



FACULTY OF LAW
Lund University

Josephine Gunnehed

The Convention on International Interests
in Mobile Equipment and its Protocol on
Aircraft Equipment -
Predictability and enforcement of international security
agreements

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Michael Bogdan

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Summary

The difference between the laws of different countries and their legal systems when it comes to restrictiveness in the approach to non-possessory securities have bedevilled the financing and leasing of highly valuable assets such as aircraft equipment, for many years. Furthermore, the law in some countries does not give adequate protection to creditors in the event of default by debtors. Because an interest created in the country of origin may prove invalid or unenforceable abroad, the rights and interests of lenders and lessors have been unstable when an item of equipment regularly crosses national borders. The 2001 Convention on International Interests in Mobile Equipment is an international commercial law instrument with the purpose of providing a stable international legal regime for the protection of secured creditors, conditional sellers and lessors of highly valuable assets, defined in three additional protocols as aircraft, railway rolling stock and satellites. The protocols have been formed in cooperation with actors on the markets of the specific types of objects. Hence, the protocols shall prevail over the Convention: they provide a way to modify the Convention's provisions to meet the specific requests and with solutions on problems significant for the specific markets. The Conventions and its Protocols contain material provisions typical for the area of property law in addition to provisions on jurisdiction and choice of law, which are to various extents left to the applicable law. The material provisions themselves are quite simple and few in number. The core of the Convention is the electronic International Registry that has been set up in Dublin. A valid interest duly registered in the International Registry will obtain strong priority over most other interests. The complexity of the Convention lies in its flexibility. The Convention does not contain "soft law"-provisions but outright "hard law"-provisions, intended to harmonize the international property law regarding valuable assets. As a consequence, a number of compromises were made not to risk the Instruments failure due to low acceptance. Hence, it is possible for the Contracting state to vary the provisions, or dismiss them wholly or in part. An inducement for the contracting state to do "the right" declarations are the economic benefits achieved through the hard provisions. Examples for such hard provisions are priority in insolvency proceedings and timely enforceable remedies in case of debtors default. By giving foreign investors the ability to enforce effective and speedy remedies, the Contracting States make investment in their own territory safe and thereby attractive. However, to create a valid and foreseeable contract, the parties to the agreement are required to have great knowledge about the interaction between the Convention and national law.

Sammanfattning

Olikheter i nationers lagstiftning och mellan olika rättsystem vad gäller restriktioner i hur man värderar säkerhetsrätter där själva säkerheten inte befinner sig i borgenärens besittning har länge försvårat marknaden för finansiering och leasing, särskilt vad gäller högt värderad egendom såsom luftfartsutrustning, rullande järnvägsmateriell och tillgångar avsedda för rymden. Dessutom ger lagstiftningen i en del länder inte ett adekvat skydd för borgenärer i det fall gäldenären inte fullföljer sina avtalsförpliktelser. Då det är så att en kreditsäkerhet som upprättats i ett land kan visa sig vara ogiltigt eller omöjligt att verkställa då egendomen lämnat det egna territoriet har kreditnehavares och leasinggivares möjligheter att tillvarata sina rättigheter och intressen varit osäkra i de fall egendomen ställd som säkerhet regelbundet transporteras över nationella gränser. Konventionen om internationell säkerhetsrätt till flyttbar egendom, signerad i Kapstaden 2001, är skapad med syftet att tillhandahålla en stabil, internationell reglering till skydd för borgenärer med säkerhet i högt värderad, flyttbar egendom samt för säljare med äganderättsförbehåll och leasinggivare av sådan. I tillägg till konventionen har protokoll, som definierar vilken slags egendom konventionen ska tillämpas på, arbetats fram i samarbete med aktörerna på marknaden för de typer av egendom som omfattas. Eftersom protokollen utgör modifieringar av konventionens bestämmelser för att denna ska möta de specifika behoven för marknaden och finna lösningar på problem typiska för var slag av egendom som omfattas av konventionen. Konventionen och dess protokoll utgörs av typisk sakrättslig materiell reglering utöver regleringen om lagval och jurisdiktion, vilka i mer eller mindre omfattning överlämnas åt nationell lag. De materiella reglerna är enkla och förhållande få. Kärnan i konventionens skydd ligger i det elektroniska, internationella registret som upprättats i Dublin. Ett giltigt upprättat avtal som registrerats mot egendomens registreringsnummer i det internationella registret kommer att erhålla prioritet över de flesta andra borgenärer. Det komplexa med konventionen är dess flexibilitet. Den utgörs, till största del, av "hårda" regelbaserade bestämmelser, med avsikt att harmonisera den internationella sakrätten gällande högt värderad egendom. Som en konsekvens av detta har en mängd kompromisser gjorts för att inte riskera en låg grad av tillämpning pga. ett lågt antal tillträden till konventionen. Det är därför möjligt för en fördragsslutande stat att genom ett antal deklARATIONER variera bestämmelserna, eller förklara att man kommer att, eller helt eller delvis inte kommer att, tillämpa dem. Ett incitament för de fördragsslutande staterna att göra "rätt" deklARATIONER är de ekonomiska fördelar som de regelbaserade bestämmelserna kan medföra. Exempel på sådana är prioritet i insolvensförfaranden och möjligheten att företa effektiva, skyndsamma rättsmedel i de fall gäldenären bryter mot sina avtalsförpliktelser. Genom att ge utländska borgenärer dessa möjligheter gör en fördragsslutande stat investeringar inom det egna territoriet säkrare och därmed attraktivare. Emellertid krävs det av parterna god kännedom om samspelet mellan

konventionen och nationell lag för att kunna skapa ett giltigt och förutsägbart avtal.

Preface

My time as a student at the Faculty of Law at Lund University has finally come to an end. I will, likely most other students, walk out after these five years as a totally different person as the one that arrived to Lund to start her law program in the spring semester 2007. I would like to thank my friends and fellow students for a, even though sometimes tough, truly amazing and fun time.

I am grateful to the faculty and to the team of skilled professors who has managed to teach me a lot during the six basic semesters and two specialist courses. I am also in particularly grateful for the opportunity to go to Heidelberg and study German and International law for one year. An experience, seen retrospectively, that not only showed me, what a valuable tool legal knowledge is, but one that literally changed my life. Moreover, without having the benefit to have taken the course “Transnational commercial law” in Heidelberg held by Prof. Dr. Dr. h.c Herbert Kronke, I would maybe never have heard about the Cape Town Convention.

I would like to thank my supervisor Prof. Michael Bogdan for valuable comments and adjustments of my essay, as well as for his great knowledge and sense of humor in his approach. I would also like to thank MG Chip Chapman for linguistic corrections and Thilo, for rewarding discussions and support, during the writing of this paper, as well as all of the time.

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Tampa, the 26th of March 2012

“Und jedem Anfang wohnt ein Zauber inne”¹

¹ “Stufen” by Hermann Hesse

² Seminar report- The CTC and the EU

Abbreviations

AP	Aircraft Protocol
AWG	Aircraft Working Group
CTC	Cape Town Convention
EU	European Union
ICAO	International Civil Aviation Organisation
IATA	International Aviation Transport Association
UNIDROIT	Institut International Pour L'Unification du Droit Prive

1 Introduction

1.1 Preamble

The aviation industry has moved from high levels of government ownership to high levels of private ownership and financing.² A consequence of this has been an increased possibility of default. That the assets are movable has made the rule *lex rei sitae* close to worthless when holders of interests need to protect their rights. The unpredictability and the risk for losing priority made the financing slow and overly expensive.

The Cape Town Convention and the Aircraft Protocol were drafted to harmonize the law concerning international security interests in high valuable movables. The intention was to provide rules that will enable the holder of an interest to get timely and predictable access to the valuable asset in the event of default or insolvency. This is accomplished by an International Registry, which enables the holders of securities to give notice to third parties about their interests and, through registration, obtain priority.

The challenge of drafting the instrument was to create a regime on a very jurisdiction specific legal area without deterring the states to accede. This is achieved through a system of declarations, whereby the Contracting State is given the possibility to dismiss some of the provisions wholly or in part and to leave some parts to the national law. Naturally, this is also a way of compromising. However, this was considered preferable to giving the provisions a more principle character.

A number of questions arise from this:

- How is an International Interest duly perfected?
- How does the holder of an international interest preserve its rights?
- What impact has the Convention on national law?
- To what extent can the parties use the party autonomy to regulate their matters?
- What benefits can be achieved through being a party to the convention for Contracting States and private parties?

To answer these questions, one has to a) understand the relation between the Convention and the Protocol and b) the importance of which declarations a Contracting State has made.

1.2 Purpose

The intention of this work is to discover and explain what impact the Cape Town Convention and the Aircraft Protocol have on cross-border property

² Seminar report- The CTC and the EU

law. The purpose is not only to give an introduction to the material provisions of the Convention and the Aircraft Protocol, but to describe how the Aircraft Protocol integrates with the Convention and the relation to national law. After finishing reading, the reader will know what an International Interest is, how the holder of such an interest protects its rights and most important, understand the flexibility of the instruments and, hence, know what creates an effective and valid security agreement.

1.3 Disposition

The paper is divided in to seven chapters. Chapter 2 describes the history to the Convention and its Protocols, followed by an overview of the content of the Convention and the Aircraft Protocol, an explanation on definitions used in this paper, the relation between the two instruments, conditions for the Convention to apply as well as the basic principles for its interpretation.

The Convention's material provisions on the contents of property law are dealt with in chapter 3. This chapter gives a brief introduction to the International Registry and what effects a registration of an interest has against third parties and in insolvency proceedings.

Chapter 4, deals with the remedies possible for a holder of an interest to undertake in the case of its debtor's default, the possibilities a Contracting State has to give non-consensual rights worthy to protect priority to rights covered by the Convention.

Chapter 5, presents the importance of the parties' choice of jurisdiction and those cases where the jurisdiction is mandatory set out by the Convention.

Chapter 6, presents the status of the Convention, explains the mechanics of the various declarations a state can make when entering the Convention and explains why the drafters highly recommend the contracting states to make these declarations.

Chapter 7, presents an analysis with some conclusions drawn.

1.4 Demarcation

This thesis focuses on the Convention and the Aircraft Protocol, although the reader should be aware of the Protocols on Railway Rolling Stock and Space Assets: the principles regarding their relation to the Convention for these are the same. The Aircraft Protocol is, however, the protocol first drafted and the only one in force. The International Registry is not described regarding the formal and technical regulations. This paper will not cover provisions on formal validity and discharges of registrations, nor the

provisions on assignments of interests and subrogation. An exception is made in 3.1.2.1.1 under the headline “Priority rules” to clarify those principles.

2 Background, structure and principles of the Convention

2.1 History of the Convention

The work leading to the signing of the Cape Town Convention started in 1988, after a proposal by the member of the UNIDROIT Governing Council Mr. T.B Smith QC. In 1992, the council set up a working group to ensure the need for and the feasibility of a uniform regulation governing security interests in cross border transactions, especially transactions connected to aircraft equipment, railway rolling stock and space assets. The group's report led to establishment of a committee with the task of preparing a first draft.³

It was at an early stage clear that such an instrument as intended had to be drafted with the outmost precaution. Property law is historically considered to be too complex and jurisdiction-specific to harmonize in an international uniform treaty. The risks of failure of the convention made the drafting challenging and the approach had to be reconsidered several times. Gradually it became clear that instead of one single document the three types of items were to be governed by additional protocols, of which the protocol on aircraft equipment was to be drafted first.

A text of a preliminary draft was presented to the UNIDROIT Governing Council 1998, which found the draft suitable for submission to governmental experts. To meet the different markets UNIDROIT also set up a number of organizations with experts from the different industries to investigate the customs and practices practiced in the different fields of aviation, railway and space assets. These organisations are known as the Aviation Working Group (AWG), the Railway Working Group (RWG) and the Space Working Group (SWG). External organisations collaborating with UNIDROIT were the International Air Transport Association (IATA) and the International Civil Aviation Organisation (ICAO). When the project reached the stage of intergovernmental negotiations, an additional three working groups were set up; an Insolvency Working Group, a Public International Law Working Group and an International Registry Task Force.⁴

The amended texts of the Convention and the Aircraft Protocol, a product of a close collaboration between UNIDROIT, ICAO, IATA and the AWG, were after being approved by the UNIDROIT for submission to a diplomatic conference held in Cape Town on 16 November 2001, where the two documents were concluded and opened for signature. The work establishing

³ Official commentary, p. 5.

⁴ Official commentary p. 5 f.f.

the International Registry started 2002 and the Registry became operative on 1st March 2006, when the Convention and the Aircraft Protocol entered into force.

2.2 The structure of the Convention and the Aircraft Protocol

For clarity, so the reader will have an idea of the outline of the instruments, the disposition of the Convention and the Aircraft Protocol will be presented in this chapter. Note that single articles are numbered with figures in the Convention and with Roman numerals in the Aircraft Protocol.

The Convention contains the following chapters:

- I, Sphere of application and general provisions, Articles 1 – 6,
- II, Constitution of an international interest, Article 7,
- III, Remedies of charge, Articles 8 – 15,
- IV, The international registration system, Articles 16 -17,
- V, Other matters relating to registration, Articles 18 – 26,
- VI, Privileges and immunities of the Supervisory Authority and the Registrar, Article 27,
- VII, Liability of the Registrar, Article 28,
- VIII, Effects of an international interest against third parties, Articles 29 – 30,
- IX, Assignments of associated rights and international interests; rights of subrogation, Articles 31 – 38,
- X, Rights or interests subject to declarations by Contracting States, Articles 39 – 40,
- XI, Application of the Convention to sales, Article 41,
- XII, Jurisdiction, Articles 42 – 45,
- XIII, Relationship with other Conventions, Articles 45 *bis* – 46,
- XIV, Final Provisions, Articles 47 – 62.

The Aircraft Protocol contains the following chapters:

- I, Sphere of application and general provisions, Articles I – VIII,
- II, Default remedies, priorities and assignments, Articles IX – XVI,
- III, Registry Provisions relating to international interests in aircraft objects, Articles XVII – XX,
- IV, Jurisdiction, Articles XXI- XXII,
- V, Relationship with other Conventions, Articles XXIII – XXV,
- VI, Final Provisions, Articles XXVI – XXXVII

Articles 8, 9, 10, 13, 29 and 30 of the Convention and Articles IX, X, XI and XXX of the Aircraft Protocol are attached in Supplement B.

2.3 Definitions

When reading this paper, when the terms and their stated meaning shall be as described below.

International Interest, means an interest to which the Convention applies. That is, as described in the chapter “Sphere of application”, an interest held by a creditor under a security, leasing or conditional sale agreement, over a uniquely identifiable object, specified by the Aircraft Protocol. The debtor has to be situated in a Contracting State and the agreement governing the interest has to fulfil the formal requirements of the Convention.

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.⁵

Creditor, means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement.⁶

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.⁷

Contracting State, means a state which has acceded to, ratified, approved or accepted the Convention and the Aircraft Protocol.

2.4 The two instruments

When reading the Convention and its Protocols, one can be confused over the double-regulation, the various alternatives and many provisions on declarations they contain. The thought from the beginning was to make one single instrument. This idea was however abandoned so the individual markets could be met more efficiently and not having separate, stand-alone conventions for each class of equipment.⁸ It is important to understand how the Convention and its Protocols interact with each other. It is not correct approaching the Protocol as a body of rules only complementing the Convention, but rather one modifying it, trying to reach the solution of highest benefit. The Convention is a complete collection of rules. It would, if it had not been made dependent on the Protocols, be sufficient to use independently. The Protocols have only the function to improve these rules slightly to better fit the purposes of the equipment they regulate. It generally applies that if a matter is not regulated by the Protocol, the wording of the

⁵ Art.1(mm), CTC.

⁶ Art 1(i), CTC.

⁷ Art 1(j), CTC.

⁸ Official commentary, p. 16.

Convention prevails and, if a matter is regulated by both instruments, or only by the Protocol, the wording of the Protocol shall prevail. In most cases, however, the Contracting State can choose if it shall apply the wording of the Convention or the one of the Protocol, or neither. The Convention and its Protocols depend on, and cannot exist without each other. This is, because one of the conditions for the Convention to apply is that the interest is in an object specified by one of its protocols⁹ and the Protocols themselves are not complete regulations. Illustrative for this approach is that according to Article II AP shall the Convention and the Aircraft Protocol together be known as “the Convention on International Interests in Mobile Equipment as applied to aircraft objects”. Hence, a contracting state cannot accede to only the Convention or only one of the Protocols, but can, naturally, choose which of the Protocols it wants to accede to in combination with the Convention.

2.5 Sphere of application

The following conditions have to be satisfied in order for the Convention to apply:

- 1) The parties must have entered a security agreement, a title reservation (a conditional sale) agreement, a leasing agreement or an outright sale¹⁰.

A security agreement by definition means an agreement by which the charger grants or agrees to grant to chargee an interest (including an ownership interest) in or over an object to secure the performance of any existing or future obligation of the charger or a third person.

A 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.

A 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. An agreement at the same time cannot be a security agreement and a title reservation or a leasing agreement, since the effects of these are different regarding for example remedies in case of default.

An outright sale means when ownership of an object is being transferred pursuant to a contract of sale¹¹ and the interest is thereby transferred according to the terms of the contract¹².

⁹ Art 2(2) CTC, II, AP.

¹⁰ Art V, AP, outright sales are not under the scope of the convention but has been added by the Aircraft Protocol.

- 2) The equipment subject to the agreement must be, as defined by the Aircraft Protocol:
- a. an airframe that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport at least 8 persons including crew or goods in excess of 2750 kilograms,
 - b. an aircraft engine, powered by jet propulsion or turbine or piston technology, and, in the case of jet propulsion engines, have at least 1750 lb of thrust or its equivalent, and in the case of turbine or piston powered engines, have at least 550 take off shaft horsepower or its equivalent, or,
 - c. a helicopter 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 at least five persons including crew or goods in excess of 450 kilograms.

Airframes, aircraft engines and helicopters of the size above for use in military, customs or police services do not fall under the scope of the convention.¹³

- 3) The equipment must be uniquely identifiable. Necessary and sufficient to identify an aircraft object for the purposes of the Convention and Aircraft Protocol is a description which contains the aircraft object's manufacturer's serial number, the name of the manufacturer and the model designation.¹⁴
- 4) The agreement must be constituted according to the formalities prescribed by the Convention. The formal requirements, as set out in Article 7, CTC are: that the agreement
- has to be in writing,
 - relates to an object of which the charger, conditional seller or lessor has power to dispose,
 - enables the object to be identified in conformity with the Protocol and,
 - 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.

¹¹ Art ,1 CTC.

¹² ArtV, AP.

¹³ Art I, AP.

¹⁴ Art VII, AP.

- 5) Debtor and Creditor have to be situated in different states, whereas the debtor has to be situated in a Contracting State, at the time of conclusion of the agreement creating or providing for the International Interest. This condition is called the **connecting factor**. Article 4, CTC provides for a number of ways in which the test of situation of the Debtor in a Contracting State can be satisfied. So the Debtor is situated in any Contracting State
- a. under which law 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.

2.6 Interpretation and applicable law

2.6.1 Underlying principles

The Official Commentary to the Convention¹⁵ states five underlying principles, which governed the drafting of the Convention and shall be considered when reading and applying it:

- **Practicality** in reflecting the salient factors characteristic of asset based financing and leasing transactions;
- **Party autonomy** in contractual relationships, reflecting the fact that parties to a high-value cross border transaction will be knowledgeable and experienced in such transactions and expertly represented, so that in general their agreements should be respected and enforced.
- **Predictability** in the application of the Convention, mentioned in the interpretation provisions in Article 5(1) CTC, replacing the normal reference to good faith, and is reflected in the concise and clear priority rules, which give pre-eminence to certainty and simplicity and a rule-based rather than standard-based approach.
- **Transparency** thorough rules which provide for registration of an international interest in order to give notice of an International Interests to third parties and which subordinates unregistered interests to registered ones and to the right of purchasers.
- **Sensitivity** to national legal cultures in allowing a Contracting State to weigh economic benefits against established rules of national law to which it attaches importance, and to make declarations (a) to exclude wholly or in part, select provisions of the Convention it

¹⁵ Official commentary p. 18.

considers incompatible with such principles or (b) to opt into select provisions which it considers will reinforce those principles.

2.6.2 Interpretation

When interpreting the text of the Convention and the Aircraft Protocol, this shall be made in the light of the underlying principles stated above which the Convention is based on. These include predictability, party autonomy, the protection and ready enforceability of security and title retention and lessor interest of equipment. Art 5(1), CTC is an instruction to the national courts to avoid national concepts in interpreting the texts¹⁶, to achieve uniformity and predictability when interpreting the Convention. The principle of autonomous interpretation shall be applied both to the definitions and to the substantive provisions.¹⁷ On the other hand, there are provisions where the text expressly provides some matters to be determined by the applicable law. Article 5(2), CTC states that in the case where matters are not expressly settled in the texts they are to be settled in conformity with the general principles, which they are based on. Hence, the main principle is that the question shall be settled by the natural and ordinary meaning of the Convention's provisions themselves. In the event this would lead to manifestly obscure and unreasonable results¹⁸, or if the question is not expressly settled by the Convention, the gap filling shall be made in light of the underlying principles.

2.6.3 The applicable law

The secondary source for gap filling shall be the applicable law. The applicable law, whenever this is referred to in the texts, shall be the domestic rules of the law applicable by virtue of the rules of private international law of the jurisdiction.¹⁹ This rule shall avoid renvoi. The law pointed out as applicable law does not have to be the law of a Contracting State.²⁰ According to this, if the parties want to choose the applicable law, this must be made in accordance with the private international law of the forum.²¹ The parties are not entitled to “directly” choose the applicable law if the Contracting State whose law is governing the contract has not made a declaration to Article VIII AP which allows this (Member states of the European Union can, however, not make this declaration, see 6.3).

The last paragraph, Article 5(4) CTC, regulates the case when a state is divided in several territorial units, each one with its own rules concerning

¹⁶ Official commentary p. 173.

¹⁷ Official commentary p.19.

¹⁸ Vienna Convention Art. 32.

¹⁹ Art. 5(3), CTC.

²⁰ Official commentary p. 173

²¹ Note, the parties cannot choose the forum for relief pending final determination and insolvency proceedings, see 5 and 5.1.

the matter to be decided. This article applies to all States having two or more law districts and is not confined to federal states. In these cases, the law of the state shall decide, which is the territorial unit whose rules shall govern, and in the case that law provides no solution, the law of the territorial unit to which the case has closest connection.

3 The International Registry and effects of registration

3.1 The International Registry

The Registrar, governed by The Supervisory Authority -the counsel of ICAO, runs the International Registry²² for aircraft objects situated in Dublin.

3.1.1 Purpose of the International Registry

The Registry is operated and administrated by the Registrar on a twenty-four hour basis, and is open to the public to search. The purpose of registration is to give notice of the existence of the registered interest and enables the creditor to preserve its priority and the effectiveness of the interest in insolvency proceedings against the debtor. The status the registration gives to an international interest is important but one must be aware that the registration does not create an international interest, nor is it a proof of the existence of such an interest. Hence, an international interest that has not been validly created is not governed by the Convention even if registered, nor does a current registration ensure the researcher that the interest has not extinguished.²³

The Registry is an asset-based system. Hence, it is based on registration against uniquely identifiable objects not against the name of the debtor.

The registry system can accommodate registrations of:

- international and prospective international interests;
- registrable, non-consensual rights, as declared by Contracting States in accordance with Art. 40, CTC;
- assignments and prospective assignments;
- subordinations;
- the acquisition of international interests by legal or contractual subrogation under the applicable law;
- notices of national interests;²⁴
- outright sales as provided in the Aircraft Protocol²⁵

²² www.internationalregistry.aero.

²³ Official commentary p. 49, 48.

²⁴ Art. 16, CTC.

²⁵ Art. III, AP.

3.1.2 Effect of a registration against third parties

3.1.2.1 Effects of competing interests

Article 29 of the CTC governs the priority rules. The principal rule is that a registered interest has priority over an unregistered interest and over an interest registered subsequent to the first registered interest. The basic principle is that the parties shall not be affected by anything that is not on the register.²⁶ To avoid factual disputes whether a holder of an interest took the interest with actual knowledge of prior, unregistered interest, this is of no importance for the priority.

3.1.2.1.1 A transferred interest

An assignment or a sub-charge retains its priority even if the assignment or sub-charge is not registered; the transferee automatically takes the place of the transferor. However, in case the holder of an interest makes a second assignment or sub-charge and this is being registered, it will obtain priority over the first unregistered assignment or sub-charge.²⁷

Illustration

C1 grants a loan to B with an aircraft engine as security and registers its interest in the international registry. 6 months later C2 registers an interest in the same aircraft engine, for a loan C2 has given B. C1 assigns its interest to C3, the assignment is not registered, but C3 obtains the priority over C2.

Assume that C1 in addition assigns its interest also to C4, who immediately registers it. In this case C4 has priority over C3.

3.1.2.1.2 Outright sales

Since the Aircraft Protocol Art.III extends Art. 16 (1) CTC to cover outright sales, the special rule in Art 29 (3) CTC is disapplied. Modification of the priority rules are set out in Art.XIV AP. The provision is designed to give the outright buyer of an aircraft object the same priority on registration as the holder of an international interest enjoys under Art 29 of the Convention.²⁸ Hence, a buyer under a registered sale acquires the object free from interests registered subsequently to the sale and from prior unregistered interests whether the buyer had knowledge of them or not, but with subject to prior registered interests.²⁹

²⁶ Official commentary p. 67

²⁷ Official commentary p. 65

²⁸ Official commentary p.12.

²⁹ Art. XIV (1), (2), AP.

3.1.2.2 Effects of insolvency

An international interest is in principle protected in insolvency proceedings against the debtor if registered in the international registry prior to the commencement³⁰ of the insolvency proceedings.³¹ It is of no importance if the international security if not registered would be void because of incompliance with local perfection requirements. In that case, where the applicable law provides effectiveness to international interests not registered in conformity with the Convention, this is not impaired by the insolvency rules of the Convention³². Hereby, article 30(1) CTC provides a rule of validation, not of invalidation.³³ Such an international interest will however always be subordinated a registered international interest, which can only be declared void if the transaction governing it is related to a preference or a transfer in fraud under the applicable law.³⁴

3.1.2.2.1 The law of the insolvency jurisdiction

Condition for the effectiveness of the registered international interest is that the insolvency jurisdiction is a member of the Convention. The law of the insolvency jurisdiction governs at which time the insolvency proceedings are deemed to commence.

As seen above, the insolvency rule of the Convention does not disturb an interest created under the applicable law (the law under which the interest is created), neither its status in the insolvency. This, however, does not impede the insolvency jurisdiction from applying its own insolvency law, declaring these kinds of unregistered interests void or liable and in this situation, any grounds of avoidance may be applied (not merely avoidance as a preference or a transaction in fraud of creditors). In other words: if the insolvency jurisdiction is a party to the Convention, international interests registered in accordance with the Convention enjoy priority in insolvency proceedings. International interests perfected under national law are to be treated by the insolvency jurisdiction according to its own insolvency law and the applicable law is the law set out by the insolvency jurisdictions competition rules.

Illustration:

In January C1 advances 3 million euro to D on the security for an airframe and registers its security interest as an international interest. In September C2, an unsecured creditor of D for a loan of 1 million euro, is concerned that D may be on verge of insolvency, takes a charge on another aircraft engine also situated in Ruritania to secure the loan and registers its

³⁰ The time when the insolvency proceedings commence under the applicable law (Art. 1(d)).

³¹ Art. 30 (1), CTC.

³² Art. 30(2), CTC.

³³ Official commentary p.231.

³⁴ Art. 30(3)(a), CTC.

international interest. In October, by which D has declared a cessation of payments, C3 takes an international interest in an aircraft engine to secure a loan of 2 million euro but fails to register this as an international interest. All the aircraft objects were situated in Ruritania at the time the various interests in them were granted. C1 did not register its charge in the Ruritanian register of charges and under Ruritanian law this invalidates the charge in the event debtor's insolvent liquidation. The other two international interests were registered in the requisite Ruritanian register and are considered duly perfected under Ruritanian law.

*In November a court in Urbania, which has ratified the Convention and Aircraft protocol but has not made an declaration under Art XI of the Aircraft Protocol the (see 3.1.2.2.2) makes a winding-up order against D on the ground of insolvency and appoints an insolvency administrator. Under Urbanian law a transfer made by a debtor after cessation of payment to its creditor is of no effect and a security interest given for past value within a period of six months will be set aside as a preference on the application of the insolvency administrator. The Urbanian insolvency administrator applies to the insolvency court for an order declaring (a) that the interest in favour of C1 is of no effect because it is invalid under Ruritanian law as the *lex situs*, (b) the international interest in favour of C2 should be set aside as a preference, and (c) the interest in favour of C3 is ineffective because it was not registered in the International registry and also offends against a rule of Urbanian law which invalidates transfers made after cessation of payments by the debtor.*

*Article 30(1) precludes the insolvency court from treating the registered international interest in favour of C1 as ineffective in the insolvency even if it is void under Ruritanian law. The interest in favour of C2 may be set aside as a preference by virtue of Art. 30(3)(a). The international interest of C3, not being registered in the International Registry, falls outside the protection of the given by Art. 30(1) but is valid under Ruritanian law as the *lex situs* and must therefore be treated by the Urbanian insolvency court as duly perfected. However, it is subject to the avoidance provisions of Urbanian insolvency law relating to transfers after cessation of payments even though this ground of avoidance is not one specified in Art. 30(3)(a).³⁵*

3.1.2.2.2 The modification of the Conventions insolvency rules in Art XI of the Aircraft Protocol

Article XI AP (attached in Supplement B) provides special rules designed to strengthen the creditor's position vis-à-vis the insolvency administrator³⁶ or the debtor in case of an insolvency-related event.³⁷ The state ratifying the Convention and Aircraft Protocol can choose to make an declaration according Article XXX(3) AP related to Art XI AP which offers two versions of the article, alternative A and alternative B where Alternative A is a "hard", rule-based version and alternative B a "soft", discretion-based

³⁵ Example taken from the Official Commentary, p. 233.

³⁶ For definition see Art 1(k), CTC.

³⁷ For definition see Art I(2)(m), AP.

version.³⁸ By doing this declaration, the Contracting State gives the holder of an International Interest factual possibilities to secure its rights towards debtors and insolvency administrators within the own territory. To explain what is meant with “hard” versus “soft” law and the differences between them, a closer look will be taken at the two alternatives in Article XI AP.

When Alternative A applies in a Contracting State, which is the primary insolvency forum, the insolvency administrator or the debtor, whoever applies, shall give possession over the aircraft equipment no later than the earlier of the end of a waiting period. How long the waiting period shall be is to be specified by the Contracting State when it makes its declaration to Article XI AP. Until the possession over the object is transferred to the creditor, the insolvency administrator or debtor is obliged to preserve the object and maintain its value and the creditor shall be entitled to apply for any form of interim relief available under the applicable law. Also shall the registration and administrative authorities, when a creditor orders a de-registration or a physical transfer of the object according to Article IX AP (Modification on default remedies), make these remedies available no later than five working days after the date the creditor gives the authorities notice that it is entitled to procure those remedies in accordance with the Convention. The authorities are obliged to expeditiously co-operate with and assist the creditor in the exercise of these remedies. The only way the debtor or insolvency administrator can avoid that the creditor exercises the remedies in the preceding Article, is to cure all defaults (other than a default created by the opening of the insolvency proceedings) and to agree to fulfil all future obligations under the agreement. For this purpose, the cure has to be undertaken before the end of the waiting period.

This is to be compared to when Alternative B is applied in a Contracting State being the prior jurisdiction of the insolvency proceedings. In this case, upon the occurrence of an insolvency-related event, the debtor or insolvency administrator shall give notice, whether it will cure all the defaults or give the creditor the opportunity to take possession of the object. Such a notice shall be given within a period of time stated in the declaration of the Contracting State. To be able to take possession over an object it must provide evidence of its claims and proof that its International Interest has been registered. If the applicable law permits the court to require the taking of additional steps or the provision of additional guarantees from the creditor, this may be requested also from a holder of an International Interest, if it wants to exercise remedies against the debtor or insolvency administrator.

Since the European Union did not make a declaration to Article XXX(3) AP when assigning the protocol, the possibility to make a declaration to Article XI is not open for the European member states. Other states can choose to adopt one of the versions in their entirety, or not at all. Art XI AP will then apply, when a Contracting State that is the primary insolvency jurisdiction -

³⁸ Official commentary, p. 131.

the state where the centre of the debtor's main interests are situated, which is deemed to be the place of the debtor's statutory seat or, if none, the place where the debtor is incorporated or formed, unless proved otherwise³⁹. The parties may exclude the application of Art XI AP by agreement in writing⁴⁰, but only in its entirety.

3.2 Non-consensual rights having priority without registration and registrable non-consensual rights or interests

A Contracting State may by declaration decide that some kinds of interest shall obtain priority over the interests covered by the Convention e.g. repairers for repairs to objects in their possession, unpaid wages due from insolvent employers, unpaid air navigation charges, a lien for unpaid taxes or judgements.⁴¹ The condition is that the non-consensual right or interest created by the law of the Contracting State, under this law of has priority over an interest equivalent to the holder of an international interest. A declaration according to Article 39 CTC has the result that the non-consensual interest automatically obtains priority, whilst a non-consensual interest subject to a declaration pursuant to Article 40 CTC has to be registered in the international registry to uphold the same status. The Contracting State who chooses to make these declarations has to list which kinds of non-consensual interests that can be registered according to Article 40 CTC. For making a declaration under Article 39 CTC, a listing of interests covered by the declaration is not necessary, the state simply can declare that every non-consensual interest having priority over secured creditors, under its own law, shall obtain this priority towards the international interest. The state can make these kinds of declarations at any time, however, a declaration will only be effective towards international interests registered subsequent to the deposition of the declaration.

³⁹ Art I(2)(n), AP.

⁴⁰ Art IV(3), AP.

⁴¹ Official commentary p. 258.

4 Remedies in case of default

The remedies in case of default are set out in chapter III of the Convention with two additional articles, Article IX and X, in the Aircraft Protocol. For the purpose of the default remedies, it is not necessary for the international interest to be registered in the International Registry, since registration is required only to give notice of the international interest to third parties and to protect the priority of the international interest.⁴² The rules governing the remedies of a chargee are more specific than the rules governing the remedies of a conditional seller or a lessor. Naturally, as the conditional seller or the lessor is the owner of the object, and may deal with the object as it pleases, once the agreement has come to an end.⁴³ Note, however, that a title reservation agreement or a leasing agreement may be recharacterised by the applicable law as a security agreement. Any remedy provided by the Convention is to be exercised in conformity with the procedure prescribed by the law of the State where the remedy is to be exercised.⁴⁴ Where the law of a Contracting State permits a remedy to be exercised without leave of the court it is open to the Contracting State in question to make a declaration under Article 54(2) CTC that the remedy is to be exercised only with leave of the court. In the opposite case, when the law of the Contracting State demands a leave of the court, the State can make a declaration that no leave of the court is necessary. By doing this, the Contracting State overrules its own requirements of a leave of the court in the own law regarding interests governed by the Convention.

The parties are free to agree upon what events constituting a default that gives rise to the rights and remedies under articles 8-10 and 13. If the parties choose not to do so, “default” under the Convention, means an event that substantially deprives the creditor of what it is entitled to expect under the agreement.⁴⁵ Any remedy given by the Convention is to be exercised in a commercially reasonable manner, that is, in conformity with a provision of the agreement except when such a provision is manifestly unreasonable.⁴⁶ This wording shall embody a strong presumption in favour of the reasonableness of a contractual provision as to the mode of exercise of a remedy and is designed to encourage reliance on contract wording, in particular where the wording is customary in international aircraft financing and leasing contracts.⁴⁷

⁴² Official commentary, p. 40.

⁴³ Official commentary, p. 40.

⁴⁴ Art. 14, CTC.

⁴⁵ Art. 14(2). CTC.

⁴⁶ Art IX(3), AP, disapplying Art 8(3), CTC.

⁴⁷ Official commentary p.320.

4.1 Remedies of chargee

The remedies of the chargee are governed by Articles 8 and 9 CTC and Article IX AP (the special rules regarding relief pending final determination are presented below). Concerning Article 8 CTC, the parties may agree at what time the chargee may exercise the remedies. Alternatively, the chargee has the possibility to apply to court authorising or directing any of the remedies. The remedies the chargee may exercise are to:

- take possession or control of any object charged to it,
- sell or grant a lease of any such object⁴⁸, or
- collect or receive any income or profits arising from the management of the object.

If the International Interest is registered and the debtor subsequently has entered in to a conditional sale or leasing agreement the chargee may also exercise these remedies against the conditional buyer and the lessee of the debtor, as they have acquired their rights subject to the senior interest. In case the debtor has entered a leasing contract, the chargee can choose to either repossess the object or take over the lease and collect the rentals (or terminate the lease).

Powers of possession and control also include arranging for custody, repair and insurance.⁴⁹ A chargee proposing to sell or grant a lease of the object shall give reasonable prior notice in writing of this to interested persons⁵⁰, which are the debtor⁵¹ itself, issuers of suretyship and demand guarantees, standby letters of credit or any other form of credit insurance. Additional to this is the very wide group defined as “any other person having right in or over the object” added, which can only demand such prior notice of sale or lease if itself have given notice about their rights to the chargee.⁵² The condition “reasonable prior notice” is satisfied if the creditor gives ten or more working days’ notice or so many days, more than ten, that the parties have agreed upon.⁵³

A sum collected or received by the chargee as result of the exercise of any of the remedies listed above shall be applied towards the discharge of the amount of the secured obligations. If a surplus should occur after the chargee discharged its secured amount, the surplus shall be distributed in order of priority among subsequently ranked interests, which have been registered or have given notice, and the remaining balance is paid back to the chargor. Again, if the chargee exercising the remedy is a holder of an

⁴⁸ Some jurisdictions have mandatory provisions related to lease, these jurisdictions can make a declaration under Article 54(1) CTC to preserve the effectiveness of those provisions.

⁴⁹ Official commentary p.42.

⁵⁰ Art. 1(m), CTC.

⁵¹ Note, if the interest is burdened by non-consensual rights under Articles 39 and 40, CTC.

⁵² Art. 8(4)(b), CTC.

⁵³ Art. IX(4), AP.

interest subject to a prior charge, the senior chargee will have his secured amount discharged prior to the part exercising the remedy. Accordingly, if the senior chargee also becomes entitled to exercise remedies, its enforcement rights prevails and the junior chargee has to give up possession of the object in favour of it.⁵⁴

Article 9 CTC provides the chargee with the possibility to take ownership over the object. This strict measurement can only be exercised in agreement with the chargor and other interested persons or by order of the court. However, the chargor and the interested persons are provided with a number of safeguards before this can be realized. These safe-guards are necessary, if the value of the object exceeds the amount of the debt, because the creditor will not be accountable to the debtor for the excess.⁵⁵ Before issuing such an order, the court has to make sure that the amount of the secured obligations to be satisfied with such vesting is commensurate with the value of the object.⁵⁶ At any time before sale or a making of a vesting order, the debtor has the chance to discharge the security by paying the secured amount in full. This right also exists for an interested person other than the debtor itself, and that person is automatically subrogated to the rights of the chargee.⁵⁷

The fact that the object is subject to prior interests or prioritized interests due to registration, does not preclude a holder of a subordinated interest to exercise the remedy in Article 9, CTC, but its ownership will then be subject to these interests. This also applies for sales under Article 8(1) and (b), CTC, the new owner's interest is free from any interest over which the chargee's interest has priority.

Article 15, CTC provides that, in their relation to each other, any, two or more parties, may waive or vary the provisions in Chapter III, AP by agreement in writing. This does not apply for the mandatory Articles 8(3) to (6), 9(3) and (4), 13(2) and 14, CTC. It is therefore possible for the parties to cumulate the remedies in the Convention and Aircraft Protocol with remedies permitted by national law and remedies agreed by the parties to extent that they are in conformity with the mandatory provisions listed above.⁵⁸

A Contracting State may declare under Article 54(2) CTC that any of the default remedies shall require the leave of court, even if this is not required by the Convention.

A few additional rules are set out in the Aircraft Protocol, that apply to creditors in general, whether it is a creditor under a security, conditional sale or leasing agreement. Two additional default remedies are provided: (a) the

⁵⁴ Official commentary p.44.

⁵⁵ Official commentary p. 45.

⁵⁶ Art. 9(3), CTC.

⁵⁷ Art. 9(4), CTC.

⁵⁸ Official commentary, p. 46.

possibility to procure de-registration of the aircraft from a national register the equipment is registered in, and (b) to procure the export or physical transfer of the object from the territory it is situated. However, the condition for these remedies to be exercised is that the Contracting State where the aircraft is registered or situated, has made a declaration to Article XXX(1) that it shall apply Article XIII, AP.

4.2 Remedies of conditional seller or lessor

The remedies of a conditional seller or lessor set out in Article 10 CTC are much simpler, as the conditional seller and lessor retain full rights in the equipment. The conditional seller or lessor can terminate the contract and/or take possession or control of the object or apply to a court to authorise or direct any of these acts. The additional remedies set out in the Aircraft Protocol apply to all debtors, hence procurement of de-registration and export and physical transfer of the aircraft from the territory in which it is situated are free to be exercised by the conditional sellers and lessor as well. It is important to note the possibility for the applicable law to recharacterise security agreements.⁵⁹ In the United States, Canada and New Zealand conditional sale agreements and certain types of financial leasing agreements are characterised as security agreements⁶⁰ and the court in such a jurisdiction will apply the rules set out in Article 8 and 9 CTC on them.

4.3 Relief pending final determination

The creditor adducing evidence of default has the right to obtain speedy relief pending final determination of its claim, to the extent that the debtor has at any time so agreed. The term “interim relief” is deliberately not used by the Convention to not confuse it with municipal terms. The creditor may request:

- preservation of the object or its value,
- possession, control or custody of the object,
- immobilisation of the object,
- lease or other management of the object and the income therefrom.⁶¹

Before making the order, the court may require notice of the request to be given to interested persons⁶². The court may also impose such terms as it considers necessary to protect interested persons. This may be done in a case where the creditor fails to perform any of its obligations to the debtor under the Convention or the Aircraft Protocol. Situations where this can

⁵⁹ See chapter 6.3.

⁶⁰ Official commentary, p. 46.

⁶¹ Art. 13(1), CTC.

⁶² Art. (1)(m), CTC.

happen are if the creditor fails to exercise in a commercially reasonable manner or, if the creditor, wholly or in part, fails to assert its claim on the final determination of that claim⁶³. As one example, the court could require an undertaking from the creditor to compensate the debtor for any loss suffered if the claim is ultimately unsuccessful. Except in these cases, the court has no discretion to refuse the order for which the creditor has applied.⁶⁴

A Contracting State may by a declaration made under Article 55 CTC exclude Article 13 CTC, wholly or in part. If paragraph (1) applies however, the safeguards in paragraph (2) are mandatory. Even if the article applies, the creditor can choose to seek interim relief under the applicable law instead. In that event, the safeguards in Article 13(2) CTC do not apply and the protection of debtor and interested parties will depend on the applicable law. This puts the creditor in an advantageous position, being able to pick the rules of the Convention or the applicable law, whatever gives it the strongest remedies vs. the protection of the other party.

The Aircraft Protocol sets out a few additional rules regarding relief pending final determination, if the Contracting State chooses to make a declaration under Article XXX(2) AP applying Article X AP, wholly or in part. In this case, the state has to declare how many working days “speedy” in the context of retaining relief means in that Contracting State. A fifth request for the creditor is added: that if the creditor and debtor specifically agree upon it, the creditor can request sale of the object and application of proceeds therefrom. In this event, the ownership passes free from interests subsequent to the interest of the creditor (see chapter 2.4.3 and Article 29 CTC).

⁶³ Art. 13(2), CTC.

⁶⁴ Official commentary, p. 47.

5 Jurisdiction – the forum State

The main principle is that the choice of forum is to be a Contracting State selected by the parties.⁶⁵ This provision covers any claim under the Convention except claims requesting relief pending final determination and claims against the Registrar of the International Registry. The choice of forum is to be made by the parties to a “transaction”. The term is not defined in the Convention but covers not only an agreement treating or providing for an international interest but any other contract falling within the scope of the Convention, including a subordination agreement, an assignment and a contractual subordination.⁶⁶ The chosen forum does not have to have connection to either the parties or the transaction. However, should the parties choose a non-contracting state as jurisdiction, naturally, the effectiveness of the jurisdiction clause has to be determined by the *lex fori*. The jurisdiction shall be exclusive if the parties do not choose to make it non-exclusive by agreement.⁶⁷ The Convention does not make a provision for the case when the parties have not agreed upon the jurisdiction if the claim is not a claim under Article 13 CTC or against the Registrar. In such a case, the jurisdiction will be determined by the *lex fori* (where the legal action is brought). If the *lex fori* is a court of a non-Contracting State, it is free even for this court to make orders under the Convention in the case that the rules under its conflict of laws points out the law of a Contracting State as the applicable law.⁶⁸

The jurisdictional aspects of insolvency proceedings are left out by the Convention and are to be decided by the *lex concursus*.⁶⁹

5.1 Forum concerning relief pending final determination.

The jurisdiction regarding relief pending final determination, set out in Article 43 CTC, is dependent on whether the relief in question is a relief of an *in rem* (relating to an object) or *in personam* (relating to a person) nature. If the relief sought by the creditor is one mentioned in Article 13(a)(b)(c) CTC or a relief under the applicable law relating to the object, the jurisdiction is the one chosen by the parties and the courts of a Contracting State where the object is situated. Again, if the relief sought is a relief under Article 13(d) CTC or a relief under the applicable law relating to a person, the jurisdiction is the one chosen by the parties and the courts of a Contracting State where the debtor is situated. The jurisdiction of the courts

⁶⁵ Art. 42, CTC.

⁶⁶ Official commentary, p. 262.

⁶⁷ Art. 42(1), CTC.

⁶⁸ Official commentary, p.263.

⁶⁹ Art. 45, CTC.

where the object or debtor is situated is concurrent to the jurisdiction chosen to the parties and is not possible for the parties to avoid.⁷⁰The Contracting State may make a declaration under Article X, AP to specify “speedy” to a number of working days. The Aircraft Protocol also provides a possibility to extend the jurisdiction regarding relief relating to an object further in its Article XXI, AP giving jurisdiction also to the courts of that Contracting state, which is the state of registry of the object. It is not necessary that the court from which relief is sought under Article 13, CTC shall be the tribunal making the final determination of the claim.

At its accession, the European Union chose to make a declaration under Article 55, CTC and under Article XXX(5), AP regarding relief pending final determination. Its member states will hereby apply the Articles 13 and 43 of the Convention on jurisdiction for interim relief only in accordance with Article 31 of Brussels I (as interpreted by the Court of Justice of the European Communities in the context of Article 24 of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters). An extension of the jurisdiction rule regarding relief pending final determination provided by Article XXI of the Aircraft Protocol is disappplied by the declaration under XXX(5), AP instead the provisions under Brussels I shall apply on the matter for the member states.⁷¹ However, Article 31 of Brussels states that application for provisional and protective measurements may be made to a court of a member state for measures available under the law of that state, even if a another member state has jurisdiction over the substance of the matter. Regarding to this, the declaration made by the European Union hardly can be seen as restricting the provision. The European Union chose not to make a declaration pursuant to Article XXX(2), AP which means that also the possibility to define “speedy” is closed for its member states (see 6.2).

5.2 Forum concerning orders against the registrar

The rule regarding the Registrar is quite simple: the courts of the place where the Registrar has its centre of administration has exclusive jurisdiction to award damages or make orders against the Registrar.⁷² This includes awards for compensatory damages for errors and system malfunction⁷³ as well as orders to discharge an international interest.⁷⁴

⁷⁰ Official commentary, p. 87, 88.

⁷¹ Declaration made by the EU on the AP.

⁷² Art. 44, CTC.

⁷³ Art. 28, CTC.

⁷⁴ Art. 44(2)(3), CTC.

6 The current status of the Convention and its Protocol

The Aircraft Protocol was adopted together with Convention the 16th of November 2001 in Cape Town and needed eight depositions of instruments of ratification, acceptance, approval or accession to enter into force⁷⁵, which it did on the 1st of March 2006. At this time, the Convention and the Aircraft Protocol combined has 54 contracting states. These are Afghanistan, Albania, Angola, Bangladesh, Belarus, Brazil, Burundi, Cameroon, Canada, Cape Verde, Chile, China, Colombia, Congo, Cuba, Ethiopia, The European Union, France, Germany, Ghana, India, Indonesia, Ireland, Italy, Jamaica, Jordan, Kazakhstan, Kenya, Latvia, Lesotho, Luxembourg, Malaysia, Malta, Mexico, Mongolia, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Russian Federation, Rwanda, Saudi Arabia, Senegal, Singapore, South Africa, Sudan, Switzerland, Tajikistan, Togo, Tonga, Turkey, Ukraine, United Arab Emirates, United Kingdom, United republic of Tanzania and the United States of America.⁷⁶

6.1 Economic perspectives

The Cape Town Convention and its Protocols are drafted so that legal security and by that primarily economic benefits can be achieved. The instruments can be seen as a response to, the transition in the aviation industry from high levels of government ownership to high level of private ownership and financing and consequence of this has been an increased possibility of default. The economic benefits mainly lie in the possibility of **timely and predictable access** to the valuable asset in the event of **default or insolvency**. Mr. Jeffery Wool⁷⁷, expressed on the seminar “The European Community and the Cape Town Convention” that a Contracting State will not achieve the economic benefits unless it properly implements the Convention and, in particular, makes the declarations that will maximise the economic advantages. Economic studies⁷⁸ shows that the Convention will deliver substantial benefits to airlines, manufacturers, governments, financiers and customers, if the “right” declarations are made.

The right declarations hereby means: a) the declaration under Article XI, AP (remedies on insolvency), alternative A, b) the declaration under Article XIII, AP (De-registration and export request authorisation), c) the declaration under Article VIII, AP (choice of law) and d) either the declaration under Article 54(2), CTC (declarations regarding remedies) that no leave of court is required or the declaration under article X, AP (“Modifications on provisions regarding relief pending final determination”)

⁷⁵ Art. XXVVIII(1), AP.

⁷⁶ Current status of the Aircraft Protocol, Unidroit.

⁷⁷ Secretary and general counsel of the AWG.

⁷⁸ Made by IATA, AWG and ICAO and by them consulted economics.

specifying up to 10 calendar days for conserving remedies and up to 30 calendar days for disposition remedies. As we will see under 6.2 are, however, the European Union member states not able to make declarations under Articles VIII, X and XI.

6.2 The accession by the European Union with shared competence

The European Union acceded to the Convention 1st August 2009 in accordance to the Article 48 of the Convention, this binds its member states as far as its competence reached, which means the accession covers those matters in respect of which legal competence has been transferred to the European Union from its member states.⁷⁹ Those legal areas would be the Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I), Council Regulation (EC) No. 1346/2000 on insolvency proceedings and Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I). However, to make the Convention and its Protocols effective, every member state individually has to accede to it. Naturally, hence the Convention and its Protocols provisions regarding applicable law, recognition and enforcement of judgements and insolvency proceedings are useless without the material provisions.

More interesting than which declarations the European Union made are the ones it did not make. Hence, the accession of the European Union has some interesting consequences for its member states. The European Union did not make declaration pursuant to Article XXX(1)(2) or (3) of the Aircraft Protocol, and in the light of this, the European member states are not able to make declarations under Article VIII (choice of law), X (relief pending final determination) and XI (remedies on insolvency). Regarding Article VIII, there is no way to get around this problem. Regarding Articles X and XI, however, the proposed solution for this problem is that member states can amend their national law to reflect the underlying principles of the articles, which would result in the same substantive outcomes under national law as if a declaration had been made.⁸⁰

UNIDROIT stresses, as its function as a depositary, it is able to post any information that is posted to it, and has no role in determining whether a contracting state has competence to make a certain declaration or not. For example Ireland, wanting to become the seat of the international registry, which was not possible without having acceded to the Convention, made an accession prior to the one of the European union⁸¹ even though it did not have the competence. It is unclear to what extent this shall be interpreted,

⁷⁹ Accession by the European Union.

⁸⁰ Seminar report – the EU and the CTC.

⁸¹ Status of the Convention and status of the Aircraft Protocol.

but it is clear that the competence of European Union Member States to make declarations under European law is an intra-European Union issue that does not arise for consideration on the international plane.⁸²

6.3 The relationship to national law

The relation to the rules of the Contracting States' national law were of outmost importance creating the Convention, providing the conditions for it to be as successful as possible. Even after a state has acceded, and made the declarations of its choice, there are a number of matters not touched by the Convention or the Aircraft Protocol, and thereby to be settled by the national law.

First, the Convention only provides remedies concerning rights and obligations in private law; thereby impact on national criminal law, tort law and regulatory public law is excluded.

Secondly, securities created by national law are still recognized, they exist, but are subordinated to registered ones.

Thirdly, the fact whether an agreement alleged to create an International Interest is valid or not and from what point in time it is valid is governed by national law. This is important to determine the existence of the interest and if the interest falls within the sphere of the Convention regarding the Connecting factor.

Because of the different ways to treat agreements like leasing and retention of title in different legal-systems it was recognized that it would not be possible to reach an agreement on a uniform Convention characterization. Therefore, this is to be determined by the applicable law. Whether an interest falls within the Convention at all is to be determined by the Convention itself. In the first instance, it is necessary to determine if the interest invoked falls within the Conventions definition of a security interest or the interest of a conditional seller or a lessor under a title retention or leasing agreement. If it does, then it is for the applicable law to decide whether the interest is to be recharacterized for the purpose of subsequent provisions of the Convention.⁸³ So if X is a kind of interest that falls under the scope of the Convention at all is to be determined by applying the rules of the Convention, but whether X will be treated as a security agreement, a conditional sale or a leasing agreement will be determined by how it would be characterized by the applicable law.

⁸² Seminar Report – EU and the CTC.

⁸³ Official commentary, p. 33.

7 Analysis

In the introduction, a few questions were asked. This chapter is an attempt to answer them, as clearly as possible.

Creating an international interest

When entering into an international security agreement under the Cape Town Convention, several aspects have to be considered. Firstly, the parties are to pick a jurisdiction. The interest must be perfected duly to the applicable law, that is, as we now know, the law pointed out by the private international law of the forum state. The parties within European Union Member states and Contracting States who made the declaration according to Article VIII AP, will be able to choose the law that shall govern their contract. In other cases, the parties will have to do so indirectly, by picking the forum with the suitable private international law. The law pointed out in its turn, naturally can allow party autonomy regarding the applicable law. Otherwise, the parties most likely will be limited to the law where the debtor is situated or where the equipment has its national registration.

The applicable law is important; it has the power to declare the interest void if it e.g. has been created in fraud of creditors or if the Connecting factor at the time of the closing was not present. The applicable law can recharacterise an agreement, for example from being an agreement of title reservation to being a security agreement. This will lead to seriously reduced power to undertake measures in the case of, for example, debtor's default. It is important to keep in mind that just by registering an interest in the International Registry, one will not per se create an International Interest or make it valid. What the registration will do, however, is to give notice over, and priority in the Contracting States, of a valid International Interest perfected due to the formal requirements of the Convention and the applicable law.

When entering into an agreement, considerations ought to be made regarding the state in which the debtor is situated and where the equipment is registered. In view of the declarations the Contracting State in question has made, the prospective holder of an interest can estimate how strong its position will be in a possible event of default and from this position negotiate its contract.

How the holder of an International Interest preserves its rights

The answer is registration of the International Interest as well as good knowledge about the default remedies and the possible relief pending final determination. The general principle is easy: a rapid registration is always effective. Failing to do so can make the holder of an International Interest lose its priority in favour of a subsequently undertaken, but earlier registered interest. Alternatively, the creditor's interest will simply not be paid respect to in a foreign insolvency. Even interests gained through

assignment and subordination shall be registered to ensure the holder of them of its rights.

What impact the Convention and Aircraft protocol has on national law

The national law will still be of significant importance in the Contracting States. The two instruments with various alternatives to enter them, are giving them more or less direct effectiveness in the own territory. The more of the “harder” rules a state adopts, the more effective the instruments become. The alternatives to make them “softer” were however necessary in the compromising. However, even if a state disappplies some of the provisions, the interest will still be goverend within the frames of the Convention, and still will some predictability be achieved.

The Contracting State which choose to adopt the harder provisions of the Convention and the Aircrafts Protocol, so to say “the whole package” will therefore gain the full economic benefits from this. The formula advocated by the drafters of the Convention seems quite simple: the stronger possibilities one gives foreign investors to protect their rights, the stronger the prospective debtors in the own territorys’ position in negotioation becomes. Through giving the Convention more impact on the national law the Contracting State becomes a more attractive place to invest in. Lower risks shall lead to cheaper and smother financing. Interesting to see, quite many of the Contracting States have choosen to adopt alternative A of Article XI AP on insolvency proceedings.⁸⁴

Among the more important declarations a Contracting State can make, to protect its own interests, are the ones regarding non-consensual rights and interests. By these declarations, the Contracting State effectively can affect and limit the Convention and Protocol’s impact to a desirable extent. This might contribute to making the states more susceptible to adopt even the hard-law provisions. After analyzing the instruments, one would consider this to be the preferable way to enter the Convention and the Aircraft Protocol: adopting the for the efficiency important provisions of the Aircraft Protocol, XI Alt. A, VIII, XIII and X, and impedeing any unwanted impact these might have through declarations under Articles 39 and 40 CTC on non-consensual interests. This would not only lead to a high level of predictability for the side of the creditor, but also for the Contracting States’ own courts and insolvency administrators.

The accession by the European Union could give rise to a problem for its Member States. The step to change the national law to reflect the underlying principles of the Convention and Protocol for the kind of equipment covered by them might, even though the substantive outcome will be the same as making the declarations, deter the states or at least delay the time for accession. This may be the reason why some of the European Union Member States, such as France and Germany who signed the Aircraft Protocol, still have not deposited their documents of ratification with any

⁸⁴ Status of the Aircraft Protocol

declarations to the depositary. However, the European Union choice was between making the declarations and thereby binding all member states who wanted to enter into them or not to make them, with the consequence that its member states would not be able to declare.

Party autonomy

Except the choice of forum already discussed, the parties are considerably free to regulate the matters between them. They can modify most provisions of the Convention and the Protocol concerning only the parties, so is it possible to disapply some of the remedies in case of default or extra remedies can be added. It is also possible for creditors to reach agreements on other priority rules than those set out by the Convention among each other. Such agreements can be published in the International Registry, but will, naturally, never have any impact for anyone other than the parties to them.

Conclusions

- The Cape Town Convention and the Aircraft Protocol provide the Contracting States with an instrument suitable for making aviation financing more efficient.
- This can however only be achieved through quite a high acceptance rate.
- Even though the Convention's and the Protocol's purpose is to harmonize the international law on security agreements, setting out outright, hard-law provisions, a sort of opt-in, opt out system of declarations has been created to enable the Contracting State to accede in a way that complies with its national regulation on the matters covered by the Convention and the Aircraft Protocol, including insolvency proceedings, remedies in case of default and interim relief.
- The result is a very complex system. To create an effective International Interest requires knowledge of how the Convention and the Aircraft Protocol interacts with the applicable law, private international law and to what extent party autonomy can be used.
- By taking into the account the declarations made by the Contracting State, the prospective parties to an agreement can use this to calculate the risks of entering it, and thereby create the appropriate contract.

Supplement A

THE CAPE TOWN CONVENTION: DECLARATIONS MATRIX

References are to the Convention (“C-Art.”) and Aircraft Equipment Protocol (“P-Art.”).

Explanatory Notes: (1) Opt-out provisions are those provisions that apply *unless* a declaration is made. Opt-in provisions are those provisions that *apply only if* a declaration is made. Whether a provision is opt-in or opt-out is noted under column B. (2) All declarations under the Convention as it relates to aircraft objects are made at or after the time of ratification, acceptance, approval of, or accession to the Aircraft Equipment Protocol. All declarations other than those under Article 60 may be modified or replaced by a subsequent declaration or be withdrawn.

	A. Art. 56 of Convention authorises declarations under Article:	B. Headings	C. Defined by or related to Article
1.	C-Art. 39	Rights having priority without Registration (<u>Opt-in</u>) (non-consensual rights and interests)	C-Art. 1(s)
2.	C-Art. 40	Registrable non-consensual rights or interests (<u>Opt-in</u>)	C-Art. 1(s)
3.	C-Art. 50	Internal transactions (<u>Opt-out</u>)	C-Art. 1(n), (r)
4.	C-Art. 52(1)	Territorial Units (<u>Opt-in</u>)	P-Art. XXIX (same topic; thus must be consistent)
5.	C-Art. 53	Determination of courts (<u>Opt-in</u>)	C-Art. 1(h)
6.	C-Art. 54 (1)	Preventing lease as remedy (<u>Opt-out</u>)	C-Art. 8(1)(b)'
7.	C-Art. 54 (2)	Remedy – Leave of Court (<u>mandatory declaration</u>)	C-Arts 8, 9(1) and 10
8.	C-Art. 55	Declarations regarding relief pending final determination of a claim (<u>Opt-out</u>)	C-Arts 13 and 43 (See also P-Art. X)
9.	C-Art. 60(1)-(3)	Transitional Provisions (<u>Opt-in</u>) (Declaration may not be modified or withdrawn)	C-Art. 1(v)
10.	C-Art. 48(2)	Regional Economic Integration Organisations	P-Art. XXVII (same topic; thus must be consistent)

	A. Article XXXII of the Protocol authorizes:	B. Headings	C. Relates to Article
11.	P-Art. VIII	Contractual Choice of Law (<u>Opt-in</u>)	P-Art. XXX(1)
12.	P-Art. X	Modification of provisions regarding relief pending final determination of a claim (<u>Opt-in</u>)	P-Art. XXX(2); C- Art. 13
13.	P-Art. XI	Remedies on Insolvency (<u>Opt-in</u>)	P-Art. XXX(3);C-Art. 1(l) and P-Arts. I(2)(m),(n)
14.	P-Art. XII	Insolvency Assistance (<u>Opt-in</u>)	P-Art. XXX(1); XI
15.	P-Art. XIII(1)	De-registration and export request authorization (<u>Opt-in</u>)	P-Art. IX(1) and (5)
16.	P-Art. XIX	Designated entry points (<u>Opt-in</u>)	C-Art. 18(5)
17.	P-Art. XXIV (2)	Relationship with the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft (Rome Convention of 1933) (<u>Opt-in</u>)	C-Art. 54(2)
18.	P-Art. XXVII	Regional Economic Integration Organisations	C-Art. 48(2) (same topic; thus must be consistent)
19.	P-Art. XXIX	Territorial Units (<u>Opt-in</u>)	C-Art. 52(1) Same topic; thus must be consistent)
20.	P-Art. XXX(5)	Declarations relating to certain provisions (modification of jurisdiction rules) (<u>Opt-out</u>)	P-Art. XXI

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⁸⁵ Official commentary s. 529

Supplement B

Articles related to priority of interests

Article 29 — Priority of competing interests, CTC

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, CTC

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.

Article XI — Remedies on insolvency, AP

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.

Articles related to remedies in case of debtors default

Article 8 — Remedies of charge, CTC

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, CTC

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 IX — Modification of default remedies provisions, AP

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 deregistration 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 deregistration 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 13 — Relief pending final determination, CTC

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 X — Modification of provisions regarding relief pending final determination, AP

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 subparagraph (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

Articles on declarations

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.

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