

CONVENTION ON INTERNATIONAL INTERESTS IN
MOBILE EQUIPMENT AND PROTOCOL TO CONVEN-
TION ON INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIP-
MENT AND PROTOCOL TO CONVENTION ON INTERNATIONAL IN-
TERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO
AIRCRAFT EQUIPMENT, CONCLUDED AT CAPE TOWN, SOUTH AF-
RICA, ON NOVEMBER 16, 2001



NOVEMBER 5, 2003.—Treaty was read the first time, and together with
the accompanying papers, referred to the Committee on Foreign Rela-
tions and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 5, 2003.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Convention on International Interest in Mobile Equipment and the Protocol on Matters Specific to Aircraft Equipment, concluded at Cape Town, South Africa, on November 16, 2001. The report of the Department of State and a chapter-by-chapter analysis are enclosed for the information of the Senate in connection with its consideration.

The essential features of the Convention and Aircraft Protocol are the establishment of an international legal framework for the creation, priority, and enforcement of security and leasing interests in mobile equipment, specifically high-value aircraft equipment (airframes, engines, and helicopters), and the creation of a worldwide International Registry where interests covered by the Convention can be registered. The Convention adopts “asset-based financing” rules, already in place in the United States, enhancing the availability of capital market financing for air carriers at lower cost. The Convention’s and Protocol’s finance provisions are consistent with the Uniform Commercial Code with regard to secured financing in the United States.

This new international system can significantly reduce the risk of financing, thereby increasing the availability and reducing the costs of aviation credit. As a result, air commerce and air transportation can become safer and environmentally cleaner through the acquisition of modern equipment facilitated by these instruments. The new international system should increase aerospace sales and employment, and thereby stimulate the U.S. economy.

Negotiation of the Convention and Protocol has involved close coordination between the key Federal agencies concerned with air transportation and export, including the Departments of State, Commerce, and Transportation, as well as the EXIM bank, and U.S. interests from manufacturing, finance, and export sectors.

Ratification is in the best interests of the United States. I therefore urge the Senate to give early and favorable consideration to the Cape Town Convention and Aircraft Protocol, and that the Senate promptly give its advice and consent to ratification, subject to the seven declarations set out in the accompanying report of the Department of State.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, September 8, 2003.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its early transmittal to the Senate for advice and consent to ratification, the Convention on International Interests in Mobile Equipment and the Protocol on Matters Specific to Aircraft Equipment, concluded at Cape Town, South Africa on November 16, 2001 (the "Cape Town Convention"). The Convention and the accompanying Protocol on aircraft equipment were signed by the United States in Rome on May 9, 2003 at the International Institute for the Unification of Private Law (UNIDROIT).

The new treaty system will expand credit financing across the world for the acquisition of commercial aircraft, and eventually other types of equipment important to U.S. exports, by introducing modern commercial finance law already in place in the United States, which will directly benefit our manufacturers and other export interests.

Enabling other countries to acquire newer aircraft will also upgrade aircraft safety around the world. By facilitating new sales and leasing transactions, the Convention will provide a needed boost for the industry, a critical factor given the effects of September 11 and more recent world events, as well as the general downturn in the air transportation market.

The Cape Town Convention, when effectively implemented by other States, will bring about a substantial change in the secured transaction and leasing laws around the world. Many legal systems lack transparent priority systems of the sort in place in the United States, which will be remedied by the International Registry. Many legal systems require elaborate, time consuming and expensive enforcement procedures, which will be streamlined by the Convention's procedures. In sum, the Convention represents an opportunity for many States to quickly upgrade their legal infrastructure, thereby attracting capital to aircraft equipment, a major U.S. export and source of employment. Prompt and wide adoption of these instruments will also add momentum to other law reform initiatives that promote other U.S. trade objectives.

BACKGROUND

The Convention and Protocol were negotiated over a five-year period under the auspices of UNIDROIT, an international body dealing with private law conventions, and ICAO, the International Civil

Aviation Organization. They were concluded in November 2001 at a Diplomatic Conference at Cape Town, South Africa, attended by 68 States and 14 international organizations, and involved the active participation at all stages of the Conference by private sector air transportation and finance interests. Negotiations were intended to track existing air finance practices in the major capital markets and thereby facilitate new transactions, especially in developing and emerging countries, which will be increasingly significant in coming decades.

Analyses of the markets indicated that a treaty extending financing methods which are already in place in the United States through the Uniform Commercial Code (UCC) would benefit other countries as well as U.S. manufacturing, employment, finance and export interests.

Key federal agencies concerned with civil aviation and U.S. exports, including the FAA, EXIM Bank, and the Departments of Transportation, Commerce and State were fully involved in negotiation of the Convention and in preparation for its implementation. U.S. signature and ratification was endorsed by these agencies in a recommendation made in October 2002 by the Interagency Group on International Aviation (IGIA), administered by the Federal Aviation Administration (FAA).

SCOPE OF THE CONVENTION AND PROTOCOL

Major Provisions

The Convention, which relates to air transportation and interstate and foreign commerce, provides for the creation of internationally recognized finance rights and enforceable remedies designed to give greater security to financiers of highly mobile equipment, particularly in markets where country or business risk would not otherwise support such transactions. This will boost transactions and directly benefit U.S. manufacturers and other export interests. Increased aircraft and engine sales, in turn, will contribute to more rapid use of newer and thus safer and environmentally cleaner aircraft and engines in all regions. In many cases, the use of asset-based financing under the Convention will reduce sovereign debt for developing States, and can assist them to attract capital generally to upgrade their transportation infrastructure.

The Cape Town Convention can produce significant macro-economic benefits in the United States, principally by enhancing (i) aerospace sales and increasing employment in the aerospace sector, (ii) risk reduction for U.S. private sector financial institutions, (iii) risk reduction to EXIM Bank, which has already evidenced its firm support by offering financing advantages to airlines located in States that ratify the Convention, and (iv) operational and fleet flexibility for airline operators with crossborder routes or interests. Importantly, U.S. leadership will bolster and significantly accelerate wide adoption of these instruments.

The Convention is designed as a “multi-equipment” treaty system, an outcome strongly supported by the United States. The protocol being submitted is the Aircraft Protocol, which applies to airframes, aircraft engines and helicopters above a minimum size or power threshold. The establishment of such thresholds maximized

the U.S. ability to achieve consensus on the fundamental issues addressed in the Convention. The Convention can apply to other categories of high-value mobile equipment defined in additional protocols adopted through diplomatic procedures and that would be subject in the United States to ratification. Such protocols to the Convention would most likely recognize specialized forms of financing applicable to the category of equipment covered. This would permit the development of best practices consistent with the needs of different sectors.

Key Financing Concepts

The Cape Town Convention creates an international secured finance system that may be summarized by the following points:

1. The Convention establishes an “international interest”, that is, a secured credit or leasing interest with defined rights. Those rights consist principally of (a) the ability to repossess and sell or lease the equipment in the case of default by an airline operator (remedies), and (b) the holding of an objectively determined and transparent finance priority in the equipment, where competing claims are made against such equipment (priority).

2. Quiet possession rights attached to an international interest will be enforced and recognized in all States party to the Convention and Protocol, thus assuring airline operators of continued rights of usage of the equipment absent default or contrary agreement.

3. Priority of interests will be established through a “notice-based” filing system, recorded in a high-technology international registry, which will determine the priority of competing interests on a first-in-time basis, subject to certain exceptions. Pursuant to a declaration recommended below, the FAA will serve as the authorizing entry point to the International Registry for aircraft having or intended to have U.S. nationality (this Convention does not deal with nationality of aircraft).

4. Associated rights, such as future payment rights and receivables in aircraft financing arising under contracts directly related to the financing arising under contracts directly related to the financing of equipment, are subject to rules similar to those applicable to international interests.

5. The Convention promotes predictable and timely remedies in the case of default, reflecting basic principles underlying asset-based financing and leasing. This permits reliance on the value of the asset to reduce overall transactional risk, thereby reducing the cost of credit. States are given a number of options, in the form of permitted declarations, which directly relate to the timing of remedies, both in and out of insolvency. These include certain basic concepts found in U.S. law, such as the availability of non-judicial remedies, the timing of remedies in the event of airline insolvency, and efficient deregistration and export of aircraft in the event of default, subject to national safety and airworthiness rules and regulations.

6. Transaction party autonomy, the ability of creditors and debtors to agree as among themselves on basic elements of their contract and its enforcement, is central to the Convention.

7. The international finance Registry, a basic component of the Convention, is similar to notice filing systems in the United States and Canada. Unlike a documentary system, where transaction documents are vetted before filing, a notice system involves posting minimal information only, so that other potential financing interests can make inquiries of possible superior interests prior to financings.

ICAO will supervise the International Registry. A Preparatory Commission, in which the United States is a very active member, will establish the requirements for and determine the initial host State of the Registry. The host State is expected to fund the creation of the International Registry and users will pay sustaining use fees, which are expected to be low since the system is wholly electronic. The feasibility of the system has already been tested by a prototype developed by a body affiliated with airline associations.

Effect on Other Treaties

The relationship of the Cape Town Convention to existing aviation conventions was carefully worked out. The 1948 Convention on the International Recognition of Rights in Aircraft (“Geneva Convention”) is the only convention in force for the United States to which the relationship rule will initially apply. As between parties to the Aircraft Protocol, the Cape Town Convention will supersede the Geneva Convention, to the extent matters are covered or affected by the new instrument. The Geneva Convention will continue to apply to matters not covered by the Cape Town Convention and will remain fully in force as between States party to it which are not parties to the Cape Town Convention.

Related International Developments

The Cape Town Convention would represent a change in the financing laws for many other States. However, two new related international legal texts have recently been negotiated in other bodies, by some of the same States—one at UNCITRAL (a new Convention on Accounts Receivable Financing, approved by the UN General Assembly in December 2001), and the other at the Organization of American States (an Inter-American Model Law on Secured Financing, completed at an OAS Diplomatic Conference in February 2002). Both adopted an approach to secured financing similar to that in the Cape Town Convention.

DECLARATIONS IN CONNECTION WITH U.S. RATIFICATION

In order to allow States to tailor the Convention to particular economic needs, a number of declarations are provided for, consistent with practice in international private law conventions. Since the United States already has a well functioning capital market for air finance, only a limited number of declarations are needed for the United States. The situation differs for many other States, where the economic value of the Convention is linked to the making of declarations designed to substantially upgrade the substantive law in that State, especially where that is needed to lower country and credit risk.

Seven declarations (three for the Convention and four for the Protocol) proposed for the United States were approved by the De-

partments of Transportation, Commerce, State and DOD through the FAA's Interagency Group on International Aviation (IGIA), as well as by EXIM Bank. Where possible, the declarations follow the recommended UNIDROIT form in order to promote uniformity. The Department of State recommends that the Senate give advice and consent to the Convention and the Protocol subject to the declarations that follow:

1. Declaration for Convention Article 39(1)(a):

Priority of non-consensual rights and interests arising by law

Pursuant to Article 39(1)(a), the United States declares that all categories of non-consensual rights or interests which under United States law have and will in the future have priority over an interest in an object equivalent to that of the holder of a registered international interest shall to that extent have priority over a registered international interest, whether in or outside insolvency proceedings.

Purpose: This declaration preserves current U.S. practice. Article 39(1)(a) allows States to identify non-consensual rights and interests arising by law that, having priority against consensual security interests without registration under national law, shall maintain such priority as against international interests registered under the Cape Town Convention. United States federal and state law contain a variety of such priorities which would be difficult to harmonize (e.g., liens in favor of repairers of equipment and taxing authorities). This declaration gives priority to all such rights.

2. Declaration for Convention Article 39(1)(b):

Retention of Rights to Compensation for Public Services

Pursuant to Article 39(1)(b), the United States declares that nothing in the Convention shall affect its right or that of any entity thereof, any intergovernmental organization in which it is a member State, or other private provider of public services in the United States to arrest or detain an aircraft object under United States law for payment of amounts owed to any such entity, organization or provider directly relating to the services provided by it in respect of that object or another object.

Purpose: This declaration allows a State to preserve rights of detention or arrest by State entities in order to secure amounts owing in connection with its provision of public services relating to objects covered by the Cape Town Convention, such as air navigation and landing charges for aircraft. This declaration will ensure the continuation in the United States of governmental rights; such rights, in addition to their inherent policy importance, have not been impediments to U.S. aircraft financing transactions.

3. Declaration for Convention Article 54(2):

Procedure for exercise of remedies

Pursuant to Article 54(2), the United States declares that all remedies available to the creditor under the Convention or Protocol which are not expressed under the relevant provision thereof to require application to the court may be exercised, in accordance with United States law, without leave of the court.

Purpose: This declaration satisfies Article 54(2) which requires States to declare whether they will permit or prohibit the exercise of non-judicial remedies in the case of default by a debtor. A declaration permitting such remedies ensures consistency with the UCC, is fundamental to the continued efficiency of U.S. secured transactions law.

The Department of State further recommends that the following four declarations to the Protocol be included in the U.S. instrument of ratification:

1. Declaration for Protocol Article VIII, as authorized by Protocol Article XXX(1)

Contractual choice of law

The United States declares that it will apply Article VIII.

Purpose: This declaration provides that parties can agree as to the law governing their contractual rights and obligations, wholly or in part. This declaration is consistent with U.S. commercial law as applied to transactions of the type covered by the Convention, and is consistent with other recent Conventions on commercial law negotiated by the United States.

2. Declaration for Protocol Article XII, as authorized by Protocol Article XXX(1):

Insolvency case assistance

The United States declares that it will apply Article XII.

Purpose: This declaration supports cross-border judicial assistance in insolvency cases, a practice now followed by U.S. bankruptcy courts in appropriate cases. It addresses cases where multiple national bankruptcy courts and administrators may be involved in various proceedings involving the same debtor and/or the same property. It is a non-intrusive rule, only requiring maximum cooperation “in accordance with the law” of the declaring State. This declaration is an important signal for the United States to give other States, and will help promote broader U.S. objectives in the field of cross-border insolvency cooperation.

3. Declaration for Protocol Article XIII, as authorized by Protocol Article XXX(1):

Deregistration and export requests

The United States declares that it will apply Article XIII.

Purpose: This declaration recognizes the effect of the power-of-attorney annexed to the Aircraft Protocol, to procure, upon default, the timely deregistration of the aircraft for nationality purposes

and its export. This process is fully subject to related aviation safety laws and regulations. It is already customarily employed in the United States for transactions covered by the Convention and Protocol, and will streamline the deregistration process by establishing a procedure for certifying interests of parties in the aircraft. This U.S. declaration can set an important example for some States where deregistration procedures have been used to block the effective exercise of remedies.

4. Declaration for Protocol Article XIX (1) and (2):

FAA Entry point to the International Registry

1. Pursuant to Article XIX(1), the United States designated the Federal Aviation Administration, acting through its Aircraft Registry, FAA Aeronautical Center, 6400 South MacArthur Boulevard, Oklahoma City, Oklahoma 73125, as the entry point at which information required for registration in respect of airframes or helicopters pertaining to “civil aircraft of the United States” or “aircraft to become a civil aircraft of the United States” shall be transmitted, and in respect of aircraft engines may be transmitted, to the International Registry.

2. Pursuant to Article XIX(2) of the Protocol, the United States hereby specifies that the requirements of Chapter 441 of title 49 of the United States Code and Part 49 of title 14 of the Code of Federal Regulations be fully complied with before such information is transmitted at the Federal Aviation Administration to the International Registry.

3. For purposes of the designation in paragraph 1 and the requirements in paragraph 2.

(a) information is transmitted at the Federal Aviation Administration in accordance with procedures established under United States law; and

(b) the terms “civil aircraft of the United States” and “aircraft to become a civil aircraft of the United States” shall take their meanings from Chapters 401 and 441 of title 49 of the United States Code, respectively.

Purpose: This declaration establishes the FAA as the exclusive point in the United States entitled to authorize electronic registrations relating to airframes pertaining to U.S. registered aircraft and helicopters, and as the non-exclusive point authorizing electronic registrations relating to engines. It also will ensure that all such registrations comply with 49 U.S.C. Ch. 441 and Part 49 of title 14 of the Code of Federal Regulations, as amended, in order to be valid. It will connect the FAA system and practices to the new electronic International Registry in a manner compatible with the existing FAA registry system.

Proposed FAA technical legislative amendments are intended to integrate this arrangement into the FAA’s existing registry system, and will be transmitted to the Congress separately. The FAA and DOT, together with U.S. air manufacturing and finance industries

and associations which work closely with the FAA's registration facilities, collectively developed the draft legislation.

U.S. statements to be made at time of ratification

Owing to the fact that in large measure the Convention and Protocol reflect existing U.S. law, the declarations made by the United States are expected to be different than those made by a number of other States. However, since the particular declarations made by other States may determine the extent of economic benefits under the treaty system, the Executive Branch intends to ask the Depository to circulate three statements of a policy nature in order to bring to the attention of other States the importance that we attach to their declarations in the fields addressed. No Senate action is requested with respect to these statements.

(1) The United States made no declaration regarding Protocol Article XI, pursuant to Protocol Article XXX(1), since existing United States law, specifically 11 U.S.C. Section 1110, will continue to apply, which is substantially equivalent to Alternative A of Protocol Article XI. However, the United States notes the importance attached to declarations applying Alternative A of Protocol Article XI in attracting financing in aircraft transactions.

(2) The United States notes the importance in terms of credit enhancement of the declarations under the Convention and Protocol that will ensure the timely exercise of remedies, in particular both non-judicial remedies to the extent so agreed by the debtor (Convention Article 54(2)), and relief pending final determination (Convention Article 13, as modified by Protocol Article X).

(3) The United States notes the importance of circumscribing the extent of priorities for non-consensual rights and interests (Convention Article 39(1)(a)), since the absence of clear and certain limits prior to financing of this preference category may significantly restrict extensions of credit in many States.

IMPLEMENTING LEGISLATION

No implementing legislation is required, except for technical amendments to certain authorities of the FAA relating to the filing of interests in registries through the FAA, discussed below. Otherwise, the UCC will apply, and no changes to the Code are required.

Coordinating the International Registry with U.S. Practices; Technical Amendments to FAA Statutes on the Registry System

United States industry and finance sectors have recommended that the authorized entry point in the United States be through the FAA Aircraft Registry, acting through its existing facilities in Oklahoma City. FAA technical statutory amendments will be submitted to Congress for implementation of the registry provisions of the Convention. These amendments to Title 49 of the U.S. Code, Chapter 441 were prepared by DOT, FAA, and EXIM Bank, together with air finance and manufacturing industries. The technical amendments will clarify the effect of filings of financing interests

under the new computer-based system vis-à-vis filings under existing FAA procedures.

The current FAA system would be merged seamlessly into the International Registry process by requiring registering parties to satisfy existing FAA requirements prior to making a registration with the International Registry. An additional filing would be added to those already recognized by the FAA system for “prospective” registrations which would require subsequent filing of full transaction documents. This approach, which is standard in commercial lending, including practices under the UCC, but not currently provided for under FAA’s existing filing regulations, will permit the continuation of a well-established and efficient U.S. documentary system, while simultaneously linking that process to the International Registry. The FAA will assume no responsibility for the content of filings under a notice-based computer system.

CONCLUSION

The Convention and Protocol will provide a needed boost to our aerospace industry and provide significant benefits to many other countries as well. It will promote modernization of commercial law based on tested market practices. United States ratification can have a significant effect on actions to be taken by other countries, and will assure a U.S. lead role in international implementation of the treaty system.

As prior sections of the report suggested, ratification of the Convention and Protocol are supported by all affected private interests in the United States. The Interagency Group on International Aviation (IGIA) and the American Bar Association’s House of Delegates have endorsed ratification of the Convention.

The Departments of Transportation and Commerce, as well as EXIM Bank and the Federal Aviation Administration join the Department of State in requesting that the Convention on International Interests in Mobile Equipment and the Protocol on Matters Specific to Aircraft Equipment be submitted to the Senate for its advice and consent to ratification as soon as possible, subject to the declaration previously described.

Respectfully submitted,

COLIN L. POWELL.

**CONVENTION ON INTERNATIONAL INTERESTS
IN MOBILE EQUIPMENT AND PROTOCOL ON MATTERS SPECIFIC TO
AIRCRAFT EQUIPMENT:**

CHAPTER-BY-CHAPTER SUMMARY

I. Introduction.

The Cape Town Convention on International Interests in Mobile Equipment (“Convention”) and the Aircraft Equipment Protocol (“Aircraft Protocol”) were concluded on November 16, 2001, at a Diplomatic Conference jointly sponsored by the International Institute for the Unification of Private Law (UNIDROIT) and the International Civil Aviation Organization (ICAO) at Cape Town, South Africa. The Diplomatic Conference was attended by representatives from 68 countries, 14 international organizations, and air transportation and other industry and trade associations.

The Convention provides uniform legal rules for secured finance of mobile equipment which will apply, upon ratification, to any category of equipment covered by a separate protocol; each protocol is subject to ratification and the special provisions of each protocol govern for that type of equipment. The first such protocol is the Aircraft Equipment Protocol, negotiated concurrently with the Convention. The model for the secured finance provisions in both the Convention and Protocol were relevant provisions of the Uniform Commercial Code, which in turn closely reflected existing practices in equipment finance and the capital market credit standards.

References to specific articles below are to the Convention and Aircraft Protocol; arabic numerals refer to articles of the Convention; roman numerals refer to articles of the Aircraft Protocol. Although the Final Act of the Diplomatic Conference has appended to it a composite text which merges the two instruments as a convenience for transacting parties, it is not an enforceable legal instrument and is not referred to here. An Official Commentary, authorized by the Diplomatic Conference, has been issued in September 2002 by UNIDROIT. Both the Convention and Protocol contain optional declarations by which States can adjust particular provisions. The chapter-by-chapter analysis indicates those declarations expected to be made by the United States; the text of the proposed declarations are set out in the report to the President by the Secretary of State on the Convention and Protocol.

II. Purposes of the Convention.

The Preamble sets out the basic purpose of the Convention, i.e. to facilitate the financing of high value mobile equipment, thereby producing a range of important economic benefits. It does so by embodying the basic principles underlying asset-based financing and leasing, such as

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those commonly employed in the United States, which are modern and efficient transactions that minimize risk.

Other important purposes include upgrading safety and navigation capabilities, since enhanced financing is a condition to the acquisition of newer, safer equipment by many countries, and the promotion of commercial law reform, which can significantly enhance investment and development in many countries. Liberalization of markets through trade agreements and otherwise often may not achieve its potential, since disparities in commercial laws often disadvantage States with less modern approaches, and laws that do not reflect current capital market practices do not support credit needed for economic development. Implementation of this Convention can serve as a model for economic law reform generally. In addition, the international financing registry to be created by this Convention system can be a model for States to adopt the concept of low-cost and fully transparent finance and priority laws.

The Aircraft Protocol finance registry does not affect other registries used for international aviation regulation, and the Convention and Protocol do not affect the Convention on International Civil Aviation of 1944 (the "Chicago Convention") on international air transportation services.

III. Summary of the Convention.

Chapter I: Sphere of application and general provisions. Unless otherwise noted, terms first appearing in quotation marks below are defined in *Article 1*. Airframes, aircraft engines and helicopters, which are defined collectively as "aircraft objects" for purposes of the Convention, are also set out individually where appropriate.

Article 2 deals with the scope and fundamentals of the Convention. The Convention applies to an "international interest" in one of three types of objects: (i) "airframes, aircraft engines and helicopters," (ii) "railway rolling stock," and (iii) "space assets," but only if the type of objects are designated in a protocol (*i.e.*, the Convention does not apply to objects on a stand-alone basis in the absence of a protocol covering that type of object). Art. 2(2), (3).

Article 2 then provides three classifications of international interests created by "agreement": international interests (i) granted by a "chargor" (the financing debtor in American terminology) in favor of a "chargee" (the financing creditor in American terminology) under a "security agreement," (ii) held by a "conditional seller" under a "title reservation agreement," and (iii) held by a "lessor" under a "leasing agreement". Art. 2(2). An international interest also extends to "proceeds" of an object, which are narrowly defined to include only proceeds arising out of an object's total or partial loss, confiscation, et cetera. Arts.1(w) and 2(5).

Article 3 provides that the Convention applies if the “debtor” (i.e., the chargor, conditional buyer, or lessee) is located in a Contracting State at the time that the relevant agreement is concluded, Art. 3(1); the location of the creditor has no bearing on the Convention’s applicability. *Article 4* provides rules to determine the debtor’s location for purposes of this Convention; satisfying any one of four conditions is sufficient, i.e. the Contracting States (i) under whose law the debtor is incorporated or formed, (ii) in which the debtor has its registered office or statutory seat, (iii) in which it has its center of administration, or registered office or statutory seat, or (iv) in which the debtor has its place of business. Providing that a debtor may have multiple locations for this purpose expands the potential scope of the Convention, a result supported by the United States as a means of extending the financing value of this treaty system.

Article 5, a common provision for conventions on private commercial law, calls for the Convention to be interpreted and applied in accordance with its purposes, here stated to be reflected by the Preamble, and its international character so as to promote its economic purposes, as well as uniformity and predictability. *Article 5(4)* provides a rule to determine which law within a State (the treaty term for country) applies when the State has more than one territorial unit; this preserves domestic conflict of laws rules to determine those questions in the United States.

Article 6 addresses the two-instrument structure of the Convention, whereby the Convention is to be read together with the applicable protocol for each type of equipment. The provisions of the protocols control, so that the financing practices particular to each type of equipment are preserved.

Chapter II: Creation of an international interest. Chapter II consists of a single article, *Article 7*, that sets forth the formal requisites for the creation of an international financing interest. The relevant agreement must be in “writing”, defined in Article 1 to include electronic records, and the relevant object must be one that the person creating the international interest--the chargor, conditional seller, or lessor--“has power to dispose.” While the international financing interest, as such, is sui generis (i.e., is not dependent upon national law), the property rights existing prior to the creation of an international interest, derived from the relevant rules under the applicable law, remain important.

Chapter III: Default remedies. Chapter III, consisting of Articles 8 through 15, addresses the remedies of a creditor following a default.

Article 8 covers the basic remedies of a creditor under a security agreement. The creditor must exercise the remedies “in a commercially reasonable manner” and it must give reasonable notice of a sale or lease to the debtor and other specified “interested persons.”

Article 9 deals with three other aspects of enforcement by a creditor. First, the creditor, the debtor, and all other interested persons may agree, or a court may order, that ownership in the object will vest in the creditor in satisfaction of some or all of the secured obligations. In the case of a court order, the court must ensure that the secured obligations satisfied are commensurate with the value of the financed object. The interest of the debtor passing on a sale under *Article 8* or a vesting under *Article 9* is free from any other interest that is subordinate to the creditor's interest.

Article 10 addresses the remedies of a lessor and a conditional seller. On default these creditors are entitled to terminate the relevant agreement and to obtain possession or control of the object; they also may seek an order from a court to enforce these remedies. These remedies are considerably less detailed and narrower in scope than the remedies afforded a creditor under the previous Articles. This reflects the considerable variety of approaches taken in different jurisdictions for enforcement of leasing agreements and title reservation agreements. Other remedies are left to the agreement of the parties and the applicable law.

Articles 11 and 12 deal with default and additional remedies. Under *Article 11* a debtor and a creditor are free to agree as to what constitutes a default for purposes of Chapter III. If the parties do not so agree, the standard for default is defined.

Article 13 requires a Contracting State to ensure that following a default a creditor can obtain from a court "speedy relief" pending a final determination of the creditor's claim. *Article 55* provides substantial flexibility for a Contracting State in this context; under that article, a Contracting State may declare, at the time it becomes a party to the Convention, that it will not apply *Article 13*, in whole or in part. Strict implementation of this provision however, and generally avoiding such a declaration may be an important factor in securing economic benefits under the Convention system for those States seeking to enhance their credit.

Article 14 establishes the important principle that, subject to *Article 54(2)*, remedies under the Convention must be exercised in accordance with the procedural law of the jurisdiction where enforcement takes place. Under *Article 54(2)* a Contracting State must declare whether or not any Convention remedies otherwise not requiring judicial action may be exercised only with court approval. In line with the approach in the Uniform Commercial Code, the United States will make a *declaration* that such remedies may be exercised in the United States, in accordance with applicable laws, without leave of court. This declaration will also ensure that any non-judicial actions comply with procedural laws in the United States.

Additional remedies may be exercised under the applicable law or by agreement of the parties, unless the remedies are inconsistent with the mandatory provisions of Chapter II as specified in *Article 15*. Although that Article generally permits parties to "derogate from or vary the effect" of the Convention's provisions, it also establishes some mandatory provisions that

may not be waived or varied: Articles 8(3)-(6) (debtor protections in sales and leases); 9(3) (debtor protection in vesting by court order), 9(4) (debtor's and interested persons' rights of redemption); 13(2) (protective court orders in relief pending final determination); and 14 (applicability of local procedural law).

Chapter IV: The international registration system. Chapter IV outlines the nature and structure of the international registration system. The registration system will provide the lynchpin of the Convention's priority system (see Chapter VII, below). *Article 16* identifies the various types of registrations that may be made in the system: (i) international interests, "prospective international interests" (see the discussion of Article 18 and 19, below), and "registrable non-consensual rights and interests" (see Article 40, below); (ii) assignments and prospective assignments of international interests (see Chapter IX, below); (iii) other acquisitions of international interests under applicable law (e.g., by subrogation) (see Article 38, below); (iv) "notices of a national interest," (see Article 50, below); and (v) subordinations of the various other interests that may be registered. Amendments, extensions, and discharges of registrations also may be registered. Art.16(3).

Article 17 addresses the general structure and operation of the International Registry. The registry will exist primarily to display computer-based filings, with a minimum of discretionary functions. It will be established and overseen by a Supervisory Authority, in such manner as is provided for in the appropriate protocol. The Authority, which will have limited functions, is expected to be intergovernmental. Among other duties, the Supervisory Authority will publish regulations relating to operation of the registry and appoint the Registrar, the entity that actually will operate the registry. Art. 17(1), (5). Central to the Convention's priority rules is the ability of any person to search the International Registry from any location. See *Article 22*.

Chapter V: Other matters relating to registration. Chapter V provides details on the operation of the International Registry, to be supplemented by each protocol and the regulations, including matters such as requirements for identifying an object, effecting registrations, searching the electronic registry, electronic data formats, digital signature systems, required operational schedules, et cetera.

Article 18 addresses the requirements of registration. Although the consent of each party to a registration is required under *Article 20*, the Registrar is not required to investigate or determine whether a required consent actually has been given. Special provisions cover prospective interests. If a prospective interest is registered that later becomes an international interest, no further action is required. Art. 18(3). A Protocol may allow States to designate national entry points for international registrations. Art. 18(5). The United States will make a *declaration* designating the Federal Aviation Administration (FAA) as the entity authorizing the entry point for certain filings.

Article 19 contains rules on the validity and timing of registrations, which are necessary for the operation of the Convention's priority rules. A registration is valid only if the required consents of the relevant parties are obtained. Prospective interests that have become international interests (*e.g.*, because the formal requisites for creating the interest have been satisfied) are treated as registered from the time that the prospective interest was registered. Art. 19(4). In addition to these general rules, the protocol will prescribe the criteria for the searchability of a registration. Art. 19(6). Once made, a registration is effective indefinitely until it is discharged, unless the registration information itself specifies another period. Art. 21. *Article 25* provides that upon satisfaction of the obligations secured by a registered security interest or non-consensual right or interest, or "national interest" covered by a registered notice, the holder of the interest must cause the registration to be discharged.

The Registrar is required by *Article 23* to maintain a searchable list of declarations made by Contracting States relating to non-consensual rights or interests under *Articles 39 and 40*. Certificates issued by the Registrar pursuant to the regulations are prima facie proof of issuance and the facts recited in a certificate.

Chapter VI: Privileges and immunities of the Supervisory Authority and the Registrar. Negotiating States, manufacturing, financing and airline interests agreed that to assure credibility of the technical registry, the Supervisory Authority should be governmental, although the Registry is expected to be operated by private entities. Under *Article 27*, the Supervisory Authority will have international legal personality and, as specified in a protocol, would be immune from legal or administrative process; since the Supervisory functions are expected to be minimal after establishment of the Registry, this is not a significant factor. Legal responsibility and liability would be borne by the Registrar under *Article 28*, which is expected to be a non-governmental entity, subject to suit, and under *Article 27 (4) and (5)* claimants would have the right to information and documents needed to pursue claims, notwithstanding any otherwise applicable privileges and immunities of the Supervisory Authority.

Chapter VII: Liability of the Registrar. *Article 28* establishes the basis of liability of the Registrar, i.e. compensatory damages may be awarded for its errors and omissions and system malfunctions. This is subject to reduction for damage caused or contributed to by an injured person, Art. 28(1), (3), and to a limited force majeure exception for malfunctions. It is not liable for factual inaccuracies in registration information provided by filers or for acts and circumstances arising before it receives registration information. Art. 28(2). The Registrar must obtain insurance or a financial guarantee covering its liability as determined by the Supervisory Authority under the Protocol. Art. 28(4).

Chapter VIII: Effects of an international interest as against third parties. *Article 29* contains the Convention's basic priority rules. A registered interest enjoys priority over later-registered or unregistered interests. Art. 29(1), (2). Similarly, a buyer of an object takes it

subject to registered interests and free of unregistered interests. Art. 29(3). A conditional buyer under a title reservation agreement and a lessee under a leasing agreement takes its interest subject to an interest registered before its conditional seller or lessor registered its interest, but free of other interests. Art. 29(4). The priority enjoyed by an assignee of a subordinated interest is addressed below in the discussion of assignment priorities under *Articles 35 and 36*. The priority afforded under *Article 29* also extends to proceeds. Art. 29(6).

Insolvency matters are dealt with inter alia under *Article 30*; an interest that is registered in the International Registry will be effective in a debtor's insolvency proceedings. Art. 30(1). However, this Article does not affect insolvency avoidance powers (*i.e.*, preferential transfers or transfers in fraud of creditors) or an international interest that is effective in insolvency proceedings under the applicable law. Art. 30(2). See also *Article 45 and Protocol Article XI*.

Chapter IX: Assignments of associated rights and international interests; rights of subrogation. Chapter IX of the Convention deals with the effect, formal requirements, and priority of assignments of associated rights and related international interests. It also deals with subrogation and subordination of priority. As with other Articles of the Convention and Protocol on financing rights, these provisions are compatible with Uniform Commercial Code Article 9.

Article 1 (b) and (c) defines "assignment" to include any contract that transfers "associated rights", whether or not for security, and whether or not in connection with a transfer of a related international interest, and "associated rights" as rights to payment or other performance secured by or associated with the object. *Article 31(1)* then provides that except as otherwise agreed an assignment of associated rights transfers to the assignee the related international interest as well as the assignor's interests and priorities. Applicable law governs the defenses and rights of set-off available to the debtor as against the assignee; the debtor may waive its defenses and set-off rights other than those arising from fraudulent acts. Art. 31(4).

Article 32(1) and (2) establish the formalities and limitations for the assignment of associated rights and the related international interest, which parallel those provided in *Article 7* for the creation of international interests. An assignment of associated rights that is ineffective to transfer the related international interest is not governed by the Convention but is governed instead by the applicable law. Art. 32(3). In the case of competing assignments of associated rights, if at least one of the assignments also assigns the related international interest and that assignment is registered, the provisions of *Article 29* apply *mutatis mutandis* (*i.e.*, a registered assignment has priority over unregistered assignments and subsequent assignments), subject to the exceptions set out in *Article 36*. Priority in other cases is left to the applicable law. *Articles 29(5) and 38(2)* permit parties to vary (*i.e.*, subordinate) priorities.

Chapter X: Rights or interests subject to declarations by Contracting States. *Article 39* addresses the types of "non-consensual right or interest" that will have priority over an

international interest, and permits a Contracting State to make a declaration, at any time, that certain types of non-consensual right or interest have priority over a registered international interest. Subject to one exception, the priority afforded a right or interest by a declaration applies only if the declaration is deposited before the conflicting international interest is registered. Art. 39(3). Under the exception, a Contracting State may declare, at the time it becomes a party to the Convention, that the types of non-consensual rights or interests covered by a declaration under *Article 39(1)(a)* have priority over international interests registered before the Contracting State became a party to the Convention.

The United States will make an *Article 39(1)(a) declaration* preserving the priority of non-consensual rights and interests which, under federal, state or local law have priority over perfected security interests, and which will to that extent have priority over registered international interests, whether in or outside of bankruptcy. This preserves existing practices in the United States which have worked well in an effective capital market for air finance. It is expected however that some countries who seek to upgrade their access to international credit under the Convention would substantially limit the use of this Article, so as to enhance the certainty needed in capital markets, or exercise instead the right of declaration under *Article 40*.

Article 39(1)(b) deals with rights to arrest or detain aircraft objects under the law of a Contracting State for payment of amounts due for the provision of public services in connection with that object, such as landing fees and fuel services. A Contracting State may at any time declare that these rights of arrest or detention in favor of a provider of public services are not affected by the Convention. The United States will make an *Article 39(1)(b) declaration* preserving the rights of arrest or other enforcement under laws in the United States for providers of such services.

Article 40 addresses other types of non-consensual rights or interests. Under this Article a Contracting State may at any time declare the types of non-consensual right or interest that are to be registrable under the Convention. These registrable rights and interests are to be treated as international interests under the Convention. While preserving certain governmental and other priority interests, it does so in a way so as to enhance certainty and thus expand credit potential.

Chapter XI: Application of the Convention to Sales. Chapter XI consists of *Article 41*, which states that a Protocol may provide that the Convention applies to a "sale" or "prospective sale"; see *Protocol Article III* below.

Chapter XII: Jurisdiction. *Articles 42 through 45 and Protocol Articles XXI and XXII* deal with jurisdiction. *Article 42* covers the parties' choice of a forum for claims brought under the Convention. Under that Article the courts of a Contracting State chosen by the parties in accordance with the formalities of the law of the chosen forum have jurisdiction over those claims without establishing a particular nexus to that jurisdiction, consistent with current practice

in air finance. This provision is however also subject to *Articles 43 and 44*, and does not affect the rights of forum courts to dismiss any action in accordance with their rules.

Article 43 covers jurisdiction to grant relief pending final resolution under *Article 13*. Jurisdiction to grant relief under Article 13(1)(a) (preservation), (b) (possession), (c) (immobilization), and (4) (other interim relief), is vested in courts of a Contracting State (i) chosen by the parties and (ii) in which the relevant object is located. Art. 43(1). Jurisdiction to grant relief under Article 13(1)(d) (lease or management) and (4) (other interim relief) is vested either in courts (i) chosen by the parties or (ii) of a Contracting State in which the debtor is located. Art. 43(2). Interim relief jurisdiction is conferred even if the final determination of a claim will be determined in a court of another Contracting State or by arbitration.

Article 44 addresses jurisdiction to make orders against the Registrar and related matters. Exclusive jurisdiction to award damages or issue orders against the Registrar is conferred on the courts of the jurisdiction in which the Registrar's center of administration is located. Art. 44(1). Those courts also have exclusive jurisdiction to order the Registrar to discharge a registration or to order the Registrar to take certain actions. Art. 44(3). This implements a policy supported by the air transportation industry, the United States and others, to assure predictability about the law and standards to be applied to the Registry, which would not be possible if a wide range of countries could exercise such jurisdiction.

Finally, *Article 45* provides that Chapter XII does not apply to insolvency proceedings nor do its provisions modify any aspects of such proceedings, so as to preserve applicable insolvency law, subject to other provisions of the Convention and Protocol.

Chapter XIII: Relationship with other Conventions. *Articles 45 bis and 46* deal with the relationship between this Convention and certain other closely connected Conventions. This Convention prevails under *Article 45 bis* over the *UNCITRAL Convention on the Assignment of Receivables in International Trade*, opened by the United Nations for signature and ratification in New York on 12 December 2001, with respect to receivables that are associated rights related to international interests in aircraft objects, railway rolling stock, and space assets. The relationship between this Convention and the *UNIDROIT Convention on International Financial Leasing*, concluded at Ottawa and opened for ratification on 28 May 1988, is left to each protocol, since different financial leasing practices may be relevant to separate categories of equipment. The relationship of the Aircraft Protocol to other Conventions is dealt with in *Protocol Articles XXIII to XXV*.

Chapter XIV: Final provisions. The Convention was concluded and opened for signature in Cape Town, South Africa on 16 November 2001 and will remain open for signature until it enters into force. *Article 47(1)*. The United States signed the Convention and Protocol on May 9, 2003. The Convention will enter into force three months after the deposit of the third

instrument of ratification, but only with respect to a category of equipment covered by a protocol when that protocol also enters into force, and only as between States that are parties to both the Convention and that protocol. *Article 49*. The Aircraft Protocol (*Article XXVIII*) requires eight ratifications to come into force.

Article 48 allows a "Regional Economic Integration Organization", which is constituted by sovereign States, such as the European Union, to become a party to the Convention, but only as to matters to which its member states have granted competency. A similar provision appears in *Protocol Article XXVII*.

Under *Article 50(1)*, at the time a Contracting State becomes a party to a protocol it may declare that the Convention does not apply to an "internal transaction" with respect to that State and as to some or all of the types of equipment covered by the protocol. However, a "national interest" created in connection with an internal transaction nonetheless is subject to the principal registration and priority rules of the Convention and protocol even if a declaration is made. *Article 50(2)*. This Article may have application to some types of equipment, but is not expected to be relevant to aircraft, given the speed with which such equipment may cross borders, the inability to predict when that may occur, and the need nevertheless to have certainty of application of the Convention *ex ante*, that is before financing commitments are made.

Article 51 establishes procedures for future protocols dealing with other types of equipment not included in *Article 2(3)*. All future protocols under either Article would in each case be subject in the United States to advice and consent of the Senate and ratification. The initial scope of the Convention under *Article 2(3)* covers airframes, aircraft engines, helicopters, railway rolling stock, and space assets, which *inter alia* under *Article 45 bis* sets the limits to which this Convention supercedes the UNCITRAL "Receivables Convention", unless otherwise provided in future international agreements.

Article 52 permits a Contracting State to declare that the Convention will extend to fewer than all of the State's territorial units, and details the effects of such a declaration. The United States has avoided any such actions that would disadvantage some U.S. jurisdictions in favor of others.

Chapter XII of the Convention (jurisdiction) refers to courts of a Contracting State; *Article 1(g)* defines "court" as including a court of law or an administrative or arbitral tribunal established by a Contracting State. *Article 53* permits a Contracting State to declare the appropriate court or courts for these purposes at the time it becomes a party to the Convention. It is considered unnecessary for the United States to make such a declaration, since rules here on jurisdiction and practice are transparent and have not presented problems for the field of equipment finance.

The Convention permits a Contracting State to make three types of declarations relating to remedies at the time it becomes a party to the Convention.

First, under *Article 54(1)* a Contracting State may declare that a creditor may not enter into a lease of an object while the object is located in that Contracting State. This provision is aimed at circumstances not relevant to financing practices in the United States. Second, under *Article 55*, it may declare that it will not apply *Article 13* (relief pending final determination) or *Article 43* (jurisdiction for relief under *Article 13*), in each case either wholly or in part. Such a declaration could limit the effectiveness of the Convention by restricting the availability of interim relief. Third, under *Article 54(2)* a State must declare at the time of ratification whether or not creditors' remedies not otherwise requiring judicial approval may nonetheless be exercised only with court approval.

The United States will make an *Article 54(2) declaration*, consistent with existing laws in the United States which permit non-judicial remedies for commercial default, subject in all cases to conformance with applicable procedures. Since assuring speedy exercise of remedies is a very important factor in lowering credit risk internationally, it is anticipated that countries seeking credit enhancement under the Convention will consider the impact of mandatory court procedures where that may substantially delay remedies.

Articles 56 through 59 and Article 62 are common final provisions for commercial law conventions. These articles deal with reservations and declarations (*Article 56*), subsequent declarations (*Article 57*), withdrawal of declarations (*Article 58*), denunciations (*Article 59*), and the Depositary and its functions (*Article 62*). Pursuant to resolutions adopted at the Diplomatic Conference, UNIDROIT will serve as Depositary for both the Convention and the Protocol.

Article 60 contains the Convention's important transition provisions. The baseline rule is that the Convention does not apply to a "pre-existing right or interest," defined in *Article 1(v)* as an interest in an object existing before the "effective date," as further defined in *Article 60(2)(a)*. U.S. air transportation and industry interests supported that principle in order to assure certainty of application as to future transactions, without risking uncertainty as to prior transactions.

However, in order to accommodate countries that might wish to cover both types of transactions in their jurisdictions, a Contracting State may declare that the Convention and a protocol will apply to pre-existing rights or interests for the purpose of determining priority and preservation of pre-existing priorities. *Article 60(1), (3)*. However, in such a case the application to pre-existing rights or interests under a declaration may not occur earlier than three years after the effective date of the Convention and the relevant Protocol, in order to allow sufficient time for parties to refile or take other appropriate steps under the new priority regime.

Article 61 deals with review conferences, amendments, and related matters. The Depositary is required to prepare reports on how the Convention regime has performed in practice. Upon the request of not less than twenty-five per cent of Contracting States a review conference will be convened. *Article 61(2)*. Amendments require approval of two-thirds of the Contracting States parties to both the Convention and the relevant protocol. *Article 61(3), (4)*. Amendments would require advice and consent of the Senate and ratification in order to be effective as to the United States.

IV. Summary of the Aircraft Protocol.

Chapter I: Sphere of application and general provisions. The Aircraft Protocol sets out provisions particular to financing practice for aircraft frames, engines and helicopters. Provisions of the Protocol govern so as to preserve specialized financing practices for this type of equipment. Chapter I consists of Articles I through VIII. *Article I* is the definitional section; unless otherwise noted, terms first appearing in quotation marks below are defined therein.

Article II provides that the Convention applies to “aircraft objects”, which includes “airframes”, “aircraft engines” and “helicopters”, each defined in *Article I* by means of power, thrust and capacity thresholds. Under *Article III*, the principal provisions of the Convention also apply to sales; the Convention otherwise applies only to secured financing transactions.

Article IV also deals with the sphere of application, and adds a new connecting factor, in addition to the location of a debtor in a Contracting State under *Convention Articles 3(1) and (4)*. The Convention will also apply through the Protocol if an aircraft object as defined is registered in the “aircraft registry” (*i.e.*, under a “Chicago Convention” registry of a State or a common mark registering authority) of a Contracting State that is also the “State of registry.” *Article IV(1)*. These registries here described have no relationship to the financing registry to be established under this Convention and Protocol.

Finally, under *Article IV(3)*, the parties may agree to exclude the application of *Article XI* (insolvency remedies, discussed below), and may vary the effect of other provisions amongst themselves, except for *Article IX (2)-(4)*, which provides certain limitations on the exercise of remedies.

Articles V(1) and VII provide standards for contracts of sale, which are substantially the same as for the creation of international interests under *Article 7* of the Convention, and the description of an aircraft object. Registrations of contracts of sale are effective indefinitely; in effect, the International Registry will serve as a type of title registry in sales transactions. Registrations of prospective contracts of sale, however, under *Article V(3)* are effective until discharged or until any expiry date specified in the registration.

Article VI provides that persons acting in a representative capacity may be parties to transactions under the Convention and Aircraft Protocol, an important provision since a number of countries may not otherwise recognize the capacity of agency relationships and third party transactions.

Article VIII supports party autonomy, if a State makes a declaration as authorized under *Article XXX(1)*. Such a declaration allows parties to agree as to the governing substantive law of a particular State to be applicable to their contractual rights and obligations. This provision is consistent with modern trends in commercial law, and with practices in aircraft finance in particular. The United States will make an *Article XXX(1) declaration* applying *Article VIII*.

Chapter II: Default remedies, priorities and assignments. Chapter II modifies the Convention in several important respects.

Article IX supplements several of the Convention's basic default remedies provisions. New remedies of de-registration and export of aircraft have been added. However, these remedies may be exercised only with the consent of holders of registered interests that are senior to the interest of the enforcing creditor and with reasonable prior notice in writing. Art. IX(1), (2), (6). Appropriate agencies in a Contracting State are obliged under *Article IX*, subject to satisfaction of any safety, navigation and airworthiness requirements, to honor a request for de-registration and export by an authorized party, if an irrevocable de-registration and export authorization has been recorded in the State's aircraft registry, and the requesting party certifies that all senior interests have been discharged or have consented to the de-registration and export. *Article IX(5)*.

Article XIII is closely related to *Article IX*, and appends an optional official form to the Protocol which is entitled to recognition if an appropriate declaration is made under *Article XXX(1)*. If the declaration is made, a Contracting State's registry authority is required to record the irrevocable de-registration and export request authorization if made consistent with the form attached to the Protocol. Art. XIII(2). The party so authorized is the only person (i) entitled to exercise remedies under *Article IX(1)* and (ii) to request removal of the authorization from the registry. This removes an element of uncertainty often experienced in some jurisdictions, which has adversely affected credit ratings based on likelihood of remedies being ineffective or long delayed. As noted above, this does not affect the obligation to comply with applicable airworthiness and safety regulations. The United States will make such a *declaration* and will apply *Article XIII* to matters within the United States.

Article IX(3) applies to all remedies relating to an aircraft object (including lessor and conditional seller remedies), and supplants *Convention Article 8(3)*, which applies only to creditor's remedies. *Article IX (3) and (4)* require all Convention remedies to be exercised in a commercially reasonable manner; the exercise of a remedy under a provision of the relevant

agreement is deemed commercially reasonable unless the provision is itself "manifestly unreasonable."

Article X contains modifications of *Convention Articles 13 and 43* on relief pending final determination, by setting out requirements to assure expeditious handling of requests for relief. It is intended to provide States with credit disadvantages an opportunity to maximize the economic benefits which can be realized under the Convention system. A Contracting State may declare, pursuant to *Article XXX(2)* that it will apply *Article X* in whole or in part. Since the United States already has a predictable legal system for assuring enforcement of remedies, it is not necessary for the United States to make such a declaration in order to access preferential capital markets for aircraft finance.

Article XI, as with Article X, deals with optional provisions that are critical for countries seeking to gain significant economic benefits under the new treaty system. *Article XI* covers remedies on insolvency of a debtor. It applies only if (i) a Contracting State is the "primary insolvency jurisdiction," as defined in *Article I(n)*, and (ii) that State has made a declaration under *Article XXX(3)* to apply the optional provisions of Article XI. Article XI contains two alternative sets of insolvency remedies. A Contracting State may declare, at the time it becomes a party, that it will apply the whole of Alternative A or the whole of Alternative B in insolvency proceedings, or it may specify the respective types of insolvency proceedings to which it will apply the whole of either alternative. If no declaration is made, the underlying insolvency law will continue to apply.

Alternative A represents the "stronger" and less discretionary set of insolvency remedies, and in the view of the United States is the best option under the Convention to achieve real economic benefits in capital markets. Inspired by section 1110 of the United States Bankruptcy Code (11 U.S.C. 1110), a key concept in Alternative A is the requirement that the "insolvency administrator" or debtor give possession of an aircraft object to a creditor no later than the expiration of the "waiting period" or, if earlier, the date on which the creditor otherwise would be entitled to possession of the object absent the application of Article XI, unless all non-insolvency defaults are cured. A Contracting State must specify the length of the waiting period in its declaration under Article XXX(3). Until the creditor obtains possession the insolvency administrator or debtor is required to preserve and maintain the object. A creditor also is entitled to pursue its de-registration and export remedies under Article IX(1) in insolvency proceedings. *Article X, Alternative A.*

Since this option is comparable to law now obtaining in the United States, it is not necessary for the United States to make such a declaration in order to receive, or grant to others for whom our Bankruptcy law is applicable, the same benefits.

Alternative B provides that an insolvency administrator or debtor must notify the creditor whether they will cure all defaults, fulfill future obligations, or permit the creditor otherwise to take possession of the object in accordance with applicable law. Upon failure to comply, the court may, but need not, permit the creditor to take possession on the terms that the court orders. *Article XI(5), Alternative B*. This option provides much less certainty as to remedies, and is more likely to result in delays in realization of remedies that may be significant. As a result, it would be less economically productive and would not be recommended by the United States for adoption by States seeking credit enhancement for high-value equipment.

Article XII obliges the courts of a Contracting State which has made a declaration under Article XXX(1) to cooperate with foreign courts and foreign insolvency administrators in effecting the provisions of *Article XI*. However this obligation would only apply to the maximum extent otherwise authorized by the law of that State. Since cases involving aircraft finance often may also involve proceedings or assets in more than one jurisdiction, such cross-border cooperation may be very important to effective remedies.

The United States will make an *Article XXX(1) declaration* to apply this provision, which is consistent with developing practices in appropriate cases in Federal Bankruptcy courts, and is consistent with the policies set out for cross-border insolvency cases by the UN Commission on International Trade Law (UNCITRAL), which were developed in 1997 with active support of the United States.

Article XIV modifies the Convention's priority rules. Article XIV(1) and (2) deal with the priority of buyers and are necessary by virtue of the Protocol's application to sales under *Article III* and the possibility of registration of contracts of sales. A buyer under a registered sale (*i.e.*, the relevant contract of sale to the buyer has been registered) takes free of subsequently registered and unregistered interests without regard to the buyer's knowledge, Art. XIV(1), but all buyers take subject to previously registered interests. Art. XIV(2). Ownership of or other rights or interests in an aircraft engine are not affected by its installation on or removal from an aircraft. Art. XIV(3), an important reflection of industry practices with regard to engine finance.

Article XV modifies the Convention's assignment-related provisions in one important respect. A debtor is not obliged to pay or otherwise render performance to an assignee unless the debtor has consented in writing to the assignment.

Article XVI contains other important provisions for the protection of the interests of debtors. Unless the debtor is in default, it is entitled to quiet possession and use of an aircraft object as against specified parties. This includes the creditor and others who hold interests from which the debtor takes free under *Convention Article 29(4) or Protocol Article XIV(1)*, subject to any contrary agreement by the debtor. Art. XVI(1)(a). The debtor also is entitled to quiet possession and use as against the holder of an interest to which the debtor's interest is subject, to the extent that the holder has so agreed. Art. XVI(1)(b). Recognition of quiet possession rights,

absent the Protocol, are less certain in some jurisdictions, and are important for airline and other users. Finally, *Article XVI(2)* makes clear that the Convention does not affect or reduce any liability of a creditor under the applicable law for any breach by it of the agreement in respect of an aircraft object.

Chapter III: The Supervisory Authority and the Registrar. Chapter III supplements and modifies the Convention's provisions relating to the Supervisory Authority, the Registrar, and the International Registry. Pursuant to *Articles XVII(1) and XVIII*, the Diplomatic Conference designated ICAO as the Supervisory Authority, subject to confirmation by ICAO, and also created a separate Preparatory Commission, consisting of 20 States including the United States, to serve as the interim Supervisory Authority, for the purpose of selecting the initial Registrar and developing the regulations. *Article XVII* also provides for the appointment of a commission of technical registry experts to assist the Supervisory Authority, for five-year terms for the Registrar, and if necessary for the convening of a Conference of Signatory and Contracting States to appoint a replacement Supervisory Authority.

Article XIX(1) authorizes a Contracting State to designate national entry point(s) within its territory through which international registrations may or must be made, as contemplated by *Article 17(5) of the Convention*. Such a designation could only be optional for aircraft engines. *Art.XIX(2)*. The United States will make an *Article XIX declaration* designating the FAA's Aircraft Registry system in Oklahoma City as the designated entry point for airframes and helicopters of the United States. Technical legislative amendments to FAA's registry provisions in Title 49 of the United States Code will provide for the proper effect of filings. This will enable all related filings for aircraft and helicopters, and optional filings for engines, to be handled at one point and will provide an efficient process, as well as assuring compliance with other FAA requirements.

Article XX contains several other modifications of the Convention's provisions relating to the International Registry. Pursuant to *Article 19(6) of the Convention*, *Article XX(1)* provides search criteria for aircraft objects for the International Registry, which may be supplemented by the regulations. *Article XX(2)* specifies the time period for purposes of *Convention Article 25(2)* within which the holder of a registered prospective international interest or assignment must discharge the registration.

Article XX(3) and (4) provide that fees to be charged by the International Registry are to be on a cost-recovery basis and that the Registry will be operated on a twenty-four hour basis. The insurance or financial guarantee to be maintained by the Registrar under *Convention Article 28(4)* must be sufficient to cover the maximum value of an aircraft as determined by the Supervisory Authority, although the Registrar is permitted to obtain coverage as well for losses for which the Registrar is not expressly liable under *Convention Article 28*. *Art. XX(5), (6)*.

Chapter IV: Jurisdiction. *Article XXI* provides a basis for interim relief jurisdiction, in addition to that provided by *Convention Article 43*. Under this Article the courts of a Contracting State that is the State of registry under the Chicago Convention for a helicopter or airframe, also have jurisdiction.

Article XXII (1) and (2) confirm the undertaking of a State, consistent with current financing practice involving acquisition of aircraft by State-owned or operated airlines, that waivers of sovereign immunity from jurisdiction of courts specified in *Convention Articles 42 or 43*, or otherwise relating to enforcement of rights under the Convention, is effective if it is in writing and contains a description of the aircraft object, subject to satisfaction of other conditions to such jurisdiction or enforcement.

Chapter V: Relationship with other conventions. The Protocol deals with the relationship with certain closely connected Conventions, in addition to those dealt with by *Convention Articles 45 bis and 46*. *Article XXIII* provides that for Contracting States that are parties to the *Convention on the International Recognition of Rights in Aircraft*, done at Geneva on 19 June 1948, 4 UST 1830, TIAS 2847 (the United States is a party) this Convention supersedes that Convention with respect to aircraft and aircraft objects to the extent that rights or interests are covered by this Convention. For Contracting States that are parties to the *Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft*, done at Rome on 29 May 1933, *Article XXIV(1)* provides that this Convention also supersedes that Convention with respect to aircraft, subject to the right of a Contracting State to declare that it will not apply Article XXIV. Finally, *Article XXV* provides that this Convention supersedes the *UNIDROIT Convention on International Financial Leasing*, done at Ottawa on 28 May 1988, with respect to aircraft objects.

Chapter V: Final provisions.

Entry into force of the Protocol requires ratification by eight states, as compared to three for the Convention. The Protocol's "final provisions" generally follow the corresponding provisions in the Convention, discussed above, including *Articles XXVI* (signature, ratification, accession), *XXVII* (Regional Economic Integration Organization), *XXVIII* (entry into force), *XXIX* (territorial units), *XXXII* (reservations and declarations), *XXXIII* (subsequent declarations), *XXXIV* (withdrawal of declarations), *XXXV* (denunciations), *XXXVI* (review conferences, amendments, and related matters), and *XXXVII* (depository and its functions).

Articles XXX and XXXI deal with declarations under Articles VIII (choice of law), X (relief pending final determination), XI (remedies on insolvency), XII (insolvency assistance), XIII (de-registration and export request authorization), and XXI (jurisdiction). These declarations are discussed above in connection with those articles. Declarations made under the Convention are deemed made under the Protocol, unless otherwise stated. Consistent with practice for private international law treaties, optional declarations apply only as to the law of or in the territory of the declaring State, and do not constitute "reservations".

The Convention and Protocol are done in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, which are the six official United Nations languages, all texts being equally authentic, which were subject to verification by the Joint Secretariat of the Conference, composed of Secretariat officials from UNIDROIT and ICAO, after review of the texts by participating States.

CONVENTION

ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

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 and mutual 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,

TAKING INTO CONSIDERATION the objectives and principles enunciated in existing Conventions relating to such equipment,

HAVE AGREED upon the following provisions:

Chapter I

Sphere of application and general provisions

Article 1 — Definitions

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

- (a) "agreement" means a security agreement, a title reservation agreement or a leasing agreement;

- (b) "assignment" means a contract which, whether by way of security or otherwise, confers on the assignee associated rights with or without a transfer of the related international interest;
- (c) "associated rights" means all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object;
- (d) "commencement of the insolvency proceedings" means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;
- (e) "conditional buyer" means a buyer under a title reservation agreement;
- (f) "conditional seller" means a seller under a title reservation agreement;
- (g) "contract of sale" means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above;
- (h) "court" means a court of law or an administrative or arbitral tribunal established by a Contracting State;
- (i) "creditor" means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;
- (j) "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;
- (k) "insolvency administrator" means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;
- (l) "insolvency proceedings" means bankruptcy, liquidation or other 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;
- (m) "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 in or over the object;
- (n) "internal transaction" means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object located (as specified in the Protocol), in the same Contracting State at the time of

the conclusion of the contract and where the interest created by the transaction has been registered in a national registry in that Contracting State which has made a declaration under Article 50(1);

- (o) "international interest" means an interest held by a creditor to which Article 2 applies;
- (p) "International Registry" means the international registration facilities established for the purposes of this Convention or the Protocol;
- (q) "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;
- (r) "national interest" means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 50(1);
- (s) "non-consensual right or interest" means a right or interest conferred under the law of a Contracting State which has made a declaration under Article 39 to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organisation;
- (t) "notice of a national interest" means notice registered or to be registered in the International Registry that a national interest has been created;
- (u) "object" means an object of a category to which Article 2 applies;
- (v) "pre-existing right or interest" means a right or interest of any kind in or over an object created or arising before the effective date of this Convention as defined by Article 60(2)(a);
- (w) "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;
- (x) "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;
- (y) "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;
- (z) "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;
- (aa) "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;
- (bb) "registered" means registered in the International Registry pursuant to Chapter V;

- (cc) "registered interest" means an international interest, a registrable non-consensual right or interest or a national interest specified in a notice of a national interest registered pursuant to Chapter V;
- (dd) "registrable non-consensual right or interest" means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 40;
- (ee) "Registrar" means, in respect of the Protocol, the person or body designated by that Protocol or appointed under Article 17(2)(b);
- (ff) "regulations" means regulations made or approved by the Supervisory Authority pursuant to the Protocol;
- (gg) "sale" means a transfer of ownership of an object pursuant to a contract of sale;
- (hh) "secured obligation" means an obligation secured by a security interest;
- (ii) "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;
- (jj) "security interest" means an interest created by a security agreement;
- (kk) "Supervisory Authority" means, in respect of the Protocol, the Supervisory Authority referred to in Article 17(1);
- (ll) "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;
- (mm) "unregistered interest" means a consensual interest or non-consensual right or interest (other than an interest to which Article 39 applies) which has not been registered, whether or not it is registrable under this Convention; and
- (nn) "writing" means a record of information (including information communicated by teletransmission) which is in tangible or other 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.

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 a uniquely identifiable object of a category of such objects listed in paragraph 3 and designated in 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; and
 - (c) space assets.
- 4. The applicable law determines whether an interest to which paragraph 2 applies falls within sub-paragraph (a), (b) or (c) of that paragraph.
- 5. An international interest in an object extends to proceeds of that object.

Article 3 — Sphere of application

- 1. This Convention applies when, at the time of the conclusion of the agreement creating or providing for the international interest, the debtor is situated in 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 Article 3(1), the debtor is situated in any Contracting State:
 - (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 sub-paragraph (d) of the preceding paragraph 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 — Interpretation and applicable law

1. In the interpretation of this Convention, regard is to be had to its purposes as set forth in the preamble, to its international character and to the need to promote uniformity and predictability in its application.
2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the applicable law.
3. References to the applicable law are 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.

**Article 6 — Relationship between
the Convention and the Protocol**

1. This Convention and the Protocol shall be read and interpreted together as a single instrument.
2. To the extent of any inconsistency between this Convention and the Protocol, the Protocol shall prevail.

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 and subject to any declaration that may be made by a Contracting State under Article 54, 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.

2. The chargee may alternatively apply for a court order authorising or directing any of the acts referred to in the preceding paragraph.

3. Any remedy set out in sub-paragraph (a), (b) or (c) of paragraph 1 or by Article 13 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.

4. A chargee proposing to sell or grant a lease of an object under paragraph 1 shall give reasonable prior notice in writing of the proposed sale or lease to:

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

5. Any sum collected or received by the chargee as a result of exercise of any of the remedies set out in paragraph 1 or 2 shall be applied towards discharge of the amount of the secured obligations.

6. Where the sums collected or received by the chargee as a result of the exercise of any remedy set out in paragraph 1 or 2 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 distribute the surplus among holders of subsequently ranking interests which have been registered or of which the chargee has been given notice, in order of priority, and pay any remaining balance 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 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)(b) or ordered under Article 8(2). 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 29.

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) subject to any declaration that may be made by a Contracting State under Article 54, 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 13.
2. Where the debtor and the creditor have not so agreed, "default" for the purposes of Articles 8 to 10 and 13 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

Article 12 — 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 15.

Article 13 — Relief pending final determination

1. Subject to any declaration that it may make under Article 55, a Contracting State shall ensure that a creditor who adduces 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 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; and
- (d) lease or, except where covered by sub-paragraphs (a) to (c), management of the object and the income therefrom.

2. In making any order under 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. Before making any order under paragraph 1, the court may require notice of the request to be given to any of the interested persons.

4. Nothing in this Article affects the application of Article 8(3) or limits the availability of forms of interim relief other than those set out in paragraph 1.

Article 14 — Procedural requirements

Subject to Article 54(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 15 — Derogation

In their relations with each other, any two or more of the parties referred to in this Chapter may at any time, by agreement in writing, derogate from or vary the effect of any of the preceding provisions of this Chapter except Articles 8(3) to (6), 9(3) and (4), 13(2) and 14.

Chapter IV**The international registration system****Article 16 — 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 subrogations under the applicable law;
 - (d) notices of national interests; and
 - (e) subordinations of interests referred to in any of the preceding sub-paragraphs.
2. Different international registries may be established for different categories of object and associated rights.
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 17 — 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) except as otherwise provided by the Protocol, appoint and dismiss the Registrar;

- (c) ensure that any rights required for the continued effective operation of the International Registry in the event of a change of Registrar will vest in or be assignable to the new Registrar;
 - (d) 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;
 - (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
 - (f) supervise the Registrar and the operation of the International Registry;
 - (g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;
 - (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
 - (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and
 - (j) 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 referred to in Article 27(3).
4. The Supervisory Authority shall own all proprietary rights in the data bases and archives of the International Registry.
5. The Registrar shall ensure the efficient operation of the International Registry and perform the functions assigned to it by this Convention, the Protocol and the regulations.

Chapter V

Other matters relating to registration

Article 18 — 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 (which shall include provision for prior electronic transmission of any consent from any person whose consent is required under Article 20);

- (b) for making searches and issuing search certificates, and, subject thereto;
 - (c) for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.
2. The Registrar shall not be under a duty to enquire whether a consent to registration under Article 20 has in fact been given or is valid.
 3. Where an interest registered as a prospective international interest becomes an international interest, no further registration shall be required provided that the registration information is sufficient for a registration of an international interest.
 4. The Registrar shall arrange for registrations to be entered into the International Registry data base and made searchable in chronological order of receipt, and the file shall record the date and time of receipt.
 5. The Protocol may provide that a Contracting State may designate an entity or entities in its territory as the entry point or entry points through which the information required for registration shall or may be transmitted to the International Registry. A Contracting State making such a designation may specify the requirements, if any, to be satisfied before such information is transmitted to the International Registry.

Article 19 — Validity and time of registration

1. A registration shall be valid only if made in conformity with Article 20.
2. A registration, if valid, shall be complete upon entry of the required information into the International Registry data base so as to be searchable.
3. A registration shall be searchable for the purposes of the preceding paragraph at the time when:
 - (a) the International Registry has assigned to it a sequentially ordered file number; and
 - (b) the registration information, including the file number, is stored in durable form and may be accessed at the International Registry.
4. If an interest first registered as a prospective international interest becomes an international interest, that international interest shall be treated as registered from the time of registration of the prospective international interest provided that the registration was still current immediately before the international interest was constituted as provided by Article 7.
5. The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.
6. A registration shall be searchable in the International Registry data base according to the criteria prescribed by the Protocol.

Article 20 — Consent to registration

1. An international interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered, and any such registration amended or extended prior to its expiry, by either party with the consent in writing of the other.
2. The subordination of an international interest to another international interest may be registered by or with the consent in writing at any time of the person whose interest has been subordinated.
3. A registration may be 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 until discharged or until expiry of the period specified in the registration.

Article 22 — Searches

1. Any person may, in the manner prescribed by the Protocol and regulations, make or request a search of the International Registry by electronic means concerning interests or prospective international interests registered therein.
2. Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol and regulations, shall issue a registry search certificate by electronic means 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.
3. A search certificate issued under the preceding paragraph shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.

**Article 23 — List of declarations and
declared non-consensual rights or interests**

The Registrar shall maintain a list of declarations, withdrawals of declaration and of the categories of non-consensual right or interest communicated to the Registrar by the Depositary as having been declared by Contracting States in conformity with Articles 39 and 40 and the date of each such declaration or withdrawal of declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol and 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, without undue delay, procure the discharge of the registration after 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, without undue delay, procure the discharge of the registration after 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 registered notice of a national interest have been discharged, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.

4. Where a registration ought not to have been made or is incorrect, the person in whose favour the registration was made shall, without undue delay, procure its discharge or amendment after written demand by the debtor delivered to or received at its address stated in the registration.

**Article 26 — Access to the
international registration facilities**

No person shall 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**Privileges and immunities of
the Supervisory Authority and the Registrar****Article 27 — Legal personality; immunity**

1. The Supervisory Authority shall have international legal personality where not already possessing such personality.
2. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal or administrative process as is specified in the Protocol.
3.
 - (a) The Supervisory Authority shall enjoy exemption from taxes and such other privileges as may be provided by agreement with the host State.
 - (b) For the purposes of this paragraph, "host State" means the State in which the Supervisory Authority is situated.
4. The assets, documents, data bases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process.
5. For the purposes of any claim against the Registrar under Article 28(1) or Article 44, the claimant shall be entitled to access to such information and documents as are necessary to enable the claimant to pursue its claim.
6. The Supervisory Authority may waive the inviolability and immunity conferred by paragraph 4.

Chapter VII**Liability of the Registrar****Article 28 — Liability and financial assurances**

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 and its officers and employees or from a malfunction of the international registration system except where the malfunction is caused by an event of an inevitable and irresistible nature, which could not be prevented by using the best practices in current use in the field of electronic registry design and operation, including those related to back-up and systems security and networking.
2. The Registrar shall not be liable under the preceding paragraph for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which it

received that information nor for acts or circumstances for which the Registrar and its officers and employees are not responsible and arising prior to receipt of registration information at the International Registry.

3. Compensation under paragraph 1 may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.

4. The Registrar shall procure insurance or a financial guarantee covering the liability referred to in this Article to the extent determined by the Supervisory Authority, in accordance with the Protocol.

Chapter VIII

Effects of an international interest as against third parties

Article 29 — Priority of competing interests

1. A registered interest has priority over any other interest subsequently registered and over an unregistered interest.
2. The priority of the first-mentioned interest under the preceding paragraph applies:
 - (a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and
 - (b) even as regards value given by the holder of the first-mentioned interest with such knowledge.
3. The buyer of an object acquires its interest in it:
 - (a) subject to an interest registered at the time of its acquisition of that interest; and
 - (b) free from an unregistered interest even if it has actual knowledge of such an interest.
4. The conditional buyer or lessee acquires its interest in or right over that object:
 - (a) subject to an interest registered prior to the registration of the international interest held by its conditional seller or lessor; and
 - (b) free from an interest not so registered at that time even if it has actual knowledge of that interest.
5. The priority of competing interests or rights 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.

6. Any priority given by this Article to an interest in an object extends to proceeds.
7. This Convention:
 - (a) does not affect the rights of a person in an item, other than an object, held prior to its installation on an object if under the applicable law those rights continue to exist after the installation; and
 - (b) does not prevent the creation of rights in an item, other than an object, which has previously been installed on an object where under the applicable law those rights are created.

Article 30 — Effects of insolvency

1. In insolvency proceedings against the debtor an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in conformity with this Convention.
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:
 - (a) any rules of law applicable in insolvency proceedings relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors; or
 - (b) any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

Chapter IX

**Assignments of associated rights and international interests;
rights of subrogation**

Article 31 — Effects of assignment

1. Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with Article 32 also transfers to the assignee:
 - (a) the related international interest; and
 - (b) all the interests and priorities of the assignor under this Convention.
2. Nothing in this Convention prevents a partial assignment of the assignor's associated rights. In the case of such a partial assignment the assignor and assignee may agree as to their respective rights

concerning the related international interest assigned under the preceding paragraph but not so as adversely to affect the debtor without its consent.

3. Subject to paragraph 4, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.
4. 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 other than defences arising from fraudulent acts on the part of the assignee.
5. In the case of an assignment by way of security, the assigned associated rights revert in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

Article 32 — Formal requirements of assignment

1. An assignment of associated rights transfers the related international interest only if it:
 - (a) is in writing;
 - (b) enables the associated rights to be identified under the contract from which they arise; 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.
2. An assignment of an international interest created or provided for by a security agreement is not valid unless some or all related associated rights also are assigned.
3. This Convention does not apply to an assignment of associated rights which is not effective to transfer the related international interest.

Article 33 — Debtor's duty to assignee

1. To the extent that associated rights and the related international interest have been transferred in accordance with Articles 31 and 32, the debtor in relation to those rights and that interest is bound by the assignment and 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; and
 - (b) the notice identifies the associated rights.

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 this Article shall affect the priority of competing assignments.

**Article 34 — Default remedies in respect of assignment
by way of security**

In the event of default by the assignor under the assignment of 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 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 associated rights and the related international interest and the security interest created by that assignment;
- (b) to the chargee or creditor and chargor or debtor were references to the assignee and assignor;
- (c) to the holder of the international interest were references to the assignee; and
- (d) to the object were references to the assigned associated rights and the related international interest.

Article 35 — Priority of competing assignments

1. Where there are competing assignments of associated rights and at least one of the assignments includes the related international interest and is registered, the provisions of Article 29 apply as if the references to a registered interest were references to an assignment of the associated rights and the related registered interest and as if references to a registered or unregistered interest were references to a registered or unregistered assignment.
2. Article 30 applies to an assignment of associated rights as if the references to an international interest were references to an assignment of the associated rights and the related international interest.

Article 36 — Assignee's priority with respect to associated rights

1. The assignee of associated rights and the related international interest whose assignment has been registered only has priority under Article 35(1) over another assignee of the associated rights:
 - (a) if the contract under which the associated rights arise states that they are secured by or associated with the object; and
 - (b) to the extent that the associated rights are related to an object.

2. For the purposes of sub-paragraph (b) of the preceding paragraph, associated rights are related to an object only to the extent that they consist of rights to payment or performance that relate to:

- (a) a sum advanced and utilised for the purchase of the object;
- (b) a sum advanced and utilised for the purchase of another object in which the assignor held another international interest if the assignor transferred that interest to the assignee and the assignment has been registered;
- (c) the price payable for the object;
- (d) the rentals payable in respect of the object; or
- (e) other obligations arising from a transaction referred to in any of the preceding sub-paragraphs.

3. In all other cases, the priority of the competing assignments of the associated rights shall be determined by the applicable law.

Article 37 — Effects of assignor's insolvency

The provisions of Article 30 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Article 38 — Subrogation

1. Subject to paragraph 2, nothing in this Convention affects the acquisition of 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 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.

Chapter X

Rights or interests subject to declarations by Contracting States

Article 39 — Rights having priority without registration

1. A Contracting State may at any time, in a declaration deposited with the Depositary of the Protocol declare, generally or specifically:
 - (a) those categories of non-consensual right or interest (other than a right or interest to which Article 40 applies) which under that State's law have priority over an interest in an object equivalent to that of the holder of a registered international interest and which shall have priority over a registered international interest, whether in or outside insolvency proceedings; and
 - (b) that nothing in this Convention shall affect the right of a State or State entity, intergovernmental organisation or other private provider of public services to arrest or detain an object under the laws of that State for payment of amounts owed to such entity, organisation or provider directly relating to those services in respect of that object or another object.
2. A declaration made under the preceding paragraph may be expressed to cover categories that are created after the deposit of that declaration.
3. A non-consensual right or interest has priority over an international interest if and only if the former is of a category covered by a declaration deposited prior to the registration of the international interest.
4. Notwithstanding the preceding paragraph, a Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that a right or interest of a category covered by a declaration made under sub-paragraph (a) of paragraph 1 shall have priority over an international interest registered prior to the date of such ratification, acceptance, approval or accession.

Article 40 — Registrable non-consensual rights or interests

A Contracting State may at any time in 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 shall be regulated accordingly. Such a declaration may be modified from time to time.

Chapter XI

Application of the Convention to sales

Article 41 — Sale and prospective sale

This Convention shall apply to the sale or prospective sale of an object as provided for in the Protocol with any modifications therein.

Chapter XII

Jurisdiction

Article 42 — Choice of forum

1. Subject to Articles 43 and 44, the courts of a Contracting State chosen by the parties to a transaction have jurisdiction in respect of any claim brought under this Convention, whether or not the chosen forum has a connection with the parties or the transaction. Such jurisdiction shall be exclusive unless otherwise agreed between the parties.
2. Any such agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of the chosen forum.

Article 43 — Jurisdiction under Article 13

1. The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is situated have jurisdiction to grant relief under Article 13(1)(a), (b), (c) and Article 13(4) in respect of that object.
2. Jurisdiction to grant relief under Article 13(1)(d) or other interim relief by virtue of Article 13(4) may be exercised either:
 - (a) by the courts chosen by the parties; or
 - (b) by the courts of a Contracting State on the territory of which the debtor is situated, being relief which, by the terms of the order granting it, is enforceable only in the territory of that Contracting State.
3. A court has jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 13(1) will or may take place in a court of another Contracting State or by arbitration.

**Article 44 — 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 or make orders against the Registrar.
2. Where a person fails to respond to a demand made under Article 25 and that person has ceased to exist or cannot be found for the purpose of enabling an order to be made against it requiring it to procure discharge of the registration, the courts referred to in the preceding paragraph shall have exclusive jurisdiction, on the application of the debtor or intending debtor, to make an order directed to the Registrar requiring the Registrar to discharge the registration.
3. 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.
4. 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 45 — Jurisdiction in respect of insolvency proceedings

The provisions of this Chapter are not applicable to insolvency proceedings.

Chapter XIII

Relationship with other Conventions

**Article 45 bis — Relationship with the *United Nations Convention on the
Assignment of Receivables in International Trade***

This Convention shall prevail over the *United Nations Convention on the Assignment of Receivables in International Trade*, opened for signature in New York on 12 December 2001, as it relates to the assignment of receivables which are associated rights related to international interests in aircraft objects, railway rolling stock and space assets.

**Article 46 — 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*, signed at Ottawa on 28 May 1988.

Chapter XIV

Final provisions

Article 47 — Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Convention shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article 49.
2. This Convention shall be subject to ratification, acceptance or approval by States which have signed it.
3. Any State which does not sign this Convention may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

Article 48 — Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a "Contracting State" or "Contracting States" or "State Party" or "States Parties" in this Convention applies equally to a Regional Economic Integration Organisation where the context so requires.

Article 49 — Entry into force

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

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

2. For other States this Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies and subject, in relation to such Protocol, to the requirements of sub-paragraphs (a), (b) and (c) of the preceding paragraph.

Article 50 — Internal transactions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that this Convention shall not apply to a transaction which is an internal transaction in relation to that State with regard to all types of objects or some of them.
2. Notwithstanding the preceding paragraph, the provisions of Articles 8(4), 9(1), 16, Chapter V, Article 29, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.
3. Where notice of a national interest has been registered in the International Registry, the priority of the holder of that interest under Article 29 shall not be affected by the fact that such interest has become vested in another person by assignment or subrogation under the applicable law.

Article 51 — Future Protocols

1. The Depositary may create working groups, in co-operation with such relevant non-governmental organisations as the Depositary considers appropriate, 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 Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all States Parties to this Convention, all member States of the Depositary, member States of the United Nations which are not members of the Depositary and the relevant intergovernmental organisations, and shall invite such States and organisations to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.
3. The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental organisations as the Depositary considers appropriate. Such non-governmental organisations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.

4. When the competent bodies of the Depository adjudge such a draft Protocol ripe for adoption, the Depository shall convene a diplomatic conference for its adoption.
5. Once such a Protocol has been adopted, subject to paragraph 6, this Convention shall apply to the category of objects covered thereby.
6. Article 45 *bis* of this Convention applies to such a Protocol only if specifically provided for in that Protocol.

Article 52 — Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.
2. Any such declaration shall state expressly the territorial units to which this Convention applies.
3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.
4. Where a Contracting State extends this Convention to one or more of its territorial units, declarations permitted under this Convention may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.
5. If by virtue of a declaration under paragraph 1, this Convention extends to one or more territorial units of a Contracting State:
 - (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which this Convention applies or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which this Convention applies;
 - (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which this Convention applies; and
 - (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which this Convention applies.

Article 53 — Determination of courts

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

Article 54 — Declarations regarding remedies

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare 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 shall, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare whether or not any remedy available to the creditor under any provision of this Convention which is not there expressed to require application to the court may be exercised only with leave of the court.

Article 55 — Declarations regarding relief pending final determination

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will not apply the provisions of Article 13 or Article 43, or both, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

Article 56 — Reservations and declarations

1. No reservations may be made to this Convention but declarations authorised by Articles 39, 40, 50, 52, 53, 54, 55, 57, 58 and 60 may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

Article 57 — Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration authorised under Article 60, at any time after the date on which this Convention has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

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

Article 58 — Withdrawal of declarations

1. Any State Party having made a declaration under this Convention, other than a declaration authorised under Article 60, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.
2. Notwithstanding the previous paragraph, this Convention shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

Article 59 — Denunciations

1. Any State Party may denounce this Convention by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which notification is received by the Depositary.
3. Notwithstanding the previous paragraphs, this Convention 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 any such denunciation.

Article 60 — Transitional provisions

1. Unless otherwise declared by a Contracting State at any time, the Convention does not apply to a pre-existing right or interest, which retains the priority it enjoyed under the applicable law before the effective date of this Convention.
2. For the purposes of Article 1(v) and of determining priority under this Convention:
 - (a) "effective date of this Convention" means in relation to a debtor the time when this Convention enters into force or the time when the State in which the debtor is situated becomes a Contracting State, whichever is the later; and
 - (b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if it has no place of business, its habitual residence.
3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when this Convention and the Protocol will become applicable, for the purpose of determining priority, including the protection of any existing priority, to pre-existing rights or interests arising under an agreement made at a time when the debtor was

situated in a State referred to in sub-paragraph (b) of the preceding paragraph but only to the extent and in the manner specified in its declaration.

Article 61 — Review Conferences, amendments and related matters

1. The Depositary shall prepare reports yearly or at such other time as the circumstances may require for the States Parties as to the manner in which the international regimen established in this Convention has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.
2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:
 - (a) the practical operation of this Convention and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
 - (b) the judicial interpretation given to, and the application made of the terms of this Convention and the regulations;
 - (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and
 - (d) whether any modifications to this Convention or the arrangements relating to the International Registry are desirable.
3. Subject to paragraph 4, any amendment to this Convention shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when ratified, accepted, or approved by three States in accordance with the provisions of Article 49 relating to its entry into force.
4. Where the proposed amendment to this Convention is intended to apply to more than one category of equipment, such amendment shall also be approved by at least a two-thirds majority of States Parties to each Protocol that are participating in the Conference referred to in paragraph 2.

Article 62 — Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.
2. The Depositary shall:
 - (a) inform all Contracting States of:

- (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Convention;
 - (iii) each declaration made in accordance with this Convention, together with the date thereof;
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (v) the notification of any denunciation of this Convention together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Convention to all Contracting States;
 - (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
 - (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

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

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the *Convention on International Interests in Mobile Equipment* (hereinafter referred to as "the Convention") as it relates to aircraft equipment, in the light of the purposes set out in the preamble to 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,

MINDFUL of the principles and objectives of the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944,

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;
 - (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:
 - (i) in the case of jet propulsion aircraft engines, have at least 1750 lb 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;
- (c) "aircraft objects" means airframes, aircraft engines and helicopters;
 - (d) "aircraft register" means a register maintained by a State or a common mark registering authority for the purposes of the Chicago Convention;
 - (e) "airframes" means airframes (other than those used in military, customs or 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;
 - (f) "authorised party" means the party referred to in Article XIII(3);
 - (g) "Chicago Convention" means the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944, as amended, and its Annexes;
 - (h) "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;
 - (i) "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;
 - (j) "guarantee contract" means a contract entered into by a person as guarantor;
 - (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;
 - (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;

(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;

(n) "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;

(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; and

(p) "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.

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 Convention on International Interests in Mobile Equipment as applied to aircraft objects.

Article III — Application of Convention to sales

The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

Articles 3 and 4;
 Article 16(1)(a);
 Article 19(4);
 Article 20(1) (as regards registration of a contract of sale or a prospective sale);
 Article 25(2) (as regards a prospective sale); and
 Article 30.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XIV(1) and (2)), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) shall apply to contracts of sale and prospective sales.

Article IV — Sphere of application

1. Without prejudice to Article 3(1) of the Convention, the Convention shall also apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State which is the State of registry, and where such registration is made pursuant to an agreement for registration of the aircraft it is deemed to have been effected at the time of the agreement.
2. 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.
3. 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 Article IX (2)-(4).

Article V — Formalities, effects and registration of contracts 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 seller 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.
3. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

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. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).
2. 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, wholly or in part.
3. 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 that Chapter:
 - (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. Article 8(3) of the Convention shall not apply to aircraft objects. Any remedy given by the Convention in relation to an aircraft object 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 agreement except where such a provision is manifestly unreasonable.

4. A chargee giving ten or more working 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(4) 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.

5. The registry authority in a Contracting State shall, subject to any applicable safety laws and regulations, honour a request for de-registration and export if:

- (a) the request is properly submitted by the authorised party under a recorded irrevocable de-registration and export request authorisation; and
- (b) the authorised party certifies to the registry authority, if required by that authority, that all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.

6. A chargee proposing to procure the de-registration and export of an aircraft under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed de-registration and export to:

- (a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and
- (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

**Article X — Modification of provisions
regarding relief pending final determination**

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

2. For the purposes of Article 13(1) of the Convention, "speedy" in the context of obtaining relief means within such number of working 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 13(1) of the Convention applies with the following being added immediately after sub-paragraph (d):

- "(e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom",

and Article 43(2) applies with the insertion after the words "Article 13(1)(d)" of the words "and (e)".

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 29 of the Convention.
5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.
6. With regard to the remedies in Article IX(1):
 - (a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than five working days after the creditor notifies such authorities that the relief specified in Article IX(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with the Convention; and
 - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.
7. Paragraphs 2 and 6 shall not affect any 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 pursuant to Article XXX(3).

Alternative A

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, 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.
3. 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.
4. References in this Article to the "insolvency administrator" shall be to that person in its official, not in its personal, capacity.
5. Unless and until the creditor is given the opportunity to take possession under paragraph 2:
 - (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.
6. 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.
 7. The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings 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.
 8. With regard to the remedies in Article IX(1):
 - (a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and
 - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.
 9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.
 10. No obligations of the debtor under the agreement may be modified without the consent of the creditor.
 11. 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.
 12. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1), shall have priority in insolvency proceedings over registered interests.
 13. The Convention as modified by Article IX of this Protocol shall apply to the exercise of any remedies under this Article.

Alternative B

2. 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 pursuant to Article XXX(3) whether it will:
 - (a) cure all defaults other than a default constituted by the opening of insolvency proceedings and 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.
3. 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.
4. The creditor shall provide evidence of its claims and proof that its international interest has been registered.
5. If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 2, or when the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take 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.
6. The aircraft object shall not be sold pending a decision by a court regarding the claim and the international interest.

Article XII — Insolvency assistance

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).
2. 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 request authorisation

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).
2. 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.
3. 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.
4. 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

1. A buyer of an aircraft object under a registered sale acquires its interest in that object free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.
2. A buyer of an aircraft object acquires its interest in that object subject to an interest registered at the time of its acquisition.
3. Ownership of or another right or interest in an aircraft engine shall not be affected by its installation on or removal from an aircraft.
4. Article 29(7) of the Convention applies to an item, other than an object, installed on an airframe, aircraft engine or helicopter.

Article XV — Modification of assignment provisions

Article 33(1) of the Convention applies as if the following were added immediately after sub-paragraph (b):

- “and (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.”

Article XVI — Debtor provisions

1. In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the object in accordance with the agreement as against:
 - (a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4) of the Convention or, in the capacity of buyer, Article XIV(1) of this Protocol, unless and to the extent that the debtor has otherwise agreed; and
 - (b) the holder of any interest to which the debtor's right or interest is subject pursuant to Article 29(4) of the Convention or, in the capacity of buyer, Article XIV(2) of this Protocol, but only to the extent, if any, that such holder has agreed.
2. Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to an aircraft object.

Chapter IIIRegistry provisions relating to
international interests in aircraft objects**Article XVII — The Supervisory Authority and the Registrar**

1. The Supervisory Authority shall be the international entity designated by a Resolution adopted by the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol.
2. Where the international entity referred to in the preceding paragraph is not able and willing to act as Supervisory Authority, a Conference of Signatory and Contracting States shall be convened to designate another Supervisory Authority.
3. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.
4. The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.
5. 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 reappointed at regular five-yearly intervals by the Supervisory Authority.

Article XVIII — First regulations

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

Article XIX — Designated entry points

1. Subject to paragraph 2, a Contracting State may at any time designate an entity or entities in its territory as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or a right or interest under Article 40 in either case arising under the laws of another State.
2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of aircraft engines.

Article XX — Additional modifications to Registry provisions

1. For the purposes of Article 19(6) of the Convention, the search criteria for an aircraft object shall be the name of its manufacturer, its manufacturer's serial number and its model designation, 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 or the person in whose favour a prospective sale has been registered shall take such steps as are within its power to procure the discharge of the registration no later than five working days after the receipt of the demand described in such paragraph.
3. The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 17(2) of the Convention.
4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated at least during working hours in their respective territories.
5. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall, in respect of each event, not be less than the maximum value of an aircraft object as determined by the Supervisory Authority.
6. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

Chapter IV**Jurisdiction****Article XXI — Modification of jurisdiction provisions**

For the purposes of Article 43 of the Convention and subject to Article 42 of the Convention, a court of a Contracting State also has jurisdiction where the object is a helicopter, or an airframe pertaining to an aircraft, for which that State is the State of registry.

Article XXII — Waivers of sovereign immunity

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or 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.

2. A waiver under the preceding paragraph must be in writing and contain a description of the aircraft object.

Chapter V

Relationship with other conventions

Article XXIII — 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*, signed at Geneva on 19 June 1948, supersede that Convention as it relates to aircraft, as defined in this Protocol, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

Article XXIV — Relationship with the *Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft*

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*, signed at 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.

Article XXV — Relationship with the *UNIDROIT Convention on International Financial Leasing*

The Convention shall supersede the *UNIDROIT Convention on International Financial Leasing*, signed at Ottawa on 28 May 1988, as it relates to aircraft objects.

Chapter VI

Final provisions

Article XXVI — Signature, ratification, acceptance, approval or accession

1. This Protocol shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft

Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, this Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article XXVIII.

2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.
3. Any State which does not sign this Protocol may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.
5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

Article XXVII — Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a "Contracting State" or "Contracting States" or "State Party" or "States Parties" in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

Article XXVIII — 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 the deposit of the eighth instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.
2. For other States this Protocol enters into force 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.

Article XXIX — Territorial units

1. If a Contracting State has 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 modify its declaration by submitting another declaration at any time.
2. Any such declaration shall state expressly the territorial units to which this Protocol applies.
3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.
4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.
5. If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:
 - (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;
 - (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and this Protocol apply; and
 - (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply and any reference to the national register or to the registry authority in that Contracting State shall be construed as referring to the aircraft register in force or to the registry authority having jurisdiction in the territorial unit or units to which the Convention and this Protocol apply.

Article XXX — Declarations relating to certain provisions

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

5. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will not apply the provisions of Article XXI, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

Article XXXI — Declarations under the Convention

Declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

Article XXXII — Reservations and declarations

1. No reservations may be made to this Protocol but declarations authorised by Articles XXIV, XXIX, XXX, XXXI, XXXIII and XXXIV may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

Article XXXIII — Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

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

Article XXXIV — Withdrawal of declarations

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.
2. Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

Article XXXV — Denunciations

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by 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 any such denunciation.

Article XXXVI — Review Conferences, amendments and related matters

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by this Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.
2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:
 - (a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
 - (b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;
 - (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and
 - (d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3. Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by eight States in accordance with the provisions of Article XXVIII relating to its entry into force.

Article XXXVII — Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

- (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Protocol;
 - (iii) each declaration made in accordance with this Protocol, together with the date thereof;
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Protocol to all Contracting States;
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
- (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

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

Annex referred to in Article XIII

[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 manufacturers 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 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 *Convention on International Civil Aviation*, signed at Chicago, on 7 December 1944, 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.

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

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]

By: [insert name of signatory]
Its: [insert title of signatory]

[insert relevant notational details]

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