

Consolidated Version

of a

PRELIMINARY DRAFT UNIDROIT CONVENTION
ON INTERNATIONAL INTERESTS IN AIRCRAFT EQUIPMENT

submitted by the German Delegation

integrating

the

PRELIMINARY DRAFT UNIDROIT CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

UNIDROIT 1998
Study LXXII - Doc. 42

and the

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

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established on the basis of the

PRELIMINARY DRAFT UNIDROIT CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

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CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1

In this Convention the following words are employed with the meanings set out below:

“agreement” means a security agreement, a title reservation agreement or a leasing agreement;

(Art.I) “aircraft” means airframes with aircraft engines installed thereon or helicopters;

(Art.I) “aircraft engines” means aircraft engines (other than those used in military, customs or police services) powered by jet propulsion or turbine technology and:

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

(b) in the case of turbine-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;

(Art.I) “aircraft objects” * means airframes, aircraft engines and helicopters;

(Art.I) “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:

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

(b) 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;

“applicable law” means the law applicable by virtue of the rules of private international law;

“assignment” means a consensual transfer, whether by way of security or otherwise, which confers on the assignee rights in the international interest;

“associated rights” means all rights to payment or other performance by the obligor under an agreement or a contract of sale secured by or associated with the object;

* In accordance with the preliminary draft Convention, the body of this preliminary draft Protocol employs the term “object” rather than the term “equipment”, although the latter is used in the title of the instrument (and, for consistency with that title, in the preamble). Consideration should be given to the adoption of a consistent terminology in the two instruments.

(Art.I) “authorised party” means the party referred to in Article 15(2);

“buyer” means a buyer under a contract of sale;

“chargee” means the grantee of an interest in an object under a security agreement;

“chargor” means the grantor of an interest in an object under a security agreement;

(Art.I) “Chicago Convention” means the Convention on International Civil Aviation, signed at Chicago on 7 December 1944, as amended;

(Art.I) “common mark registering authority” means the authority maintaining the non-national register in which an aircraft of an international operating agency is registered in accordance with Article 77 of the Chicago Convention;

“conditional buyer” means the buyer under a title reservation agreement;

“conditional seller” means the seller under a title reservation agreement;

“contract of sale” means a contract for the sale of an object which is not an agreement;

“court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;

(Art.I) “deregister the aircraft” means delete the registration of an aircraft from a national aircraft register;

(Art.I) “Geneva Convention” means the Convention on the International Recognition of Rights in Aircraft, signed at Geneva on 19 June 1948;

(Art.I) “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:

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

(b) 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;

(Art.I) “insolvency date” means the date referred to in Article 15 ter(1);

“international interest” means an interest to which Article 2 applies and which is constituted in conformity with Article 8;

“International Registry” means the international registry referred to in Article 16(3);

(Art.I) [“International Registry Authority” means the permanent international body designated as the International Registry Authority;]

(Art.I) [“International Regulator” means [the permanent international body designated as the International Regulator] [the entity designated as the International Regulator in Article 17(1)];] [replaces the definition of the Convention concerning “Intergovernmental Regulator”]

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

(Art.I) “national aircraft register” means the national register in which an aircraft is registered pursuant to the Chicago Convention;

(Art.I) “national registry authority” means the national authority, or the common mark registering authority in a Contracting State which is the State of registry responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention;

(Art.I) [definition of "object" replaced by "aircraft object"]

“obligee” means the chargee under a security agreement, the conditional seller under a title reservation agreement or the lessor under a leasing agreement;

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

(Art.I) “primary insolvency jurisdiction” means the insolvency jurisdiction of the State in which the centre of the obligor's main interests is situated;

“prospective assignment” means an assignment that is intended to be made in the future, whether or not upon the occurrence of an uncertain event;

“prospective international interest” means an interest that is intended to be created or provided for as an international interest in the future, whether or not upon the occurrence of an uncertain event;

(Art.I) “prospective sale” means a sale that is intended to take effect on the conclusion of a contract of sale in the future; [replaces the definition of the Convention]

“registered” means registered in the International Registry pursuant to Chapter V;

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

[“registrable non-consensual right or interest” means a right or interest registrable pursuant to an instrument deposited under Article 39;]

(Art.I) [“Registrar” means [the entity designated as the Registrar under this Convention] [the entity initially designated or subsequently appointed or re-appointed as the Registrar, as the case may be];] [replaces the definition of the Convention]

“regulations” means regulations made by the Intergovernmental Regulator under Article 17(5 bis and 7);

“sale” means a transfer of ownership pursuant to a contract of sale;

“secured obligation” means an obligation secured by a security interest;

“security agreement” means an agreement by which a chargor grants or agrees to grant to a chargee an interest in or over an object to secure the performance of any existing or future obligation of the chargor or a third person;

“security interest” means an interest created by a security agreement;

(Art.I) “State of registry” means in respect of an aircraft the State, or a State member of a common mark registering authority, on whose national aircraft register an aircraft is entered under the Chicago Convention; and

“surety” means any guarantor, surety or other credit insurer under a guarantee (including a demand guarantee and a standby letter of credit) or credit insurance given to the chargee;

(Art.I) “suretyship contract” means a contract entered into by one of the parties as surety for the obligations of the obligor under an agreement.

“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;

“unregistered interest” means a consensual [or non-consensual right or] interest [(other than an interest to which Article 40 applies)] which has not been registered, whether or not it is registrable under this Convention; and

“writing” means an authenticated record of information (including information sent by teletransmission) which is in tangible form or is capable of being reproduced in tangible form.

Article 2

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

2. – For the purposes of this Convention, an international interest aircraft equipment is an interest in an aircraft object:

- (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.

3. – Whether an interest to which the preceding paragraph applies falls within-sub-paragraph (a), (b) or (c) of that paragraph is to be determined by the applicable law. An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).

Article 3

This Convention applies in relation to an aircraft object, and associated rights relating to an aircraft object.

Article 4

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

- (a) the obligor is located in a Contracting State; or
- (Art.III(1)) (b) the object to which the international interest relates has been registered in a national aircraft register in a Contracting State.**

Article 5

For the purposes of this Convention, a party is located in a State if it is incorporated or registered or has its principal place of business in that State. **(Art.III(2)) Notwithstanding the provisions of Article V, this convention shall apply [a purely domestic transaction].**

(Art.III(3)) Article 6

In their relations with each other, the parties may, by agreement in writing, derogate from or vary of Articles 15 (1) phrase 2, 15bis (1), 15bis (3), 15ter (1)-(6).

Article 7

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

2. – [In the interpretation of this Convention, regard is to be had to the commentaries on the Convention.]

3. – 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.

CHAPTER II

CONSTITUTION OF AN INTERNATIONAL INTEREST

Article 8

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 aircraft object in respect of which the chargor, conditional seller or lessor has power to enter into the agreement;
- (c) enables the aircraft object to be identified; and
- (d) in the case of a security agreement, enables the secured obligations to be identified[, but without the need to state a sum or maximum sum secured].

(Art.VII) A description of an aircraft object that contains its manufacturer's serial number, the name of the manufacturer and its model designation is sufficient to identify the object for the purposes of sub-paragraph ©.

* The preamble will be drafted in due course.

CHAPTER III
DEFAULT REMEDIES

Article 9

1. – In the event of default in the performance of a secured obligation, the chargee may 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;
- (d) apply for a court order authorising or directing any of the above acts.

(2. Original version replaced by Article 14bis according to Article IX (3).)

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 interested persons.

(Art.IX(4) A chargee giving ten or more working days' prior written notice of a proposed sale or lease to interested persons is deemed to satisfy the requirement of providing “reasonable prior notice” specified in Article 9(3). The foregoing shall not prevent a chargee and a chargor from agreeing to a longer prior notice period.

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

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

6. – In this Article and in Article 10 “interested persons” means:

- (a) the chargor;
- (b) any surety;
- (c) any person entitled to the benefit of any international interest which is registered after that of the chargee;
- (d) any other person having rights subordinate to those of the chargee in or over the object of which notice in writing has been given to the chargee within a reasonable time before exercise of the remedy given by paragraph 1(b) or vesting of the object in the chargee under Article 10(1), as the case may be.

Article 10

1. – At any time after default in the performance of a secured obligation, the chargee and all the interested persons may agree, or 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.

2. – 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.

3. – At any time after default in the performance of a secured obligation and before sale of the charged object or the making of an order under paragraph 1, the chargor or any interested person may discharge the security interest by paying the amount secured, subject to any lease granted by the chargee under Article 9(1). Where, after such default, the payment is made in full by an interested person, that person is subrogated to the rights of the chargee.

4. – Ownership or any other interest of the chargor passing on a sale under Article 9(1) or passing under paragraph 1 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 28.

Article 11

In the event of default by the conditional buyer under a title reservation agreement or by the lessee under a leasing agreement, the conditional seller or the lessor, as the case may be, may terminate the agreement and take possession or control of any object to which the agreement relates. The conditional seller or the lessor may also apply for a court order authorising or directing either of these acts.

Article 12

1. – The parties may provide in their agreement for the kind of default, or any event other than default, that will give rise to the rights and remedies specified in Articles 9 to 11 or 15.

2. – In the absence of such an agreement, “default” for the purposes of Articles 9 to 11 and 15 means a substantial default.

Article 13

1. – Subject to paragraph 2, any remedy provided by this Chapter shall be exercised in conformity with the procedural law of the place where the remedy is to be exercised.

2. – Any remedy available to the obligee under Articles 9 to 11 which is not there expressed to require application to the court may be exercised without leave of the court except to the extent that the Contracting State where the remedy is to be exercised has made a declaration under Article Y.

Article 14

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.

(Art.IX(3)b)) Article 14bis

- 1. – Any remedy shall be exercised in a commercially reasonable manner.**
- 2. – An agreement between an obligor and an obligee as to what is commercially reasonable shall, subject to paragraph 3, be conclusive.**
- 3. – An obligee may not take possession or control of an aircraft object in a manner which contravenes public order. For these purposes, the disruption of air transport shall not in itself be deemed a contravention of public order.**

Article 15

1. – A Contracting State shall ensure that an obligee who adduces *prima facie* evidence of default by the obligor may, pending final determination of its claim, obtain speedy judicial relief in the form of [one or more of] the following orders:

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

(Art.X(1)) “speedy” in the context of obtaining judicial relief means a period not exceeding thirty calendar days from the date on which the instrument initiating the proceedings is lodged with the court or its administrative office.

2. – Ownership or any other interest of the obligor passing on a sale under the preceding paragraph is free from any other interest over which the chargee's security interest has priority under the provisions of Article 28.

3. – Nothing in this Article shall limit the availability of any form of interim judicial relief under the applicable law.

Article 15bis

(Art.IX(1)+(2)) 1. – In addition to the remedies specified in the provisions of Articles 9(1), 11 and 15(1), the obligee may in the circumstances specified in such provisions:

- (a) deregister the aircraft; and**
- (b) export and physically transfer the aircraft object from the territory in which it is situated.**

2. – The obligee may 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 obligee.

(Art.X(2)) 3. The remedies specified in paragraph 1 shall be made available by the national registry authority and other administrative authorities, as applicable, in a Contracting State no later than three working days after the judicial relief specified in the preceding paragraph is authorised or, in the case of judicial relief authorised by a foreign court, approved by courts of that Contracting State.

(Art.XI) Article 15ter

1. – For the purposes of this Article, “insolvency date” means the earliest date on which one of the events specified in paragraph 2 shall have occurred.

2. – This Article applies where:

(a) any insolvency proceedings** against the obligor have been commenced by the obligor or another person in a Contracting State which is the primary insolvency jurisdiction of the obligor; or

(b) the obligor is located in a Contracting State and has declared its intention to suspend, or has actually suspended payment to creditors generally.

3. – Within a period not exceeding [thirty/sixty] days from the insolvency date the obligor shall:

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

(b) give possession of the aircraft object to the obligee [in accordance with, and in the condition specified in the agreement and related transaction documents].

4. – Where possession has been given to the obligee pursuant to the preceding paragraph, the remedies specified in Article 15 bis(1) shall be made available by the national registry authority and other administrative authorities, as applicable, no later than three working days after the date on which the aircraft object is returned.

5. – No exercise of remedies permitted by the Convention may be prevented or delayed after the period specified in paragraph 3.

6. – No obligations of the obligor under the agreement and related transactions may be modified [in the insolvency proceedings] without the consent of the obligee.

7. – No rights or interests, except for preferred non-consensual rights or interests listed in an instrument deposited under Article 40, shall have priority in the insolvency over registered interests.

** The phrase “insolvency proceedings” will need to be defined.

(Art.XII) Article 15quater

The courts of a Contracting State in which an aircraft object is situated shall expeditiously co-operate with and assist the courts or other authorities administering the insolvency proceedings referred to in Article 15 ter in carrying out the provisions of that Article.

(Art.XIII) Article 15quinquies

1. – Where the obligor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Convention and has submitted such authorisation for recordation to the national 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 15 bis(1), and may do so only in accordance with the authorisation. Such authorisation may not be revoked by the obligor without the consent in writing of the authorised party.

3. – The national 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 15 bis.

CHAPTER IV

THE INTERNATIONAL REGISTRATION SYSTEM

Article 16

- 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; and
 - (c) subordinations of interests referred to in sub-paragraph (a) of this paragraph.
2. – [The International Registry shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes under this Convention.]
3. – Different registries may be established for different categories of object and associated rights. For the purposes of this Convention, “International Registry” means the relevant international registry.
4. – For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

[Article 17

ALTERNATIVE A

(Art.XVI(1)) [1. – [The International Registry shall be established and operated by the International Registry Authority.] [The International Registry shall be regulated by the International Regulator **** and operated by the Registrar.]] *****

ALTERNATIVE B

(Art.XVI(1)-(4)) [1. – The International Registry shall be regulated by the Council of the International Civil Aviation Organization or such other permanent body designated by it to be the International Regulator.

2. – The initial Registrar hereby designated to operate the International Registry shall be a newly created, independent special purpose affiliate of the International Air Transport Association.

3. – The initial Registrar shall be organised in consultation with the International Regulator. Its constitutive documents shall contain provisions that:

(a) restrict it to acting as Registrar and performing ancillary functions;
and

(b) ensure that it has no greater duties (fiduciary or otherwise) to members of the International Air Transport Association than to any person or entity in the performance of its functions as Registrar.

4. – The initial Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Convention. Thereafter, the Registrar shall be appointed or re-appointed at regular five-year intervals by the [Contracting States] [International Regulator].]

(Art.17(5) Convention) 5. – The Registrar shall:

(a) operate the International Registry efficiently and responsibly;

(b) perform the functions assigned to it under this Convention and the regulations;

(c) report to the Intergovernmental Regulator on its performance of these functions and otherwise comply with the oversight requirements specified by the Intergovernmental Regulator;

(d) maintain financial records relating to its functions in a form specified by the Intergovernmental Regulator; and

(e) insure against liability for its acts and omissions in a manner acceptable to the Intergovernmental Regulator.

**** Further consideration needs to be given as to whether the appropriate term is *International Regulator* or *Intergovernmental Regulator*.

***** The two bracketed provisions in this Alternative A are mutually exclusive, so that if the decision is to have an International Registry Authority references in other Articles to the International Regulator and the Registrar will be deleted, whilst if the latter are adopted references to the International Registry Authority will be deleted.

(Art.17(4) Convention) (5 bis) – The manner in which such oversight is conducted, the responsibilities of the Registrar and operators of registration facilities and the fees to be paid by users of the international registration system shall be prescribed in the regulations.

(Art.XIX(3)) (5ter) – The fees referred to in paragraph 5 bis 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.

(Art.XIX(4)) (5quater) – The centralised functions of the International Registry shall be operated and administered by the [International Registry Authority] [Registrar] on a twenty-four hour basis. The various registration facilities shall be operated and administered during working hours in their respective territories.

(Art.17(6) Convention) 6. – The Intergovernmental Regulator shall have power to require acts and omissions which are in contravention of this Convention or the regulations to be rectified.

(Art.17(7) Convention) 7. – The regulations may prescribe the procedures pursuant to which the Registrar and operators of registration facilities may request advice from the Intergovernmental Regulator regarding the exercise of their respective functions under this Convention and the regulations.]

(Art.XIX(5)) (7 bis) – The regulations shall prescribe the manner in which the following provisions of the Convention shall apply:

Article 17(6) and (7);

Article 18;

Article 19;

Article 22;

Article 23(1) and (2);

Article 24; and

Article 25.

(Art.XVII) Article 17bis

1. – The [International Registry Authority] [International Regulator] shall act in a non-adjudicative capacity. This shall not prevent the [International Registry Authority] [International Regulator] from undertaking the functions specified in Article 17(6) and (7).

2. – The [International Registry Authority] [International Regulator] shall [be responsible to the Contracting States, and shall report thereto on its regulatory [and oversight] functions. Such reports shall be made on a yearly basis or more frequently as the [International Registry Authority] [International Regulator] deems appropriate.]

[3. – The initial regulations shall be promulgated by the [International Registry Authority] [International Regulator] on entry into force of this Convention.]

Article 17ter

(Art.XVIII(1)) 1. – At the time of ratification, acceptance, approval of, or accession to this Convention, a Contracting State may, subject to paragraph 2:

- (a) designate its operators of registration facilities and**
- (b) declare the extent to which any such designation shall preclude alternative access to the International Registry.**

[(Art.17(2) phrase 2 Convention) Such operators shall be transmitters of the information required for registration and, in such capacity, shall constitute an integral part of the registration system of this Convention.]

(Art.XVIII(2)) 2. – A Contracting State may only designate registration facilities as points of access to the International Registry in relation to:

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

CHAPTER V

MODALITIES OF REGISTRATION

Article 18

The regulations may contain conditions and requirements, including the criterion or criteria for the identification of the object, which must be fulfilled in order:

- (a) to effect a registration; or**
- (b) to convert the registration of a prospective international interest or a prospective assignment of an international interest into registration of an international interest or of an assignment of an international interest.**

Article 19

The information required for a registration shall be transmitted, by any medium prescribed by the [Convention or] regulations, to the International Registry or registration facility prescribed therein.

Article 20

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

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

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

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

3. – If an interest first registered as a prospective international interest becomes an international interest, the international interest shall be treated as registered from the time of registration of the prospective international interest.

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

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

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

(Art.XIX(1) (6 bis) For the purpose of paragraph 6 the search criterion for an aircraft object shall be its manufacturer's serial number, supplemented as necessary to ensure identification. Such supplementary information shall be specified in the regulations.

Article 21

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 grantor or assignor, as the case may be. Any other type of international interest may be registered by the holder of that interest.

2. – The subordination of an international interest to another international interest may be registered by the person in whose favour the subordination is made.

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

Article 22

Registration of an international interest remains effective for the period of time [specified in the regulations as extended in conformity with Article 21(3)] [agreed between the parties in writing].

Article 23

1. – A person may, in the manner prescribed by the [Convention and] 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 [Convention and] 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 24

The Registrar shall maintain a list of the categories of non-consensual right or interest declared by Contracting States in conformity with Article 40 and the date of each such declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the regulations [Convention and] to any person requesting it.]

Article 25

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 under Article 21.

Article 26

1. – When the obligations secured by a security interest [or the obligations giving rise to a registrable non-consensual right or interest] have been discharged, or the conditions of transfer of title under a title reservation agreement have been fulfilled, the obligor may, by written demand delivered to the holder of such a registered interest, require the holder to remove the registration relating to the interest.

2. – Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending grantor or assignor may by notice in writing, delivered to the intended grantee or assignee at any time before the latter has given value or incurred a commitment to give value, require the relevant registration to be removed.

(Art.XIX(2)) (2 bis) For the purposes of paragraph 2, 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 effect a removal thereof no later than five working days after the receipt of the demand described in such paragraph.

[CHAPTER VI

LIABILITIES AND IMMUNITIES OF THE INTERNATIONAL REGISTRY

Article 27

1. – Any person suffering loss by reason of any error or system malfunction in the International Registry shall be entitled to an indemnity in respect of such loss. The measure of liability shall be compensatory damages for loss incurred as the result of the act or omission.

2. – The courts [of the Contracting State[s] in which the Registrar or the operators of registration facilities, as the case may be, [is] [are] situated] shall have jurisdiction to resolve any disputes arising under this Article.

3. – Subject to paragraph 1, the International Registry, the Registrar and staff of the International Registry, the Intergovernmental Regulator and the operators of registration facilities and the staff thereof shall, in the exercise of their functions, enjoy immunity from legal process except:

(a) to the extent that the International Registry expressly waives such immunity;
or

(b) as otherwise provided by agreement with a State in which the International Registry is situated.

4. – The assets, documents and archives of the International Registry shall be inviolable and immune from seizure or legal process except to the extent that the International Registry expressly waives such immunity.]

CHAPTER [VII]

EFFECTS OF AN INTERNATIONAL INTEREST
AS AGAINST THIRD PARTIES

Article 28

1. – A registered interest has priority over any other interest subsequently registered and over an unregistered interest.

2. – The priority of the first-mentioned interest under the preceding paragraph applies:

(a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and

(b) even as regards value given by the holder of the first-mentioned interest with such knowledge.

[Former paragraph 3 deleted in accordance with Article XIV(1).]

3. – 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.

4. – Any priority given by this Article to an interest in an object extends to insurance **(Art.XIV(2)) proceeds payable in respect of the loss or physical destruction of that object and to amounts payable by any Government or State entity in respect of the confiscation, condemnation or requisition of that object.**

Article 29

1. – An international interest is valid against the trustee in bankruptcy of the obligor if prior to the commencement of the bankruptcy that interest was registered in conformity with this Convention.

2. – For the purposes of this Article and Article 37, “trustee in bankruptcy” includes a liquidator, administrator or other person appointed to administer the estate of the obligor for the benefit of the general body of creditors.

3. – Nothing in this Article affects the validity of an international interest against the trustee in bankruptcy where that interest is valid against the trustee in bankruptcy under the applicable law.

CHAPTER [VIII]

ASSIGNMENTS OF INTERNATIONAL INTERESTS AND RIGHTS OF SUBROGATION

Article 30

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 identified.

(Art.XV (1)) (d) is consented to in writing by the obligor, whether or not the consent is given in advance of the assignment or specifically identifies the assignee.

Article 31

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
- (Art.XV (2))(b) all associated rights [omitted according to Article XV (2) the following words: "so far as such rights are assignable under the applicable law"].**

2. – Subject to paragraph 3, an assignment made in conformity with the preceding paragraph shall take effect subject to:

- (a) all defences of which the obligor could have availed itself against the assignor; and
- (b) any rights of set-off in respect of claims existing against the assignor and available to the obligor at the time of receipt of a notice of the assignment under Article 33.

3. – The obligor may by agreement in writing waive all or any of the defences and rights of set-off referred to in paragraph 2.

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

Article 32

The provisions of Chapter V shall apply to the registration of an assignment or prospective assignment of an international interest as if the assignment or prospective assignment were the international interest or prospective international interest and as if the assignor were the grantor of the interest.

Article 33

1. – To the extent that an international interest has been assigned in accordance with the provisions of this Chapter, the obligor in relation to that interest is bound by the assignment, and, in the case of an assignment within Article 31(1)(b), has a duty to make payment or give other performance to the assignee, if but only if:

- (a) the obligor has been given notice of the assignment in writing by or with the authority of the assignor;
- (b) the notice identifies the international interest.

[(c) omitted according to Article XV (3)]

2. – Irrespective of any other ground on which payment or performance by the obligor 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 34

In the event of default by the assignor under the assignment of an international interest made by way of security, Articles 9, 10 and 12 to 15, in so far as they are capable of application to intangible property, apply as if references:

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

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

(c) to the holder of the international interest were references to the holder of the assignment; and

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

Article 35

Where there are competing assignments of international interests and at least one of the assignments is registered, the provisions of Article 28 apply as if the references to an international interest were references to an assignment of an international interest.

Article 36

Where the assignment of an international interest has been registered, the assignee shall, in relation to the associated rights transferred by virtue of the assignment, have priority over the holder of associated rights not held with an international interest. **The following words omitted according to Article XV(4).**

Article 37

1. – An assignment of an international interest is valid against the trustee in bankruptcy of the assignor if prior to the commencement of the bankruptcy that assignment was registered in conformity with this Convention.

2. – Nothing in this Article affects the validity of an assignment of an international interest against the trustee in bankruptcy where that interest is valid against the trustee in bankruptcy under the applicable law.

[Article 38

1. – Subject to paragraph 2, nothing in this Convention affects rights or interests arising in favour of any person by operation of principles of legal 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.]

[CHAPTER [IX]

NON-CONSENSUAL RIGHTS AND INTERESTS

Article 39

A Contracting State may at any time in an instrument deposited with the depositary of the Convention 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 40

A non-consensual right or interest (other than a registrable non-consensual right or interest) which under the law of a Contracting State would have priority over an interest in the object equivalent to that held by the holder of the international interest (whether in or outside the insolvency of the obligor) has priority over the international interest to the extent, and only to the extent that:

- (a) such priority is set out by that State in an instrument deposited with the depositary of the Convention and that instrument has been deposited with the depositary prior to the time when the registration of the international interest takes effect; and
- (b) the non-consensual right or interest would, under the domestic law of that State, have priority over a registered interest of the same type as the international interest without any act of publication.]

[CHAPTER [X]
APPLICATION OF THE CONVENTION TO SALES

(Art. IV) Article 41

The following provisions of the Convention apply *mutatis mutandis* in relation to a sale and a prospective sale as they apply in relation to an international interest and a prospective international interest:

- Article 16(1) other than sub-paragraph (c);**
- Articles 18 - 20;**
- Article 23;**
- Articles 25 and 27;**
- Chapter VII; and**
- Article 40.**

Article 41bis

(Art.V (1)) 1. – An agreement is a contract of sale for the purposes of this Convention if it:

- (a) is in writing;**
- (b) relates to an aircraft object in respect of which the transferor has power to enter into the agreement; and**
- (c) identifies the aircraft object.**

(Art.VII) A description of an aircraft object that contains its manufacturer's serial number, the name of the manufacturer and its model designation is sufficient to identify the object for the purposes of sub-paragraph c.

(Art.V (2)) 2. – A contract of sale transfers the interest of the transferor in the aircraft object to the transferee according to its terms.

(Art.V (3)) 3. – A sale may be registered by either party to the contract of sale in the International Registry by or with the consent in writing of the other party.

(Art.VI) *Article 41ter*

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

(Art. VIII) *Article 41quater*

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

2. – The reference in the preceding paragraph to the law chosen by the parties is to the rules of law in force in the designated State other than its rules of private international law.

CHAPTER [XI]

JURISDICTION

Article 42

1. – A court of a Contracting State has jurisdiction to grant judicial relief under Article 15(1) where:

- (a) the object is within [or is physically controlled from] the territory of that State;
- (b) [one of the parties] [the defendant] is located within that territory; or
- (c) the parties have agreed to submit to the jurisdiction of that court.

2. – A court may exercise jurisdiction under the preceding paragraph even if the trial of the claim referred to in Article 15(1) will or may take place in a court of another State or in an arbitral tribunal.

[Article 43

A court of a Contracting State to which Article 42(1) applies has jurisdiction in all proceedings relating to this Convention, but no court may make orders or give judgments or rulings against or purporting to bind the International Registry.]

(Art.XX) Article 43bis

For the purposes of Articles 42 and 43 of the Convention, a court of a Contracting State also has jurisdiction where that State is the State of registry.

(Art.XXI) Article 43ter

A waiver of sovereign immunity from jurisdiction of the courts specified in Article 43 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.

[CHAPTER [XII]
RELATIONSHIP WITH OTHER CONVENTIONS] ****

(Art.XXII) Article 44

Relationship with 1948 Convention on the International Recognition of Rights in Aircraft

1. – Where a Contracting State is a party to the Geneva Convention:

(a) the reference to the “law” of such Contracting State for the purposes of Article I (1)(d)(i) of the Geneva Convention should be to such law after giving effect to the Convention;

(b) for the purposes of the Geneva Convention, the term “aircraft” as defined in Article XVI of that Convention shall be deleted and replaced by the terms “airframes,” “aircraft engines” and “helicopters” as defined in this Convention; and

(c) registrations in the International Registry shall be deemed to be regular recordations “in a public record of the Contracting State” for the purposes of Article I (1)(ii) of the Geneva Convention.

2. – Subject to paragraph 3, the Convention shall, for the Contracting States referred to in the preceding paragraph, supersede the Geneva Convention to the extent, after giving effect to the preceding paragraph, of inconsistency between the two Conventions.

3. – The provisions of the preceding paragraph shall not apply to Articles VII and VIII of the Geneva Convention where an obligee elects to exercise remedies against an obligor in accordance with those Articles [and provides the court with written evidence of that election.]

**** 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.

(Art.XIII) Article 45
Relationship with 1933 Convention for the Unification of Certain Rules
Relating to the Precautionary Arrest of Aircraft

The Convention shall, for Contracting States that do not make a declaration under Article Y(2) of the Convention, supersede the 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft.

(Art.XXIV) Article 46
Relationship with 1988 Unidroit Convention on International Financial Leasing

The Convention shall supersede the 1988 Unidroit Convention on International Financial Leasing as it relates to aircraft objects.

CHAPTER [XIII]
[OTHER] FINAL PROVISIONS