s approval of it. [(v)]⁶

Article 2

The international interest

1. – This Convention provides for the constitution and effects of an international interest in mobile equipment and associated rights.

2. – For the purposes of this Convention, an international interest in mobile equipment is an interest, constituted under Article 7, in a uniquely identifiable object of a category of such objects designated in a Protocol:

- (a) granted by the chargor under a security agreement;
- (b) vested in a person who is the conditional seller under a title reservation agreement; or
- (c) vested in a person who is the lessor under a leasing agreement.

An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).

3. – This Convention does not determine whether an interest to which the preceding

⁵ Consideration should be given to the question whether reference should also be made to a digital teletransmission.

⁶ It was noted by the Drafting Committee that this definition would need to be reconsidered in the light of advice from specialists.

paragraph applies falls within sub-paragraph (a), (b) or (c) of that paragraph.

4. – An international interest in an object extends to proceeds of that object.

Article 3
Sphere of application

1. – This Convention shall apply when at the time of the conclusion of the agreement creating or providing for the international interest:

- (a) the debtor is situated in a Contracting State; or
- (b) the object to which the international interest relates has a connection, as specified in the Protocol, with a Contracting State.

2. – The fact that the creditor is situated in a non-Contracting State does not affect the applicability of this Convention.

Article 4
Where debtor is situated

1. – For the purposes of this Convention,⁷ the debtor is situated in any Contracting State where it:

- (a) is incorporated or formed;
- (b) has its statutory seat;
- (c) has its centre of administration; or
- (d) has its place of business.

2. – A reference in this Convention to the debtor's place of business shall, if it has more than one place of business, mean its principal place of business or, if it has no place of business, its habitual residence.

Article 5
Derogation

In their relations with each other, the parties may, by agreement in writing, derogate from or vary the effect of any of the provisions of Chapter III, except as stated in Articles 8(2)-(5), 9(3) and (4), 12 and 14(2).

⁷ The Drafting Group proposed that the words in square brackets ([other than the provisions of Article 40]) be deleted on the assumption that all the locations set forth in Article 4(1)(a)-(d) are appropriate for the purposes of the reference to the debtor in Article 40(1).

Article 6
Interpretation and applicable law

1. – In the interpretation of this Convention, regard is to be had to its purposes as set forth in the preamble, to its international character and to the need to promote uniformity and predictability in its application.

2. – Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the applicable law.

3. – References to the applicable law are [, except as provided in Articles ...,] to the domestic rules of the law applicable by virtue of the rules of private international law of the forum State.

4. – Where a State comprises several territorial units, each of which has its own rules of law in respect of the matter to be decided, and where there is no indication of the relevant territorial unit, the law of that State decides which is the territorial unit whose rules shall govern. In the absence of any such rule, the law of the territorial unit with which the case is most closely connected shall apply.

CHAPTER II

CONSTITUTION OF AN INTERNATIONAL INTEREST

Article 7
Formal requirements

An interest is constituted as an international interest under this Convention where the agreement creating or providing for the interest:

- (a) is in writing;
- (b) relates to an object of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the object to be identified in conformity with the Protocol; and
- (d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.

CHAPTER III

DEFAULT REMEDIES

Article 8

Remedies of chargee

1. – In the event of default as provided in Article 11, the chargee may, to the extent that the chargor has at any time so agreed, exercise any one or more of the following remedies:

- (a) take possession or control of any object charged to it;
 - (b) sell or grant a lease of any such object;
 - (c) collect or receive any income or profits arising from the management or use of any such object,
- or apply for a court order authorising or directing any of the above acts.

2. – Any remedy given by sub-paragraph (a), (b) or (c) of the preceding paragraph or by Article 14 shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the security agreement except where such a provision is manifestly unreasonable.

3. – A chargee proposing to sell or grant a lease of an object under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed sale or lease to:

- (a) interested persons specified in Article 1(p)(i) and (ii); and
- (b) interested persons specified in Article 1(p)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

4. – Any sum collected or received by the chargee as a result of exercise of any of the remedies set out under paragraph 1 shall be applied towards discharge of the amount of the secured obligations.

5. – Where the sums collected or received by the chargee as a result of the exercise of any remedy given in paragraph 1 exceed the amount secured by the security interest and any reasonable costs incurred in the exercise of any such remedy, then unless otherwise ordered by the court the chargee shall pay the excess to the holder of the international interest registered immediately after its own or, if there is none, to the chargor.

Article 9

Vesting of object in satisfaction; redemption

1. – At any time after default as provided in Article 11, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

2. – The court may on the application of the chargee order that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

3. – The court shall grant an application under the preceding paragraph only if the amount of the secured obligations to be satisfied by such vesting is reasonably commensurate with the value of the object after taking account of any payment to be made by the chargee to any of the interested persons.

4. – At any time after default as provided in Article 11 and before sale of the charged object or the making of an order under paragraph 2, the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted by the chargee under Article 8(1). Where, after such default, the payment of the amount secured is made in full by an interested person, that person is subrogated to the rights of the chargee.

5. – Ownership or any other interest of the chargor passing on a sale under Article 8(1) or passing under paragraph 1 or 2 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 27.

Article 10

Remedies of conditional seller or lessor

In the event of default under a title reservation agreement or under a leasing agreement as provided in Article 11, the conditional seller or the lessor, as the case may be, may:

- (a) terminate the agreement and take possession or control of any object to which the agreement relates; or
- (b) apply for a court order authorising or directing either of these acts.

Article 11

Meaning of default

1. – The debtor and the creditor may at any time agree as to the events that constitute a default or otherwise give rise to the rights and remedies specified in Articles 8 to 10 and 14.

2. – In the absence of such an agreement, “default” for the purposes of Articles 8 to 10 and 14 means a substantial default.

Article 12
Procedural requirements

Subject to Article Y(2), any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.

Article 13
Additional remedies

Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter as set out in Article 5.

Article 14
Relief pending final determination

1. – A Contracting State shall ensure that a creditor who adduces *prima facie* evidence of default by the debtor may, pending final determination of its claim and to the extent that the debtor has at any time so agreed, obtain speedy judicial relief in the form of such one or more of the following orders as the creditor requests:

- (a) preservation of the object and its value;
- (b) possession, control or custody of the object;
- (c) immobilisation of the object ⁸;
- (d) sale, lease or management of the object;
- (e) application of the proceeds or income of the object.

2. – [In making any order under sub-paragraphs (d) or (e) of the preceding paragraph, the court may impose such terms as it considers necessary to protect the interested persons in the event that the creditor:

- (a) in implementing any order granting such relief, fails to perform any of its obligations to the debtor under this Convention or the Protocol; or
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.]

[[3.–] Prior notice of any application under paragraph 1 shall be given in writing to the interested persons.]

⁸ It was proposed that the comment by a delegation seeking to ensure that Article 14(1)(c) should not run counter to any other international instrument on the subject should be dealt with at the appropriate time in the Final Provisions; cf. also footnote to Article XXIII of the preliminary draft Aircraft Equipment Protocol.

[3.-] [4.] Ownership or any other interest of the debtor passing on a sale under paragraph 1 is free from any other interest over which the creditor's international interest has priority under the provisions of Article 27.

[4.-][5.] Nothing in this Article affects the application of Article 8(2) or limits the availability of forms of interim judicial relief other than those set out in paragraph 1.

CHAPTER IV

THE INTERNATIONAL REGISTRATION SYSTEM

Article 15

The International Registry

1. – An International Registry shall be established for registrations of:
 - (a) international interests, prospective international interests and registrable non-consensual rights and interests;
 - (b) assignments and prospective assignments of international interests;
 - (c) acquisitions of international interests by [legal or contractual] subrogation;
 - (d) subordinations of interests referred to in sub-paragraph (a) of this paragraph; and
 - (e) sales or prospective sales of objects to which this Convention is made applicable by a Protocol under Article 39.
2. – Different registries may be established for different categories of object and associated rights. For the purposes of this Convention, “International Registry” means the relevant international registry.
3. – For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

Article 16

The Supervisory Authority and the Registrar

1. – There shall be a Supervisory Authority as provided by the Protocol.
2. – The Supervisory Authority shall:
 - (a) establish or provide for the establishment of the International Registry;
 - (b) where the Registrar has not been designated by the Protocol, appoint the Registrar;

(c) make regulations pursuant to the Protocol dealing with the operation of the International Registry, and establish administrative procedures through which complaints concerning the operation thereof can be made to the Supervisory Authority;

(d) exercise supervisory control over the Registrar and the operation of the International Registry and give such directions as it thinks fit to the Registrar to rectify acts or omissions which are in contravention of this Convention, the Protocol or the regulations;

(e) at the request of the Registrar provide such guidance to the Registrar as the Supervisory Authority thinks fit;

(f) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;⁹

(g) do all things necessary to ensure that an efficient registration system exists to implement the objectives of this Convention and the Protocol; and

(h) report periodically to Contracting States concerning the discharge of its obligations under this Convention and the Protocol.

3. – The Supervisory Authority may enter into any agreement provided for by Article 26.

4. – The Registrar shall:

(a) ensure the efficient operation of the International Registry and perform the functions assigned to it by this Convention, the Protocol and the regulations;

(b) implement directions given by the Supervisory Authority.

Article 16 bis

Access to the international registration facilities

A person who is not a national of, or located in a Contracting State shall not on that ground be denied access to the registration and search facilities of the International Registry.

CHAPTER V

MODALITIES OF REGISTRATION

Article 17

Registration requirements

1. – The Protocol and regulations shall specify the requirements, including the criteria

⁹ The question whether the Registrar shall operate as a non-profit-making entity is a policy question which may need to be determined separately for each category of object and accordingly left to the Protocol.

for the identification of the object:

- (a) for effecting a registration; or
- (b) for making searches and issuing search certificates, and, subject thereto,
- (c) for ensuring the confidentiality of information and documents of the International Registry.

2. – The Protocol and regulations may specify any further requirements necessary to convert the registration of a prospective international interest ¹⁰ or a prospective assignment of an international interest into the registration of an international interest or an assignment of an international interest.

3. – The Protocol may provide that a Contracting State may designate an entity in its territory as the entity through which the information required for registration shall or may be transmitted to the International Registry. ¹¹

~~Article 18~~

~~*Transmission of information*~~

[Deleted]

Article 19

When registration takes effect

1. – A registration shall take effect upon entry of the required information into the International Registry data base so as to be searchable.

2. – A registration shall be searchable for the purposes of the preceding paragraph at any time when:

- (a) the International Registry has assigned to it a sequentially ordered file number; and
- (b) the registration, including the file number, may be accessed at the International Registry and at each registration facility in which searches may be made at that time.

¹⁰ Consideration should be given to the question as to whether there should be a requirement to inform the International Registry that a registered prospective international interest has become an international interest. Such a requirement would not affect the priority conferred by Article 19(3).

¹¹ The Registration Working Group proposed that the question of the relationship between this entity and the International Registry could be dealt with by the relevant Protocol. Consideration should be given to the question as to whether this relationship should be left to be dealt with by national law. A separate question requiring consideration concerns whether the liability of this entity should be dealt with in the preliminary draft Convention or rather be left to be dealt with by the otherwise applicable law, on the basis that the entity in question would not be part of the international registration system.

3. – If an interest first registered as a prospective international interest becomes an international interest, [then, subject to compliance at any time with any further requirements referred to in Article 17(2),]¹² the international interest shall be treated as registered from the time of registration of the prospective international interest.

4. – The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.

5. – The International Registry shall record the date and time a registration takes effect.

6. – A registration shall be searchable in the International Registry data base according to the criteria prescribed by the Protocol.

Article 20

*Who may register*¹³

Alternative A

[1. – An international interest which is a security interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered by or with the consent in writing of the chargor or assignor or intending chargor or assignor, as the case may be. Any other type of international interest may be registered by the holder of that interest.]

Alternative B

[1. – An international interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered by or with the consent in writing of the debtor or assignor or intending debtor or assignor.]¹⁴

2. – The subordination of an international interest to another international interest may be registered by or with the written consent of the person whose interest has been subordinated.

3. – A registration may be amended, extended prior to its expiry or discharged by or with the consent in writing of the party in whose favour it was made.

4. – The acquisition of an international interest by [legal or contractual] subrogation

¹² The Drafting Group noted that the additional language included within square brackets would only be necessary to cover the eventuality that the regulations required more information for the registration of an international interest than for the registration of a prospective international interest.

¹³ The question whether the debtor's consent should be required in all cases will need to be considered in due course.

¹⁴ In the event that Alternative A is preferred to Alternative B, the substance of Alternative B will need to be reinserted in the preliminary draft Aircraft Protocol.

may be registered by the subrogee.

5. – A registrable non-consensual right or interest may be registered by the holder thereof.

Article 21

Duration of registration

Registration of an international interest remains effective [for the period of time specified in the Protocol or the regulations as extended in conformity with Article 20(3)] [until discharged or until expiry of the period specified in the application for registration as extended by any registered consent to extension of such period].

Article 22

Searches

1. – A person may, in the manner prescribed by the Protocol or regulations, make or request a search of the International Registry concerning interests registered therein.

2. – Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol or regulations, shall issue a registry search certificate with respect to any object:

(a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or

(b) stating that there is no information in the International Registry relating thereto.

Article 23

List of declared non-consensual rights or interests

The Registrar shall maintain a list of the categories of non-consensual right or interest communicated to the Registrar by the depositary State as having been declared by Contracting States in conformity with Article 38 and the date of each such declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol or regulations to any person requesting it.

Article 24

Evidentiary value of certificates

A document in the form prescribed by the regulations which purports to be a certificate issued by the International Registry is *prima facie* proof:

- (a) that it has been so issued; and
- (b) of the facts recited in it, including the date and time of a registration.

Article 25
Discharge of registration

1. – Where the obligations secured by a registered security interest or the obligations giving rise to a registered non-consensual right or interest have been discharged, or where the conditions of transfer of title under a registered title reservation agreement have been fulfilled, the holder of such interest shall procure the discharge of the registration upon written demand by the debtor delivered to or received at its address stated in the registration.

2. – Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending creditor or intending assignee shall procure the discharge of the registration upon written demand by the intending debtor or assignor which is delivered to or received at its address stated in the registration before the intending creditor or assignee has given value or incurred a commitment to give value.

CHAPTER VI ¹⁵

PRIVILEGES AND IMMUNITIES OF THE SUPERVISORY
AUTHORITY AND THE REGISTRAR

Article 26
Legal personality; immunity

1.– The Supervisory Authority shall have international legal personality where not already possessing such personality.

2. – Except as provided by Article 26 *bis* and by the terms of any agreement between the Supervisory Authority and the host State, the Supervisory Authority, its officers and employees shall be immune from legal process. ¹⁶

[3. – The Supervisory Authority shall enjoy [exemption from taxes and] such [other] privileges as may be provided by agreement with the host State.]

[4.] – Except as provided by Article 26 *bis* and by the terms of any agreement with the host State:

¹⁵ It was noted by the Drafting Group that the contents of this Chapter were provisional in so far as they were on the agenda of the Public International Law Working Group.

¹⁶ It was noted by the Drafting Group that the question of functional immunity is addressed by the 1969 Vienna Convention on the Law of Treaties and that the question of the extent of such immunity is the exclusive concern of the host State.

(a) the Registrar and the officers and employees of the Registrar shall be immune from legal process;

(b) the assets, documents, databases and archives of the International Registry shall be inviolable and immune from seizure or other legal process.¹⁷

[5.] – In this Article “host State” means the State in which the Supervisory Authority or, as the case may be, the Registrar is situated.

CHAPTER VII

LIABILITY OF THE SUPERVISORY AUTHORITY AND THE REGISTRAR

Article 26 bis

[1. – The Supervisory Authority shall be liable for compensatory damages for loss suffered by a person directly resulting from failure by the Supervisory Authority to discharge its obligations under this Convention or the Protocol].¹⁸

Alternative A

[2. – The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of the Registrar or from a malfunction of the international registration system].

Alternative B

[2. – The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from the failure of the Registrar to exercise reasonable care and skill in the performance of its duties].¹⁹

3. – The [Supervisory Authority and the] Registrar shall insure against the liability referred to in the preceding paragraphs to the extent provided by the Protocol.

¹⁷ *Idem.*

¹⁸ The question whether there should be liability, and if so, on what basis, and the courts having jurisdiction over such liability will need to be considered in due course.

¹⁹ The Drafting Group noted that Plenary’s discussions during the second Joint Session of this issue in the context of the preliminary draft Convention were based on the establishment of a strict liability regimen but when discussing the same issue in the context of the preliminary draft Aircraft Protocol it had requested the Drafting Group to prepare alternative texts.

CHAPTER VIII

EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES

Article 27

Priority of competing interests

1. – A registered interest has priority over any other interest subsequently registered and over an unregistered interest.
2. – The priority of the first-mentioned interest under the preceding paragraph applies:
 - (a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and
 - (b) even as regards value given by the holder of the first-mentioned interest with such knowledge.
3. – The buyer of an object acquires its interest in it:
 - (a) subject to an interest registered at the time of its acquisition of that interest; and
 - (b) free from an unregistered interest even if it has actual knowledge of such an interest.
4. – The priority of competing interests under this Article may be varied by agreement between the holders of those interests, but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.
5. – Any priority given by this Article to an interest in an object extends to proceeds.

Article 28

Effects of insolvency

1. – An international interest is effective in insolvency proceedings against the debtor if prior to the commencement of the insolvency proceedings that interest was registered in conformity with this Convention.²⁰
2. – Nothing in this Article impairs the effectiveness of an international interest in the

²⁰ The definitions of “insolvency proceedings”, “insolvency administrator” and “commencement of the insolvency proceedings” added by the Drafting Group in replacement of the terms “bankruptcy” and “trustee in bankruptcy” have been relocated in Article 1 (Definitions) with a view to ensuring that all definitions which apply to more than one Article of the preliminary draft Convention and the preliminary draft Aircraft Protocol are brought together in Article 1 of the preliminary draft Convention and Article I of the preliminary draft Aircraft Protocol respectively.

insolvency proceedings where that interest is effective under the applicable law.

3.– Nothing in this Article affects any rules of insolvency law relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors [or any other transaction which unfairly ²¹ diminishes the value of the assets available to creditors] or any rules of insolvency procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator. ²²

CHAPTER IX

ASSIGNMENTS OF INTERNATIONAL INTERESTS AND RIGHTS OF SUBROGATION

Article 29

Formal requirements of assignment

1. – The holder of an international interest (“the assignor”) may make an assignment of it to another person (“the assignee”) wholly or in part.

2. – An assignment of an international interest shall be valid only if it:

- (a) is in writing;
- (b) enables the international interest and the object to which it relates to be identified;
- (c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be determined in accordance with the Protocol but without the need to state a sum or maximum sum secured.

Article 30

Effects of assignment

1. – An assignment of an international interest in an object made in conformity with the preceding Article transfers to the assignee, to the extent agreed by the parties to the assignment:

- (a) all the interests and priorities of the assignor under this Convention; and
- (b) all associated rights.

2. – Subject to paragraph 3, the applicable law shall determine the defences and rights

²¹ The mere fact that the value of the asset is not available to the creditor shall not in itself be deemed to be unfair.

²² This paragraph is based on the decision on this point taken by the Informal Insolvency Working Group. It was noted by the Drafting Group that, even though the point in question was not discussed either by the Insolvency Working Group or by Plenary during the second Joint Session, it was referred by Plenary to the Drafting Committee (cf. Report on the second Joint Session, § 5:61).

of set-off available to the debtor against the assignee.

3. – The debtor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph.

4. – In the case of an assignment by way of security, the assigned rights revert in the assignor, to the extent that they are still subsisting, when the security interest has been discharged.

Article 31

Debtor's duty to assignee

1. – To the extent that an international interest has been assigned in accordance with the provisions of this Chapter, the debtor in relation to that interest is bound by the assignment, and, in the case of an assignment within Article 30(1)(b), has a duty to make payment or give other performance to the assignee, if but only if:

(a) the debtor has been given notice of the assignment in writing by or with the authority of the assignor;

(b) the notice identifies the international interest [; and

(c) the debtor [consents in writing to the assignment, whether or not the consent is given in advance of the assignment or identifies the assignee] [has not been given prior notice in writing of an assignment in favour of another person].

2. – Irrespective of any other ground on which payment or performance by the debtor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with the preceding paragraph.

3. – Nothing in the preceding paragraph shall affect the priority of competing assignments.

Article 32

Default remedies in respect of assignment by way of security

In the event of default by the assignor under the assignment of an international interest made by way of security, Articles 8, 9 and 11 to 14 apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply in so far as they are capable of application to intangible property) as if references:

(a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the international interest and the security interest created by that assignment;

(b) to the chargee and chargor were references to the assignee and assignor of the international interest;

(c) to the holder of the international interest were references to the holder of the

assignment; and

- (d) to the object included references to the assigned rights relating to the object.

Article 33

Priority of competing assignments

Where there are competing assignments of international interests and at least one of the assignments is registered, the provisions of Article 27 apply as if the references to an international interest were references to an assignment of an international interest.

Article 34

Assignee's priority with respect to associated rights

Where the assignment of an international interest has been registered, the assignee shall, in relation to the associated rights transferred by virtue of the assignment, have priority over the assignee of associated rights [or other rights] not held with an international interest to the extent that the first-mentioned associated rights relate to:

- (a) a sum advanced and utilised for the purchase of the object;
- (b) the price payable for the object; or
- (c) the rentals payable in respect of the object,

and the reasonable costs referred to in Article 8(5).

Article 35

Effects of assignor's insolvency

The provisions of Article 28 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Article 36

*Subrogation*²³

1. – Subject to paragraph 2, nothing in this Convention affects the acquisition of an international interest by [legal or contractual] subrogation under the applicable law.

2. – The priority between any interest within the preceding paragraph and a competing interest may be varied by agreement in writing between the holders of the respective interests.

²³ It was assumed by the Drafting Group that contractual subrogations were also meant to be covered under this Article (cf. also Articles 15(1)(c) and 20(4)).

CHAPTER X

NON-CONSENSUAL RIGHTS AND INTERESTS

Article 37

Registrable non-consensual rights and interests

A Contracting State may at any time in an instrument deposited with the depositary of the Protocol list the categories of non-consensual right or interest which shall be registrable under this Convention as regards any category of object as if the right or interest were an international interest and be regulated accordingly.

Article 38

Priority of non-registrable non-consensual rights and interests

1.— A Contracting State may declare, generally or specifically, those categories of non-consensual right or interest (other than a right or interest to which Article 37 applies) which under that State's law would have priority over an interest in the object equivalent to that held by the holder of the international interest and are to have priority over a registered international interest, whether in or outside the insolvency of the debtor. Such a declaration may be modified from time to time.

2.— A declaration made under the preceding paragraph may be expressed to cover categories that are created after the deposit of that declaration.

3.— An international interest has priority over a non-consensual right or interest of a category not covered by a declaration deposited prior to the registration of the international interest.²⁴

CHAPTER XI

APPLICATION OF THE CONVENTION TO SALES

Article 39

Sale and prospective sale

The Protocol may provide for the application of this Convention, wholly or in part and with such modifications as may be necessary, to the sale or prospective sale of an object.

²⁴ It will be necessary to prepare transitional provisions on this matter.

[CHAPTER XII

JURISDICTION

Article 40

Jurisdiction under Article 14(1)

Without prejudice to Article 41(2), [only] the courts of the place where the object is situated ²⁵, of the place from which it is physically controlled or of the place where the debtor is situated ²⁶ may exercise jurisdiction to grant judicial relief under Article 14(1).

2. – A court may exercise jurisdiction under the preceding paragraph even if the trial of the claim referred to in Article 14(1) will or may take place in a court of another State or in an arbitral tribunal.

Article 40 *bis*

Jurisdiction to make orders against the Registrar

1.– The courts of the place in which the Registrar has its centre of administration shall have exclusive jurisdiction to award damages against the Registrar under Article 26 *bis*.

2.– Where a person fails to respond to a demand made under Article 25 and that person has ceased to exist or cannot be found for the purpose of enabling an order to be made against it requiring it to procure discharge of the registration, the courts of the place in which the Registrar has its centre of administration shall have exclusive jurisdiction, on the application of the debtor or intending debtor, to make an order directed to the Registrar requiring the Registrar to discharge the registration.

3.– Except as otherwise provided by the preceding paragraphs, no court may make orders or give judgments or rulings against or purporting to bind the Registrar.

Article 41

General jurisdiction

1. – Except as provided by Article[s 40 and] ²⁷ 40*bis*, the courts of a Contracting State having jurisdiction under the law of the forum State may exercise jurisdiction in respect of any claim brought under this Convention.

²⁵ Consideration should be given to the question as to whether a different rule should apply to remedies under Article 14(1)(d) and (e).

²⁶ Cf. footnote 7, *supra*.

²⁷ The reference to Article 40(1) assumes that the grounds of jurisdiction provided for under Article 40 are exclusive.

2. – The court or courts of a Contracting State chosen by the parties under an agreement that is valid under the applicable law may also exercise jurisdiction in respect of any claim referred to in the preceding paragraph and Article 40.

3. – For the purposes of the preceding paragraph, a choice of forum is not invalid by reason of the fact that the chosen forum State has no connection with the parties or the agreement.

[CHAPTER XIII

RELATIONSHIP WITH OTHER CONVENTIONS] ^{28 29}

CHAPTER [XIV]

[OTHER] FINAL PROVISIONS ³⁰

Article U

1. – This Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the ... instrument of ratification, acceptance, approval or accession ³¹ but only applies as regards any category of object to which a Protocol applies:

- (a) as from the time of entry into force of the Protocol;
- (b) subject to the terms of that Protocol; and
- (c) as between Contracting States Parties to that Protocol.

2. – This Convention and the Protocol shall be read and interpreted as a single instrument.

²⁸ It is thought that the only existing Conventions needing to be dealt with in Chapter XII are the UNIDROIT Convention on International Financial Leasing and, possibly, the UNIDROIT Convention on International Factoring. It is thought that relations between this Convention and other equipment-specific Conventions should be left to each Protocol.

²⁹ This Chapter was not reviewed by the Drafting Committee in line with the decision taken by the Joint Session not to consider this Chapter at this stage.

³⁰ Of this Chapter only Articles V and Y were reviewed by the Drafting Committee during the second Joint Session.

³¹ At the second Joint Session the Plenary recognised the desirability of requiring a small number of ratifications, acceptances, approvals or accessions for the future Convention to enter into force.

Article V

[If the Protocol so provides, a] A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that it will not apply this Convention in relation to [a purely internal transaction] [In such a case, that State may specify in its declaration which types of transaction are to be considered purely internal transactions].

Article W

[Insert provision for accelerated procedure to finalise further Protocols] ³²

[Article X

A Contracting State shall declare at the time of ratification, acceptance, approval of, or accession to the Protocol the relevant “court ” or “courts” for the purposes of Article 1 and Chapter XII of this Convention.]

Article Y

1. – A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that while the charged object is situated within, or controlled from its territory the chargee shall not grant a lease of the object in that territory.

2. – A Contracting State at the time of signature, ratification, acceptance, approval of, or accession to the Protocol shall declare whether or not any remedy available to the creditor under Articles 8 to 10 which is not there expressed to require application to the court may only be exercised with leave of the court.

Article Z

A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that it will not apply the provisions of Article 14, wholly or in part.

[Remaining Final Provisions to be prepared by the Diplomatic Conference]

³² These provisions are to be the subject of consideration by the Public International Law Working Group.

