



UNIDROIT Committee of governmental Experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment



Sub-Committee of the ICAO Legal Committee on the study of international interests in mobile equipment (aircraft equipment)

UNIDROIT CGE/Int.Int./3-WP/40
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THIRD JOINT SESSION

(Rome, 20 – 31 March 2000)

DRAFTING COMMITTEE:

REPORT

1. The Drafting Committee set up by the first Joint Session in Rome on 3 February 1999 met on one occasion during the third Joint Session on 30 March 2000. Representatives of the following States attending this meeting as members: Canada, France, Germany, Japan, Republic of Korea, Singapore, South Africa and the United States of America. A representative of the following States attended this meeting as observers: Greece and Tunisia. An observer of the Aviation Working Group attended as adviser. The Drafting Committee was assisted by the UNIDROIT and ICAO Secretariats.

2. The Drafting Committee was chaired by Mr K.F. Kreuzer (Germany). Sir Roy Goode (United Kingdom), *Rapporteur* to the Joint Session, also took part in the work of the Drafting Committee, in accordance with the invitation addressed to him by the Chairman of the Joint Session on the occasion of the first Joint Session.

3. The business of the Drafting Committee was to give effect to the matters referred to it by the Joint Session in the light of its third reading of the [preliminary] draft [UNIDROIT] Convention on International Interests in Mobile Equipment (cf. UNIDROIT CGE/Int.Int./3-WP/2 – ICAO Ref. LSC/ME/3-WP/2, Appendix I) (hereinafter referred to as the *draft Convention*) and the [preliminary] draft Protocol thereto on Matters specific to Aircraft Equipment (cf. UNIDROIT CGE/Int.Int./3-WP/2 – ICAO Ref. LSC/ME/3-WP/2, Appendix II) (hereinafter referred to as the *draft Protocol*), in particular in the light of the Reports submitted by the Public International Law Working Group on its sessions held in Cape Town and en route to Pretoria from 8 to 11 December 1999 (cf. UNIDROIT CGE/Int.Int./3-WP/3 – ICAO Ref. LSC/ME/3-WP/3) and in Rome on 20 and 21 March 2000 (cf. UNIDROIT CGE/Int.Int./3-WP/18 – ICAO Ref. LSC/ME/3-WP/18).

4. Pursuant to the decision taken by Plenary at the opening session of the Third Joint Session (cf. UNIDROIT CGE/Int.Int./3-WP/23 – ICAO Ref. LSC/ME/3-WP/23, § 7), the work of the Drafting Committee was prepared by the work accomplished by a restricted group of the Drafting Committee, which had met on nine occasions, on 20, 21, 22, 23, 24, 25, 27, 28, 29 and 30 March 2000. Representative of the following States had attended these meetings as members: Canada, France, Germany and the United States of America. An observer of the Aviation Working Group had attended as adviser. Ms C. Chinkin had attended as adviser to the Public International Law Working Group in order to assist the restricted group with its implementation of certain aspects of the Public International Law Working Group's aforementioned Reports.

5. The restricted group of the Drafting Committee had noted that the reference in Article 13 to the applicable law covers not only the *lex fori* but also the *lex contractus*. It was explained that, if the conflicts rules of the *lex fori* characterised the issue as substantive, the courts would apply the *lex causae* and, if as procedural, then the *lex fori*.

6. One member of the Drafting Committee reserved his position regarding the solution proposed in Article V of the draft Convention.

7. The text of the provisions of the draft Convention as reviewed by the restricted group is appended hereto as Appendix I, with the text of the provisions of the draft Protocol as reviewed by the restricted group appended as Appendix II.

8. While the Drafting Committee did not consider the text of the Proposal for a revised text of Chapter IX of the draft Convention submitted by the delegations of Canada, France and the United States of America (cf. UNIDROIT CGE/Int.Int./3-WP/31 – ICAO Ref. LSC/ME/3-WP/31), it considered it opportune to append the text of that Proposal as an Annex to Appendix I to this Report.

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

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:

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.

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1 ^{2bis}

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 contract which consensual transfer, whether by way of security or 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~~ which are 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 at which the insolvency proceedings are deemed to commence under the applicable insolvency law 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, including one authorised on an interim basis; [(c)]

^{2bis} The numbering of the paragraphs of the definitions will be adjusted after the session, as also the paragraph numbers of the corresponding definitions in the French text.

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

(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)]

(p bis) “internal transaction” means a transaction of a type listed in Article 2(2)(a)-(c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object is located (as specified in the Protocol), in the same Contracting State at the time of conclusion of the transaction; [(bb)]

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

(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)]

(u bis) “national interest” means an interest in an object created by an internal transaction; [(y bis)]

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

(v bis) “notice of a national interest” means a notice that a national interest has been registered in a public registry in the Contracting State making a declaration to the Protocol under Article V; [(d)]

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

(w bis) “pre-existing right or interest” means a right or interest of any kind in an object created or arising under the law of a Contracting State before the entry into force of this Convention in respect of that State, including a right or interest of a category covered by a declaration pursuant to Article 38 and to the extent of that declaration; [(u bis)]

(x) “proceeds” means money or non-money proceeds of an object arising from the total or partial loss or physical destruction of the object or its total or partial 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 or a national interest specified in a notice of a national 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 or body designated by the Protocol or appointed under Article 16(2)(b); [(i)]

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

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

(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; [(l)]

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

(kk bis) “seller” means a seller under a contract of sale; [(ll bis)]

(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

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.~~

(oo) “writing” means a record of information (including information communicated by teletransmission) which is in tangible ~~or other 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 ~~a person’s approval of the record 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 certain categories of 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 ~~an~~ uniquely identifiable object of a category of such objects listed in paragraph 3 and designated in ~~a~~ the 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. – The categories referred to in the preceding paragraphs are :

- (a) airframes, aircraft engines and helicopters ;
- (b) railway rolling stock ;
- (c) space property.

~~3.4.~~ – This Convention does not determine whether an interest to which ~~the preceding~~ paragraph 2 applies falls within sub-paragraph (a), (b) or (c) of that paragraph.

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

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.

Article 3
Sphere of application

1. – This Convention ~~shall apply~~^{ies} when, at the time of the conclusion of the agreement creating or providing for the international interest:² ~~(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) under the law of which it is incorporated or formed;
- (b) where it has its registered office or statutory seat;
- (c) where it has its centre of administration; or
- (d) where it 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 (relocated to new Article 14ter)~~
~~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).~~

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.

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).~~

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-registered~~ interest ~~registered-ranking~~ 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 other than the debtor, 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)(b) 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 in writing 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 (relocated to new Article 14bis)~~
~~*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 ~~514ter~~.

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 from a court 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; and/or
- (d) ~~sale,~~ lease or management of the object and the income therefrom;
- ~~(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.] Before making any order under paragraph 1, the court may require notice of the request to be given to any of the interested persons.~~

~~[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.

Article 14bis (former 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.

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.~~

Article 14ter (former 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 preceding provisions of this Chapter-III, except as stated in Articles 8(2)-(5), 9(3) and (4), ~~12 and~~ 14(2) and 14bis.

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;:-
- (f) notices of national interests.

2. – Different international 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~~ except as otherwise provided by the Protocol, appoint and dismiss the Registrar;

(c) after consultation with the Contracting States, make or approve and ensure the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry;^{8bis}

(d) ~~and~~ establish administrative procedures through which complaints concerning the operation ~~thereof of the International Registry~~ can be made to the Supervisory Authority;

~~(d)(e) exercise supervisory control over~~ supervise 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;~~ ^{8ter}

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

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

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

~~(h)(i)~~ 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 requisite for the performance of its functions including any agreement provided for by referred to in 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 (relocated to new Article 25bis)
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.~~

^{8bis} The procedure of consultation referred to in this sub-paragraph will need to be further examined at the diplomatic Conference.

^{8ter} This does not empower the Supervisory Authority to require or permit the Registrar to change any data relating to a registration.

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.

CHAPTER V

MODALITIES OF REGISTRATION

Article 17 *Registration requirements*

1. – The Protocol and regulations shall specify the requirements, including the criteria 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⁺⁰ or a prospective assignment of an international interest into the registration of an international interest or an assignment of an international interest.~~

~~2. — Such requirements shall not include any evidence that a consent to registration required by Article 20(1), (2) or (3) has been given.~~

~~3. — Registration shall be effected in chronological order of receipt at the International Registry data base, and the file shall record the date and time of receipt.~~

~~3.4. — 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.⁺¹~~

Article 18 *Transmission of information*

[Deleted]

~~⁺⁰ — 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).~~

~~⁺¹ — 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.~~

Article 19
When registration takes effect

1. – A registration shall be valid only if made in conformity with Article 20 and 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~~ the time when:

(a) the International Registry has assigned to it a sequentially ordered file number; and

(b) the registration data, including the file number, are stored in durable form and may be accessed at the International Registry ~~and at each registration facility in which searches may be made at that time.~~

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.~~

~~6.5.~~ – 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, and any registration amended or~~

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.~~

~~extended prior to its expiry, by or with the consent in writing at any time 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 in writing at any time 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 may be registered by the subrogee.

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

6. – A notice of a national 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 Any 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

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.~~

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.

3. – Where the obligations secured by a national interest specified in a notice of a national interest have been discharged, the holder of such interest shall procure the removal of the notice upon written demand delivered to or received at its address stated in the registration.

Article 25bis (former Article 16bis)
Access to the international registration facilities

A No 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 on any ground other than its failure to comply with the procedures prescribed by this Chapter.

CHAPTER VI ¹⁵PRIVILEGES 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, t~~The Supervisory Authority, its officers and employees shall ~~be immune~~ enjoy [functional] immunity ¹⁶ from legal [or administrative] process.

[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 for the purposes of~~ Article 26 bis (1) and ~~by the terms of any agreement with the host State in relation to any claim made under that Article and for the purposes of Article 40 bis:~~

(a) the Registrar and the officers and employees of the Registrar shall ~~be immune~~ enjoy functional immunity from legal [or administrative] process;

(b) the assets, documents, databases and archives of the International Registry shall be inviolable and immune from seizure or other legal [or administrative] 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. ^{17bis}

CHAPTER VII

LIABILITY OF ~~THE SUPERVISORY AUTHORITY AND~~ THE REGISTRAR

Article 26 bis

Liability and insurance

~~[1. — The Supervisory Authority shall be liable for compensatory damages for loss~~

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.

¹⁷ *Idem.*

^{17bis} The restricted group noted that a provision relating to the host State agreement will need to be inserted at this point at the diplomatic Conference.

~~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

[~~2.1.~~ – 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].

~~2.~~ – The ~~[Supervisory Authority and the]~~ Registrar shall ~~insure against provide insurance or a financial guarantee covering~~ the liability referred to in the preceding paragraphs to the extent provided by the Protocol.^{18bis}

Alternative B

[~~2.1.~~ – 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

~~3.2.~~ – The ~~[Supervisory Authority and the]~~ Registrar shall ~~insure against provide insurance or a financial guarantee covering~~ the liability referred to in the preceding paragraphs to the extent provided by the Protocol.^{18bis}

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

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.~~

^{18bis} During Plenary's discussions a strong majority of delegations was in favour of Alternative A. Alternative B however has been retained purely to enable the question of insurance or financial guarantees to be considered at a later time.

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.

(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.

6. – This Convention does not determine priority as between the holder of an interest in an item held prior to its installation on, or after its removal from, an object and the holder of an international interest in that object.

Article 28 *Effects of insolvency*

1. – In insolvency proceedings against the debtor ~~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 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

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.~~

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).~~

CHAPTER IX ^{22bis}

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 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, but the debtor may not waive defences arising from fraudulent acts on the part of the assignee.

^{22bis} At the third Joint Session the Chairman invited three delegations to develop proposals designed to bring Chapter IX more into line with national legal systems under which an assignment of associated rights would carry with it the interest securing those rights. A proposal containing two Alternatives (attached as an Annex to this Appendix with some adjustments made to reflect the views expressed during the Plenary session of the third Joint Session held on 30 March 2000) was discussed but there was insufficient time to give the Alternatives full consideration, particularly given the highly specialised nature of the topic. Substantial support for the approach taken in the proposal was expressed. However, it was agreed that the Alternatives required further careful study by experts and a number of delegations expressed their wish to proceed with further informal consultations. In particular, Alternative B would recognise that the approach taken for security agreements (where an international interest could not be assigned independently of the related associated rights) might not be appropriate for other international interests (arising under leasing agreements and title reservation agreements).

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 obligation secured by the assignment~~ 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^{bis} 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~~^{were} references to the assigned rights relating to the object. ^{22ter}

^{22ter} The Drafting Committee noted that this provision would require further technical consideration.

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 or in connection with the assignment, have priority ~~over the assignee of associated rights [or other rights] not held with an international interest under Article 27 only~~ to the extent that ~~the such 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~~ or interests

A Contracting State may at any time in ~~an instrument~~ a declaration 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~~ or interests

1. – A Contracting State may at any time in a declaration deposited with the depositary of the Protocol 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~~ of the holder of the international interest and ~~are to~~ shall 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 39bis Choice of forum

1. – The court or courts of a Contracting State chosen by the parties under an agreement that is valid under the applicable law may exercise jurisdiction in respect of any claim brought under this Convention.

2. – 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.

Article 40 *Jurisdiction under Article 14(1)*

~~1. — Without prejudice to Article 41(2), [only] the courts of the place where the object is situated²⁵, of the place from which it is physically controlled or of the place where the debtor is situated²⁶ may exercise jurisdiction to grant judicial relief under Article 14(1).~~

1. – Subject to Article 39bis, only the courts of a Contracting State on the territory of which the object is situated may exercise jurisdiction to grant relief under Article 14(1)(a), (b) and (c).

2. – The courts of a Contracting State on the territory of which the debtor is situated may exercise jurisdiction to grant relief under Article 14(1)(d) and, where applicable, related provisions of the Protocol.

2.3. – A court may exercise jurisdiction under the preceding paragraphs even if the ~~trial-final~~ determination 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(1) or (2) 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.

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*.

~~3. Where a person fails to comply with an order of a court having jurisdiction under this Convention or, in the case of a national interest, an order of a court of competent jurisdiction requiring that person to procure the amendment or discharge of a registration, the courts referred to in paragraph 1 may direct the Registrar to take such steps as will give effect to that order.~~

~~34.— 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 39bis, 40 and] ²⁷40bis, the courts of a Contracting State having jurisdiction under the law of ~~the forum that~~ State may exercise jurisdiction in respect of any claim brought under this Convention. ^{27bis}~~

~~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}

Article 41bis

Relationship with the UNIDROIT Convention on International Financial Leasing

The Protocol may determine the relationship between this Convention and the UNIDROIT Convention on International Financial Leasing, opened for signature in Ottawa on 28 May 1988.

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

^{27bis} — ~~The Drafting Committee drew the attention of Plenary to the fact that this might lead to over-broad jurisdiction. Moreover, the implications of this provision were seen as raising problems for Article 40bis~~

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.~~

Article 41ter
Relationship with the [draft] UNCITRAL Convention on Assignment [in Receivables Financing] [of Receivables in International Trade]

[This Convention shall supersede the [draft] UNCITRAL Convention on Assignment [in Receivables Financing] [of Receivables in International Trade] as it relates to the assignment of receivables which are associated right related to international interests in objects of the categories referred to in Article 2(3).]^{29bis}]

CHAPTER [XIV]

[OTHER] FINAL PROVISIONS³⁰

[Article T
Criminal and tortious liability

Nothing in this Convention exonerates a person from criminal or tortious liability].

Article U
Entry into force

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 [third/fifth] instrument of ratification, acceptance, approval or accession³¹ 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 that** 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 together as a single instrument.

Article V
Internal transactions

~~[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~~

^{29bis} This provision may be modified or deleted depending on the final form of the future UNCITRAL Convention.

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. The question as to whether States would be permitted to ratify the Convention separately from a Protocol was left open by Plenary.~~

~~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].~~

1. - A Contracting State may declare at the time of ratification, acceptance, approval of, or accession to the Protocol that the Convention shall not apply to a transaction which is an internal transaction in relation to that State.

2. - Notwithstanding the preceding paragraph, the provisions of Articles 8(3) and 9(1), Chapter V, Article 27, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

Article W

~~[Insert provision for accelerated procedure to finalise further Protocols]_³²~~

[Protocols on Railway Rolling Stock and Space Property]

1. - The International Institute for the Unification of Private Law (UNIDROIT) shall communicate the text of any preliminary draft Protocol relating to a category of objects falling within Article 2 (3)(b) or (c) prepared by a working group convened by UNIDROIT to all Contracting States Parties to the Convention through their adherence to any existing Protocol, all Member States of UNIDROIT and all Member States of any intergovernmental Organisation represented in the working group. Such States shall be invited to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

2. - UNIDROIT shall also communicate the text of any preliminary draft Protocol prepared by a working group to relevant non-governmental Organisations as UNIDROIT considers appropriate. Such non-governmental Organisations shall be invited to submit comments on the text of the preliminary draft Protocol to UNIDROIT or, as appropriate, to participate as observers in the preparation of a draft Protocol.

3. - Upon completion of a draft Protocol, as provided by the preceding paragraphs, the draft Protocol shall be submitted to the Governing Council of UNIDROIT for approval with a view to adoption by the General Assembly of UNIDROIT and such other intergovernmental Organisations as may be determined by UNIDROIT .

4. - The procedure for the adoption of Protocols covered by this Article shall be determined by the States participating in their preparation.]

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

Article W bis
Other future Protocols

1. – UNIDROIT may create working groups to assess the feasibility of extending the application of this Convention, through one or more Protocols, to objects of any category of high-value mobile equipment, other than a category referred to in Article 2 (3), each member of which is uniquely identifiable, and associated rights relating to such objects.

2. – The Protocols referred to in the preceding paragraph shall be prepared and adopted in accordance with the procedures provided for under Article W.

[Article X
Determination of courts

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
Declarations regarding remedies

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~~ any provisions of this Convention which is not there expressed to require application to the court may ~~only~~ be exercised only with leave of the court.

Article Z
Declarations regarding relief pending final determination

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.

Article Z bis
Reservations, declarations and non-application of reciprocity principle

1. – No reservations are permitted except those expressly authorised in this Convention and the Protocol.

2. – No declarations are permitted except those expressly authorised in this Convention and the Protocol.

3. – The provisions of this Convention subject to any reservation or declaration shall be binding on the Contracting States that do not make such reservations or declarations in their relations vis-à-vis the reserving or declaring Contracting State.

Article Z ter
Transitional provisions

Alternative A

[This Convention does not apply to a pre-existing right or interest, which shall retain the priority it enjoyed before this Convention entered into force.]

Alternative B³³

[1. – Except as provided by paragraph 2, this Convention does not apply to a pre-existing right or interest].

2. – Any pre-existing right or interest of a kind referred to in Article 2(2) shall retain the priority it enjoyed before this Convention entered into force if it is registered in the International Registry before the expiry of a transitional period of [...] years after the entering into force of this Convention in the Contracting State under the law of which it was created or arose. Where such a pre-existing right or interest is not so registered, its priority shall be determined in accordance with Article 27.

3. – The preceding paragraph does not apply to any right or interest in an object created or arising under the law of a State which has not become a Contracting State.]

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

³³ The restricted group recognised that it would be necessary, should Alternative B be adopted, to consider the question of the costs that would be associated with acceptance of this Alternative.

**PROPOSAL FOR REVISED TEXT OF CHAPTER IX OF THE
PRELIMINARY DRAFT CONVENTION**

Following is a revised text of two alternative approaches for Chapter IX of the Convention developed for discussion purposes only by the delegations of Canada, France, and the United States of America at the request of the Chair of the Joint Session

CHAPTER IX

ASSIGNMENTS OF ASSOCIATED RIGHTS, INTERNATIONAL INTERESTS
AND RIGHTS OF SUBROGATION

Alternative A

[Article 29

Formal requirements of assignment

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

2. – An assignment of ~~an~~ associated rights and the related international interest ~~shall be~~ is valid only if it:

(a) is in writing;

(b) enables the associated rights, the related international interest and the object to which it relates to be identified; and

(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~~ associated rights and the related 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) the associated rights;
- (b) the international interest related to the associated rights; and
- (c) 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 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, but the debtor may not waive defences arising from fraudulent acts on the part of the assignee.

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

Article 31

Debtor's duty to assignee

1. — To the extent that ~~an~~ associated rights and the related international interest ~~has~~ have been assigned in accordance with the provisions of this Chapter, the debtor in relation to those rights and 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 associated rights and 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~~ associated rights and the related 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~~ those provisions 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 and the~~ international interest related to the object.

Article 33

Priority of competing assignments

Where there are competing assignments of associated rights and related 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~~ the associated rights and the related 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~~ in connection with the assignment, have priority ~~over the assignee of associated rights [or other rights] not held with an international interest~~ under Article 27 only 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*³³

1. – Subject to paragraph 2, nothing in this Convention affects the acquisition of ~~an~~ associated rights and the related 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.]

Alternative B

[Article 29
Requirements in respect 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 ;
 - (d) in the case of an assignment of [an international interest which is] a security agreement, includes the related associated rights and enables such associated rights to be identified.]

³³ 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)).

**[PRELIMINARY] DRAFT PROTOCOL TO THE [PRELIMINARY] DRAFT
[UNIDROIT] CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT**

PREAMBLE

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the [UNIDROIT] Convention on International Interests in Mobile Equipment as it relates to aircraft equipment, in the light of the purposes set out in the preamble of the Convention,

MINDFUL of the need to adapt the Convention to meet the particular requirements of aircraft finance and to extend the sphere of application of the Convention to include contracts of sale of aircraft equipment,

HAVE AGREED upon the following provisions relating to aircraft equipment:

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I *
Defined terms

1. – In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.

2. – In this Protocol the following terms are employed with the meanings set out below:

(a) “aircraft” means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters; [(a)]

(b) “aircraft engines” means aircraft engines [(other than those used in military, customs or police services)] powered by jet propulsion or turbine or piston technology and:

* The numbering of the paragraphs of the definitions will be adjusted after the session, as also the paragraph numbers of the corresponding definitions in the French text.

(i) in the case of jet propulsion aircraft engines, have at least 1750 lbs of thrust or its equivalent; and

(ii) in the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horsepower or its equivalent,

together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto; [(l)]

(c) “aircraft objects” means airframes, aircraft engines and helicopters; [(d)]

(d) “airframes” means airframes [(other than those used in military, customs and police services)] that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:

(i) at least eight (8) persons including crew; or

(ii) goods in excess of 2750 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto; [(e)]

(e) “authorised party” means the party referred to in Article XIII(2); [(m)]

(f) “Chicago Convention” means the Convention on International Civil Aviation, opened for signature in Chicago on 7 December 1944, as amended and its annexes; [(g)]

(g) “common mark registering authority” means the authority maintaining a register in accordance with Article 77 of the Chicago Convention as implemented by the Resolution adopted on 14 December 1967 by the Council of the International Civil Aviation Organization on nationality and registration of aircraft operated by international operating agencies ; [(b)]

(h) “de-registration of the aircraft” means deletion or removal of the registration of the aircraft from its aircraft register in accordance with the Chicago Convention; [(n)]

(j) “guarantee contract” means a contract entered into by a person as guarantor; [(f)]

(k) “guarantor” means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance; [(j)]

(l) “helicopters” means heavier-than-air machines [(other than those used in military, customs or police services)] supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport:

(i) at least five (5) persons including crew; or

(ii) goods in excess of 450 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all data, manuals and records relating thereto; [(k)]

(m) “insolvency-related event” means:

(i) the commencement of the insolvency proceedings; or

(ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action; [(q)]

(n) “aircraft register” means a register maintained by a State or a common mark registering authority for the purposes of the Chicago Convention; [(o)]

(o) “registry authority” means the national authority or the common mark registering authority, maintaining an aircraft register in a Contracting State and responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention; [(c)]

(p) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor's main interests is situated, which for this purpose shall be deemed to be the place of the debtor's statutory seat or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise; [(p)] and

(q) “State of registry” means, in respect of an aircraft, the State on the national register of which an aircraft is entered or the State of location of the common mark registering authority maintaining the aircraft register. [(i)]

Article II

Application of Convention as regards aircraft objects

1. – The Convention shall apply in relation to aircraft objects as provided by the terms of this Protocol.

2. – The Convention and this Protocol shall be known as the [UNIDROIT] Convention on International Interests in Mobile Equipment as applied to aircraft objects.

Article III

Sphere of application

1. – Article 3(1) of the Convention shall apply in relation to a sale as if the references to an agreement creating or providing for the international interest were references to the contract of sale and as if the references to the debtor were references to the seller under the contract of sale.

2. – Without prejudice to Article 3(1) of the Convention, the Convention shall also apply if an aircraft is registered in an aircraft register of a Contracting State [or if the agreement provides that the aircraft shall be registered, and the aircraft becomes so registered, in a Contracting State].

~~[2. Notwithstanding the provisions of Article V of the Convention, this Protocol shall~~

apply to ~~[a purely domestic transaction].]~~³⁴

3. - For the purposes of the definition of “internal transaction” in Article 1 of the Convention:

(a) an airframe is located in the State of registry of the aircraft of which it is a part;

(b) an aircraft engine is located in the State of registry of the aircraft on which it is installed or, if it is not installed on an aircraft, where it is physically located; and

(c) a helicopter is located in its State of registry,

at the time of the conclusion of the agreement creating or providing for the interest.

[.4 -] The parties may, by agreement in writing, exclude the application of Article XI and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol, except as stated in Article IX(2)-(4).

Article IV

Application of Convention to sales

Except where the context otherwise requires, the following provisions of the Convention apply in relation to a sale and a prospective sale as they apply in relation to an international interest and a prospective international interest:

Article 20(1);

Article 25(1) and (2);

Chapter VIII other than Article 27(3); and

Article 38.

Article V

Formalities and effects of contract of sale

1. - For the purposes of this Protocol, a contract of sale is one which:

(a) is in writing;

(b) relates to an aircraft object of which the transferor has power to dispose;
and

(c) enables the aircraft object to be identified in conformity with this Protocol.

2. - A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.

~~³⁴ This provision will need to be reinstated in the event that Article V of the preliminary draft Convention is not found to be acceptable.~~

3. – A sale may be registered in the International Registry by or with the consent in writing of the seller

Article VI
Representative capacities

A person may enter into an agreement or a sale, and register an international interest in, or a sale of, an aircraft object, in an agency, trust or other representative capacity. In such case, that person is entitled to assert rights and interests under the Convention.

Article VII
Description of aircraft objects

A description of an aircraft object that contains its manufacturer's serial number, the name of the manufacturer and its model designation is necessary and sufficient to identify the object for the purposes of Article 7(c) of the Convention and Article V(1)(c) of this Protocol.

Article VIII
Choice of law

1. – The parties to an agreement, or a contract of sale, or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations under the Convention, wholly or in part.

2. – Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

CHAPTER II

DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article IX
Modification of default remedies provisions

1. – In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in such provisions:

- (a) procure the de-registration of the aircraft; and
- (b) procure the export and physical transfer of the aircraft object from the

territory in which it is situated.

2. – The creditor shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.

3. – (a) Article 8(2) of the Convention shall not apply to aircraft objects.

(b) In relation to aircraft objects the following provisions shall apply:

(i) Any remedy given by the Convention shall be exercised in a commercially reasonable manner.

(ii) An agreement between the debtor and the creditor as to what is a commercially reasonable manner shall be conclusive.

4. – A chargee giving ten or more calendar days' prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing "reasonable prior notice" specified in Article 8(3) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

Article X

Definition of speedy relief

1. – This Article applies only where a Contracting State has made a declaration to that effect under Article XXX(2) and to the extent stated in such declaration.

2. – For the purposes of Article 14(1) of the Convention, "speedy" in the context of obtaining relief means within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.

3. – Article 14(1) of the Convention applies with the following being added immediately after sub-paragraph (d): "(e) sale and application of proceeds therefrom".

4. – Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor's international interest has priority under the provisions of Article 27 of the Convention.

5. – The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 14(2) of the Convention.

6. – The remedies specified in Article IX(1) shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than [...] calendar days after the relief specified in paragraph 2 is authorised or, in the case of relief authorised by a foreign court, approved by courts of that Contracting State, in accordance with applicable aviation safety laws and regulations.

Article XI

Remedies on insolvency

1. – This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration under Article XXX(3).

[Alternative A]

1bis. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 6, give possession of the aircraft object to the creditor no later than the earlier of:

- (a) the end of the waiting period; and
- (b) the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply.

2. – For the purposes of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

3. – References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.

4. – Unless and until the creditor is given the opportunity to take possession under paragraph *1bis*:

- (a) the insolvency administrator or the debtor, as applicable, shall preserve the aircraft object and maintain it and its value in accordance with the agreement; and
- (b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

5. – Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the aircraft object under arrangements designed to preserve the aircraft object and maintain it and its value.

6. – The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph *1bis*, it has cured all defaults and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

7. – The remedies specified in Article IX(1)(a) and (b) of this Protocol shall be made available by the registry authorities and the other administrative authorities, as applicable, no later than [. . .] working days after the date on which the creditor notifies such authorities that it has been given possession of the aircraft object.

8. – No exercise of remedies permitted by the Convention or Protocol may be prevented or delayed after the date specified in paragraph *1bis*.

9. – No obligations of the debtor under the agreement may be modified without the consent of the creditor.

10. – Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

11. – No rights or interests, except for preferred non-consensual rights or interests of a category covered by a declaration deposited under Article 38(1), shall have priority in the insolvency over registered interests.

12. – The Convention as modified by Article IX of this Protocol shall apply to the exercise of any remedies under this Article.

[Alternative B]

1bis. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State under Article XXX(3) whether it will:

(a) cure all defaults and to agree to perform all future obligations, under the agreement and related transaction documents; or

(b) give the creditor the opportunity to take possession of the aircraft object, in accordance with the applicable law.

2. – The applicable law referred to in sub-paragraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.

3. – The creditor shall provide evidence of its claims and proof that its international interest has been registered.

4. – If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph *1bis*, or when he has declared that he will give possession of the aircraft object but fails to do so, the court may permit the creditor to take possession of the aircraft object upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

5. – The aircraft object shall not be sold pending a decision by a court regarding the claim and the international interest.

Article XII
Insolvency assistance

The courts of a Contracting State in which an aircraft object is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI.

Article XIII
De-registration and export authorisation

1. – Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Protocol and has submitted such authorisation for recordation to the registry authority, that authorisation shall be so recorded.

2. – The person in whose favour the authorisation has been issued (the “authorised party”) or its certified designee shall be the sole person entitled to exercise the remedies specified in Article IX(1) and may do so only in accordance with the authorisation and applicable aviation safety laws and regulations. Such authorisation may not be revoked by the debtor without the consent in writing of the authorised party. The registry authority shall remove an authorisation from the registry at the request of the authorised party.

3. – The registry authority and other administrative authorities in Contracting States shall expeditiously co-operate with and assist the authorised party in the exercise of the remedies specified in Article IX.

~~Article XIV
Modification of priority provisions~~

~~Article 27 of the Convention applies with the omission of paragraph 3.~~

Article XIV
Modification of priority provisions

1. – A buyer under a registered contract of sale takes its interest free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest, but subject to a previously registered interest.

2. – Notwithstanding the provisions of Article 27(6) of the Convention, the provisions of Article 27(1)-(4) of the Convention determine the priority of the holder of an interest in an [item] (other than an aircraft object) held prior to its installation on, or after its removal from, an aircraft object and the holder of an international interest in that aircraft object.

3. – Ownership of an aircraft engine shall not pass solely by virtue of its installation on, or removal from, an airframe.

Article XV
Modification of assignment provisions

1. – Article 29(2) of the Convention applies with the following being added immediately after sub-paragraph (c):

“(d) is consented to in writing by the debtor, whether or not the consent is given in advance of the assignment or identifies the assignee.”³⁵

[2. – Article 31(1) of the Convention applies with the omission of sub-paragraph (c).]

[[3.]– Article 34 of the Convention applies as if the words following the phrase “ under Article 27” were omitted.]³⁶

CHAPTER III
**REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS
IN AIRCRAFT OBJECTS**

Article XVI
The Supervisory Authority and the Registrar

1. – The Supervisory Authority shall be

2. – [The first Registrar shall be ...] [The Supervisory Authority shall appoint the Registrar.]

3. – The first Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or re-appointed at regular five-yearly intervals by the [Contracting States] [Supervisory Authority].

³⁵ This provision will be deleted if the words “consents in writing to the assignment, whether or not the consent is given in advance of the assignment or identifies the assignee” are accepted in Article 31(1)(c) of the preliminary draft Convention.

³⁶ Article 34 of the preliminary draft Convention, as it may be modified by this preliminary draft Protocol, will have important implications for the competing rights of a receivables financier and an asset-based financier. Consideration should be given to the appropriate rule in the context of aviation financing as well as to its effects on general receivables financing.

Article XVII
First regulations

The first regulations shall be made by the Supervisory Authority so as to take effect on the entry into force of this Protocol.

Article XVIII

Designated entry points

1. – At the time of ratification, acceptance, approval of, or accession to this Protocol, a Contracting State may, subject to paragraph 2, 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.

2. – A Contracting State may make a designation under the preceding paragraph only in relation to:

- (a) international interests in, or sales of, helicopters or airframes pertaining to aircraft for which it is the State of registry;
- (b) registrable non-consensual rights or interests created under its domestic law; and
- (c) notices of national interests.

Article XIX

Additional modifications to Registry provisions

1. – For the purposes of Article 19(5) of the Convention, the search criterion for an aircraft object shall be its manufacturer's serial number, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

2. – For the purposes of Article 25(2) of the Convention and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest shall take such steps as are within its power to procure the discharge of the registration no later than five calendar days after the receipt of the demand described in such paragraph.

Alternative A

[3. – The fees referred to in Article 16(2)(g) of the Convention shall be determined so as to recover the reasonable costs of operating the International Registry and the registration facilities and, in the case of the initial fees, of designing and implementing the international registration system.]

Alternative B

[3. – The Registrar shall, in the performance of its functions as operator of the International Registry, be a non-profit-making organisation.]

4. – The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various registration facilities shall be operated and administered during working hours in their respective territories.

5. – The insurance or financial guarantee referred to in Article 26 *bis* (2) shall cover all liability of the Registrar under the Convention.

CHAPTER IV

JURISDICTION

Article XX

Modification of jurisdiction provisions

For the purposes of Articles 40 and 41 of the Convention, a court of a Contracting State also has jurisdiction where that State is the State of registry.

Article XXI

Waivers of sovereign immunity

1. – Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Articles 39*bis*, 40 or 41 of the Convention or relating to enforcement of rights and interests relating to an aircraft object under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

2.– A waiver under the preceding paragraph must be in awriting that contains a description of the aircraft object.

CHAPTER V

RELATIONSHIP WITH OTHER CONVENTIONS ³⁷

Article XXII

Relationship with the Convention on the International Recognition of Rights in Aircraft

The Convention shall, for a Contracting State that is a party to the Convention on the International Recognition of Rights in Aircraft, opened for signature in Geneva on 19 June 1948, supersede that Convention as it relates to aircraft, as defined in this Protocol, and to aircraft objects.

Article XXIII

Relationship with the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft

³⁸

1. = The Convention shall, for a Contracting State that is a Party to the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft, opened for signature in Rome on 29 May 1933, supersede that Convention as it relates to aircraft, as defined in this Protocol.

2. = A Contracting State Party to the above Convention may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will not apply this Article. ^{22bis}

Article XXIV

Relationship with 1 the UNIDROIT Convention on International Financial Leasing

The Convention shall supersede the UNIDROIT Convention on International Financial Leasing as it relates to aircraft objects.

²¹ ~~With the exception of Article XXX, the Joint Session did not discuss Chapters V and VI, leaving consideration of those Chapters to a time nearer to a diplomatic Conference.~~

³⁸ ~~If Alternative B of Article Y(2) is adopted, this will need to be amended accordingly.~~

^{22bis} ~~This paragraph will be moved to the final provisions in due course.~~

CHAPTER VI

[OTHER] FINAL PROVISIONS ³⁹

Article XXV

Adoption of Protocol

1.– This Protocol is open for signature at the concluding meeting of the Diplomatic Conference for the Adoption of the Draft Protocol to the [UNIDROIT] Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment and will remain open for signature by all Contracting States at [...] until [...].

2.– This Protocol is subject to ratification, acceptance or approval of Contracting States which have signed it.

3.– This Protocol is open for accession by all States which are not signatory States as from the date it is open for signature.

4.– Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the depositary. ⁴⁰

Article XXVI

Entry into force

1. – This Protocol enters into force on the first day of the month following the expiration of [three] months after the date of deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession.

2. – For each Contracting State that ratifies, accepts, approves or accedes to this Protocol after the deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession, this Protocol enters into force in respect of that Contracting State on the first day of the month following the expiration of [three] months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

³⁹ It is envisaged that, in line with practice, draft Final Provisions will be prepared for the Diplomatic Conference at such time as governmental experts have completed their preparation of the draft Protocol. The proposals for draft Final Provisions set out in the Addendum to this preliminary draft Protocol below are in no way intended to prejudge that process but simply to indicate the suggestions of the Aircraft Protocol Group on this matter as developed by the Joint Session. Particular attention is drawn to Articles XXXI(3) and XXXIII(3) (limiting the effect of any future declaration or reservation and denunciation respectively as regards established rights) and Article XXXIV (establishing a Review Board and contemplating review and revision of this Protocol).

⁴⁰ It is recommended that a resolution be adopted at, and contained in the Final Acts and Proceedings of, the Diplomatic Conference, contemplating the use by Contracting States of a model ratification instrument that would standardise, *inter alia*, the format for the making and/or withdrawal of declarations and reservations.

Article XXVII
Territorial units

1. – If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them and may substitute its declaration by another declaration at any time.

2. – These declarations are to be notified to the depositary and are to state expressly the territorial units to which this Protocol extends.

3. – If a Contracting State makes no declaration under paragraph 1, this Protocol is to extend to all territorial units of that Contracting State.

~~This Protocol applies in a Contracting State to rights and interests in aircraft objects created or arising on or after the date on which this Protocol enters into force in that Contracting State.~~

Article XXX
Declarations relating to certain provisions

1. – A Contracting State, at the time of ratification, acceptance, approval of, or accession to this Protocol, may declare that it will apply any one or more of Articles VIII, XII and XIII of this Protocol

2.- A Contracting State may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will apply Article X of this Protocol wholly or in part. If it so declares with respect to Article X(2), it shall specify the time-period required thereby.

3 – A Contracting State may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XI and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration under this paragraph shall specify the time-period required by Article XI.

.4 – The courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

Article XXXI
Subsequent declarations

1. – A Contracting State may make a subsequent declaration at any time after the date on which it enters into force for that Contracting State, by the deposit of an instrument to that effect with the depositary.

2. – Any such subsequent declaration shall take effect on the first day of the month following the expiration of [six/twelve] months after the date of deposit of the instrument in which such declaration is made with the depositary. Where a longer period for that declaration to take effect is specified in the instrument in which such declaration is made, it shall take effect upon the expiration of such longer period after its deposit with the depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declaration had been made, in respect of all rights and interests arising prior to the effective date of that subsequent declaration.

Article XXXII
Withdrawal of declarations and reservations

Any Contracting State which makes a declaration under, or a reservation to this Protocol may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of [three] months after the date of the receipt of the notification by the depositary.

Article XXXIII
Denunciations

1. – This Protocol may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State, by the deposit of an instrument to that effect with the depositary.

2. – Any such denunciation shall take effect on the first day of the month following the expiration of [six/twelve] months after the date of deposit of the instrument of denunciation with the depositary. Where a longer period for that denunciation to take effect is specified in the instrument of denunciation, it shall take effect upon the expiration of such longer period after its deposit with the depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of that denunciation.⁴¹

Article XXXIV
Establishment and responsibilities of Review Board

1. – A five-member Review Board shall promptly be appointed to prepare yearly reports for the Contracting States addressing the matters specified in sub-paragraphs (a)-(d) of paragraph 2.

2. – At the request of not less than twenty-five per cent of the Contracting States, conferences of the Contracting States shall be convened from time to time to consider:

(a) the practical operation of this Protocol and its effectiveness in facilitating the asset-based financing and leasing of aircraft objects;

(b) the judicial interpretation given to the terms of the Convention, this Protocol and the regulations;

(c) the functioning of the international registration system and the performance of the Registrar and its oversight by the Supervisory Authority; and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

Article XXXV
Depositary arrangements

1. – This Protocol shall be deposited with the [...].

2. – The [depositary] shall:

(a) inform all Contracting States of this Protocol and [...] of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) each declaration made in accordance with this Protocol;

(iii) the withdrawal of any declaration;

(iv) the date of entry into force of this Protocol; and

(v) the deposit of an instrument of denunciation of this Protocol together with the date of its deposit and the date on which it takes effect;

(b) transmit certified true copies of this Protocol to all signatory States, to all States acceding to the Protocol and to [...];

⁴¹ The effect of this paragraph in relation to prospective international interests should be considered further.

(c) provide the Registrar with the contents of each instrument of ratification, acceptance, approval or accession so that the information contained therein may be made publicly accessible; and

(d) perform such other functions customary for depositaries.

**FORM OF IRREVOCABLE DE-REGISTRATION
AND EXPORT REQUEST AUTHORISATION**

[Insert Date]

To: [Insert Name of Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorisation

The undersigned is the registered [operator] [owner]* of the [insert the airframe/helicopter manufacturer name and model number] bearing manufacturer's serial number [insert manufacturer's serial number] and registration [number] [mark] [insert registration number/mark] (together with all installed, incorporated or attached accessories, parts and equipment, the “**aircraft**”).

This instrument is an irrevocable de-registration and export request authorisation issued by the undersigned in favour of [insert name of creditor] (“the **authorised party**”) under the authority of Article XIII of the Protocol to the UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

(i) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:

(a) procure the de-registration of the aircraft from the [insert name of aircraft register] maintained by the [insert name of registry authority] for the purposes of Chapter III of the Chicago Convention of 1944 on International Civil Aviation; and

(b) procure the export and physical transfer of the aircraft from [insert name of country]; and

(ii) confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in [insert name of country] shall-co-operate with the authorised party with a view to the speedy completion of such action.

The rights in favour of the authorised party established by this instrument may not be revoked by the undersigned without the written consent of the authorised party.

Please acknowledge your agreement to this request and its terms by appropriate notation in the space provided below and lodging this instrument in [insert name of registry authority].

[insert name of operator/owner]

Agreed to and lodged this
[insert date] Its: [insert title of signatory]

By: [insert name of signatory]

[insert relevant notational details]

* Select the term that reflects the relevant nationality registration criterion.