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U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

STUDY GROUP FOR THE PREPARATION OF
UNIFORM RULES ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

*REVISED DRAFT ARTICLES OF A FUTURE UNIDROIT CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT*

(as proposed by the Drafting Group at its fourth session, held in Würzburg
from 24 to 26 July 1997)

with

INTRODUCTORY REMARKS

(by the Unidroit Secretariat)

Rome, July 1997

INTRODUCTORY REMARKS

by the Unidroit Secretariat

1. – The Drafting Group of the Unidroit Study Group for the preparation of uniform rules on international interests in mobile equipment held its fourth session at the University of Würzburg from 24 to 26 July 1997. The session was opened at 9 a.m. on the 24th by Mr R.M. Goode, Professor of English Law in the University of Oxford and member of the Unidroit Governing Council, who chaired the session in his capacity of Chairman of the Study Group.

2. – The session was also attended by the following other members of the Study Group:

Mr R.C.C. Cuming	Professor of Law in the University of Saskatchewan
Mr K.F. Kreuzer	Professor of Law in the University of Würzburg
Mr H. Synvet	Professor of Law in the University of Paris II (Panthéon-Assas)

3. – The business of the Drafting Group at the session was to agree upon a complete set of revised draft articles of a future Unidroit Convention on international interests in mobile equipment for submission to the Study Group at its fourth session, to be held in Rome from 3 to 8 November 1997. This revision was designed to reflect the provisional conclusions reached by the Study Group at its third session, held in Rome from 15 to 21 January 1997, and by the Working Group to consider the legal and technical issues raised by the establishment of an international register (**the Registration Working Group**) at its second session, held in Geneva from 26 to 28 May 1997.

4. – The basic working documents of the session were:

(1) Revised draft articles of a future Unidroit Convention on international interests in mobile equipment (prepared by the Chairman of the Study Group in the light of the deliberations of that Group at its third session, held in Rome from 15 to 21 January 1997, and of the proposals by the Drafting Group at its third session, held in Rome on 17 and 20 January 1997) (International Interests / Study Group / Drafting Group / Fourth session / W.P. 1) (**the Chairman's draft**);

(2) Revised draft articles of a future Unidroit Convention on international interests in mobile equipment: Chapters IV and V (as proposed by the Registration Working Group at the conclusion of its second session, held in Geneva from 26 to 28 May 1997 (Study LXXIIc - Doc. 3, Appendix II);

(3) Revised draft articles of a future Unidroit Convention on international interests in mobile equipment (prepared by the Chairman of the Study Group in the light of the deliberations of that Group at its third session, held in Rome from 15 to 21 January 1997, and of the proposals by the Drafting Group at its third session, held in Rome on 17 and 20 January 1997): comments on the application of the revised draft articles to space-based equipment (submitted by Mr Scott H. Siegel) (International Interests / Study Group / Drafting Group / Fourth session / W.P. 2);

(4) Revised draft articles of a future Unidroit Convention on international interests in mobile equipment (prepared by the Chairman of the Study Group in the light of the deliberations

of that Group at its third session, held in Rome from 15 to 21 January 1997, and of the proposals by the Drafting Group at its third session, held in Rome on 17 and 20 January 1997): preliminary comments on the application of the revised draft articles to space property (submitted by the Space Working Group) (International Interests / Study Group / Drafting Group / Fourth session / W.P. 4).

5. – The Drafting Group also had before it, for information purposes only (the texts in question having arrived too late for French-language versions to be prepared), papers from the Department of State of the United States of America and from its representatives on the Study Group (Mr C.W. Mooney, Jr. and Mr T.J. Whalen) expressing concern at the approach evidenced in Article 2(2) of the Chairman's draft and proposing a possible solution designed to permit particular industry sectors to see their special needs catered for in Protocols whilst ensuring the general applicability of the future Convention to all the different categories of equipment encompassed therein, on the one hand, and papers from the Working Group for the preparation of a preliminary draft Protocol on matters specific to aircraft equipment (**the Aircraft Protocol Group**), including a number of suggestions for revision of the Chairman's draft, on the other hand.

6. – The Drafting Group took note with particular interest of the constitution of a Space Working Group set up to comment on the suitability of the revised draft articles for space-based equipment. It noted that, following its first meeting, held in Los Angeles on 1 July 1997, the Space Working Group had submitted a series of preliminary comments for the Drafting Group's consideration. These comments acknowledged the need for the future Convention to recognise the unique attributes of space property, whether in the Convention itself or in a supplementary Protocol thereto. The Space Working Group had drawn attention to the need, first, to address the fact that, while most financing of space equipment to date had involved satellites and transponders, there were other new types of equipment (used in the construction and operation of space stations and the exploration of celestial bodies) that might prove to be financeable in this rapidly developing field and, secondly, to make due allowance for the fact that, unlike earth-based mobile equipment that had an inherent value and could be physically repossessed, the inherent value of equipment in space was often determined by the availability of associated rights, such as licences to use equipment.

7. – The text of the revised draft articles as proposed by the Drafting Group at the conclusion of its Würzburg session is set out at pp. i-xvii *infra*.

Article-by-Article consideration of the Chairman's draft as amended by the registration provisions agreed by the Registration Working Group⁽¹⁾

Re Article 1

8. – There was agreement among members of the Drafting Group with the recommendations formulated by the Registration Working Group in this connection, namely that the Study Group consider favourably the case for the extension of the sphere of application of the future Convention to those intangible interests inextricably connected to a registered agreement⁽²⁾. However, the Drafting Group did not support an extension to cover proceeds for the reasons set out in paragraph 12 *infra*. The Drafting Group endorsed the Registration Working Group's recommendation that, with a view to ensuring the Convention's application to those

⁽¹⁾ Unless otherwise indicated, the numbering employed hereunder in respect of individual Articles refers to their numbering in the revised draft articles proposed by the Drafting Group.

⁽²⁾ Cf. Study LXXIIc - Doc. 3, § 16(ii).

associated rights inextricably connected to space equipment in particular, Article 1(1) should be accordingly modified, albeit in square brackets so as to indicate that this was a matter to be decided upon by the Study Group, although one member of the Drafting Group voiced his concern that States might feel that the Study Group was going too far in proposing such an extension. The Drafting Group further agreed to propose a broad definition of “associated rights”, relating these rights to the definition of a particular category of equipment provided in the relevant Protocol.

9. – The Drafting Group did not however find itself able to accede to the Space Working Group’s proposal that the scope of the international interest be extended so as to permit buyers under title reservation agreements and lessees under leasing agreements to be considered as possible chargors of international interests under Article 1(2). There was concern that such an extension would introduce confusion into the nature and purpose of an international interest, in particular as evidenced by Article 7(b). It was nevertheless recognised that the proposal reflected a matter of great practical importance for space finance. So as to ensure that the desired result might be achieved and that a grant of security rights in a lease, for example, might be covered by the future Convention, it was therefore provisionally agreed that the definition of “object” should be broadened so as to encompass also those rights in an object which the chargor might have under the applicable law. In this connection the Drafting Group also agreed to introduce new definitions of “chargor” and “chargee”.

10. – The Drafting Group agreed to propose a new Article 1(4) indicating that a Protocol might provide for the extension of the application of Chapters V and VI of the future Convention to outright transfers under contracts of sale, as required for aircraft equipment.

Re Article 2

11. – In line with its decision to extend the application of the future Convention to associated rights in particular categories of equipment ⁽³⁾, the Drafting Group agreed to propose a consequential amendment to the chapeau of Article 2(1).

12. – In line with the recommendation of the Space Working Group, the Drafting Group agreed to replace the term “satellites” with “space property”, while recognising however that the definition of “space property” proposed by the Space Working Group was unduly broad, in particular in its proposal to include proceeds; it was recalled that the future Convention was designed to operate in respect of identifiable equipment only and that, whilst it had been found possible to accommodate interests that could be entered on the international register against a specific asset, such as an assignment of contract rights, it would not be possible for its application to extend to proceeds that might be detached from, and therefore no longer be identifiable to a particular asset, for this would extend the scope of the future Convention to receivables financing generally, which was not the objective.

13. – As regards the concerns expressed by the Department of State and its representatives on the Study Group, the Drafting Group entirely accepted the view that limits had to be set on Protocols so as to ensure that these did not weaken the future Convention but rather supplemented it. It had always been its intention to specify such limits when the text of the Convention was reasonably complete. However, the Drafting Group was unanimous in the view that the Protocol approach was essential because of the impossibility of drafting provisions which would allow the Convention to be a free-standing instrument while simultaneously

⁽³⁾ Cf. § 7 *supra*.

accommodating provisions for definitions, registration and the like that would be specific to particular categories of equipment.

14. – In particular, there was agreement that the Protocol was the best place for defining the different categories of asset encompassed by the future Convention for the purposes of its application: it would be necessary to have a clear indication of the specifications of all these categories, indicating, for instance, their capacity, along the lines of the definitions of airframes and aircraft engines provided by the Aviation Working Group⁽⁴⁾. It was a fact that at the present time a number of industries were not yet ready with an agreed definition of their particular asset, for instance, the container industry, and the technique of referring these definitions to the relevant Protocols could be seen as a particularly valuable method of ensuring the applicability of the future Convention to as wide a range of assets as possible.

15. – Furthermore, the experience acquired by the Registration Working Group had shown that it would be extremely difficult to draft registration provisions applicable to all the different types of equipment encompassed by the future Convention and that it would be necessary to have equipment-specific provisions regarding the registration of interests in different categories of asset concerning, for instance, the identification and search criterion or criteria, provisions which logically ought to find their rightful place in the relevant Protocol. There was moreover recognition of the fact that, for the future Convention to be able to work in respect of a particular type of equipment, an International Registry would need to be in place for that category. Article 15(3) indicated that it was the Registration Working Group's considered opinion that it was likely that it would be necessary to set up separate registries for different categories. There was a strong likelihood that these registries would be organised by industry representatives, as was to be seen in the leading role that was being taken by the International Air Transport Association in the creation of a registry for aircraft equipment.

16. – Just as it seemed likely that the efforts of one industry in this direction might provide inspiration for others, so it was probable that the experience acquired in the drafting of one Protocol might provide inspiration for the drafting of others; in this connection, it had already emerged that the Space Working Group expected to derive great assistance from the pioneering work being accomplished by the Aircraft Protocol Group and the Registration Working Group had recommended that consideration be given to the preparation of a model Protocol, which might serve the needs of industries not to date as far advanced as the aviation and space industries.

17. – In addition, it made sense that the question of the relationship between the future Convention and existing international instruments should also be addressed on an equipment-specific basis in the applicable Protocol.

18. – It was agreed that the language contained in the second sentence of Article 2(2) of the Chairman's draft was not particularly well suited to convey what was nevertheless the Drafting Group's firm intention, namely, whilst enabling specific industries to formulate by means of a Protocol those supplementary rules corresponding to their particular needs, to ensure the future Convention's coverage of as broad a range of equipment as possible. It was accordingly agreed to delete the sentence in question and to give the first sentence of that paragraph a positive formulation, the language of Article 2(2) as a whole being placed in square brackets to indicate its provisional nature. The Drafting Group however also emphasised what it saw as the fundamental necessity, for the reasons expounded above, of the preparation of

⁽⁴⁾ Cf. Study LXXII - Doc. 30, Appendix, Part II.

equipment-specific Protocols, at least in the absence of any other workable solution. Moreover, the Protocol approach had several advantages: it would enable the Convention's provisions to be kept general; it would accommodate the specific needs of particular sectors; it would allow those sectors not ready with detailed proposals at the time of the diplomatic Conference to bring these forward later and it would allow for the future addition of further categories of equipment not yet specifically listed.

19. – The Drafting Group also considered the related question of the extent of the limits which should be placed on the power to amend the future Convention in a Protocol. The Drafting Group was unanimous in the view that it should not be possible for a Protocol, by contradicting the Convention, to end up by controlling and in effect divesting the Convention of its substance. Whilst it was legitimate and indeed would seem to be necessary for a Protocol to provide definitions of the different categories of equipment and asset-specific registration provisions, it would not therefore be appropriate for a Protocol to modify the core rules of the future Convention regarding the constitution of an international interest, default remedies and priorities. It was agreed that this was a further reason why it was necessary to delete the second sentence of Article 2(2) of the Chairman's draft and to introduce a new provision making it clear that certain provisions of the Convention were to be mandatory and accordingly not susceptible to modification by a Protocol. Such a provision was included as the new Article 2(3). Given the novelty of this provision, it was deemed appropriate to submit it in square brackets for consideration by the Study Group. While constraints of time precluded the Drafting Group from making an exhaustive examination of the provisions of the revised draft articles to be made mandatory in this sense, some idea of the sense of its feeling in this regard may be gleaned from those provisions of Chapters I-III which it tentatively concluded should not be susceptible to modification by a Protocol, to wit Articles 1, 2, 3, 4 (as regards the definitions in the Appendix), 6, 7, 9(4), 10, 12(1), 13 and 14. ⁽⁵⁾

Re Article 4

20. – In line with its decision to provide for definitions of the different categories of equipment in the relevant Protocol, the Drafting Group agreed to propose that this Article be amended so as to take account of the definitions to be set out in the relevant Protocol.

Re Article 5

21. – The Drafting Group, noting that the scope for freedom of contract provided for under this Article was limited to those provisions of the future Convention concerning the parties' mutual relations, proposed replacing the reference to the Convention by one to Chapter III. Although time did not permit the Drafting Group to make an exhaustive appraisal of those provisions of Chapter III not intended to be subject to the parties' freedom of contract, it did nevertheless provisionally conclude that Articles 8(2), (3), (4), (5) and (6), 9(2) and (3), 12(1) and 13 ought in principle to be mandatory.

Re Article 6

22. – With a view to responding to the Aircraft Protocol Group's proposal to see the reference to the observance of good faith removed from Article 6(1) and, provisionally, relocated to Article 6(2), the Drafting Group agreed to propose alternative versions of this Article to the

⁽⁵⁾ An alternative approach, which the Drafting Group had however not yet had the opportunity to consider, might consist in specifying the types of provision that could not be included in a Protocol.

Study Group, Alternative A reflecting what was agreed at the third session of the Study Group and Alternative B the solution advocated by the Aircraft Protocol Group. By way of explanation of the thinking behind the Aircraft Protocol Group's proposal, it was pointed out that it was anxious to ensure that parties should be able to rely on a court deciding a case, where this was possible, on the basis of the rules of the Convention alone without creating scope for such a court, by virtue of a reference in Article 6(1) to good faith, to feel bound to do something which it might otherwise not have been bound to do.

Re Article 7

23. – The Drafting Group agreed to propose that Article 7(c) be amended so as to take account of the fact that the criterion for the identification of space property, elements of which might not be manufactured at the time the international interest takes effect, might need to be different from that for the identification of other categories of equipment. The effect of this proposed amendment would be to refer the criterion of identification to the relevant Protocol.

Re Chapter III

24. – The Drafting Group agreed to propose an amendment of the French version of the heading of Chapter III, designed to bring it into line with the formulation of default elsewhere in that Chapter.

Re Article 8

25. – The Drafting Group agreed to propose that Article 8(1)(a) be amended to take account of the fact that it was not usually feasible physically to repossess space property. It was agreed to add the words "or control" to reflect the fact that the functional alternative of repossession in the context of space property was to take control of the ground-based telemetry, tracking and control equipment.

26. – It was further agreed to propose that Article 8(3) be brought into line with Article 8(1)(b) by inserting a reference to the possibility for the chargee to grant a lease of the chargor's interest.

27. – In Article 8(6)(d) the Drafting Group agreed to propose a clarification in respect of the other interested persons of whose rights in or over the equipment notice had to be given to the chargee before exercise of that party's remedies under Article 8(1)(b) or the vesting in that party of the equipment under Article 9(1). The effect of this amendment would be to make it clear that the class of persons in question was limited to persons with rights in or over the equipment subordinate to the chargee's interest therein.

Re Article 9

28. – It was agreed to propose, in line with a recommendation formulated by the Space Working Group, that both Article 9(1) and (4) be amended to take account of the fact that the chargor might not own the equipment but simply be a lessee or the holder of other limited rights in or over it, signifying that in such circumstances it would not be the chargor's ownership but rather its more limited rights that would vest in the chargee.

29. – The Drafting Group further agreed that the right of redemption exercisable by the chargor under Article 9(3) should also be exercisable by any interested person as defined in

Article 8(6). The Drafting Group further noted the link between Article 8(3) and Article 9(3), the latter giving substance to the former, for example in the case of a surety.

Re Article 10

30. – In line with the amendment proposed to Article 8(1)(a), the Drafting Group agreed to propose amending Article 10 in such a way as to provide for the seller or lessor taking control of the equipment in those cases where physical repossession was not feasible.

31. – The Drafting Group further agreed to propose the deletion of the word “or” after the word “and” in the previous version of the revised draft articles.

Re Article 12

32. – The Drafting Group agreed to propose amending Article 12(2) in two respects. First, it proposed replacing the words “without reference to the court” by the words “without leave of the court”. Secondly, it proposed, by adding a reference to the relevant Protocol, that it should be possible for a State to make a declaration requiring an obligee to make an application to the court before being able to exercise his remedies under Articles 8 to 10 either in the Convention or in the relevant Protocol.

33. – It was agreed to propose amending Article 12(3) in two respects. First, there was agreement that this provision was otiose as regards the reference to the chargee’s need to make an application to the court before selling the equipment, this already being covered by Article 12(2). Secondly, it was recalled that the purpose of this provision was to deal with the fact that one of the remedies granted under Article 8(1)(b), namely the granting of a lease, was not known at all in certain jurisdictions, for example France, thus making it necessary to allow a State to specify that a chargee would not be able to exercise such a remedy in respect of equipment situated within or controlled from its territory.

34. – As regards Article 12(4), the Drafting Group agreed to propose two amendments, the first designed to make this provision generally applicable to references to a “court” in the future Convention and the second to enable a State to make such a declaration either in the Convention or in the relevant Protocol.

35. – The Drafting Group considered a possible formulation of a provision regarding limitation of actions brought under the future Convention. It agreed however that the problems involved in the formulation of such a provision were so complex that it was better in the circumstances simply to alert the Study Group as to the need to consider this matter rather than to propose a specific provision at this time.

Re Article 14

36. – The Drafting Group agreed to propose a new formulation of Article 14(1) and (2) in which the contents of the two paragraphs were combined in one. In addition to considerable redrafting, designed to enhance the clarity of this provision, the Drafting Group introduced a reference to “control” in Article 14(1)(b), to mirror the amendments made to Articles 8(1)(a) and 10, and replaced the word “or” in Article 14(1)(a) by the word “and” in the English text (it was agreed that the term “conservation” in the French text encompassed the notion of preservation of both the object and its value). It was however noted that the French text of sub-paragraphs (a) to (e) of Article 14(1) was unsatisfactory and would require further refining.

37. – It was agreed to propose a new Article 14(3) designed to indicate that the forms of speedy judicial relief envisaged under Article 14(1)(a)-(e) were non-exclusive and therefore without prejudice to such other forms of speedy judicial relief as might be available under the applicable law.

38. – The Drafting Group agreed to take up the Space Working Group’s proposal for a new Article 14(4), designed to enable the parties to agree to confer jurisdiction to entertain proceedings for speedy judicial relief under this Article on the courts of a specific Contracting State.

39. – As regards Article 14(5), it will be noted that, in line with the amendment proposed elsewhere, the possibility for a State to make a declaration under the Convention announcing that it would not apply the provisions of this Article has been extended to the relevant Protocol.

Re Article 15

40. – Article 15 as proposed by the Drafting Group basically reproduces the text proposed by the Registration Working Group. The only substantial change is to be found in the new Article 15(2) which indicates that, for the purposes of the registration provisions of the future Convention, the term “registration” is intended to cover not only the initial registration of an international interest but also all amendments and any extension or discharge of such a registration.

Re Article 16

41. – The Drafting Group noted that this provision represented a radical departure from the previous structure of the registration provisions, introduced on a provisional basis (and accordingly presented for the Study Group’s consideration within square brackets) by the Registration Working Group with a view to indicating the type of constitutional structure that might be envisaged for the future international registration system.

42. – Apart from considerable drafting improvements, the only real change introduced in this Article concerned the introduction of the idea of an independent adjudicator, to be found in Article 16(5)(a), to hear complaints in respect of acts or omissions of the Registrar and operators of national registration facilities. The Drafting Group took the view that principles of natural justice made the conferment of this responsibility on the Intergovernmental Regulator, itself responsible for the designation of the Registrar under Article 16(3), highly undesirable.

Re Article 17

43. – The simplification of the drafting of this Article reflects the introduction of the rule contained in Article 15(2).

Re Article 18

44. – Here again the Drafting Group was able greatly to simplify the drafting as a result of the rule contained in Article 15(2).

Re Article 19

45. – The rule contained in Article 15(2) enabled the Drafting Group also to simplify the drafting of Article 19(1).

Re Article 20

46. – The Drafting Group agreed to propose that the provisions previously divided between Article 20(1), (2) and (3) of the text proposed by the Registration Working Group and Article 34(2) (dealing with the registration of registrable non-consensual interests) of the Chairman's draft be reordered in one paragraph, the new Article 20(1).

47. – The Drafting Group also considerably simplified the drafting of the remaining three paragraphs of Article 20.

Re Article 26

48. – Of the alternative versions of Article 26(2) prepared by the Chairman of the Drafting Group in order to reflect the discussions at the third session of the Study Group, the Drafting Group, noting that both the Aircraft Protocol Group and the Space Working Group favoured Alternative A, expressed itself also to be in favour of that solution. It nevertheless agreed to forward both alternatives to the Study Group for decision, whilst indicating that in its opinion only Alternative A was workable and that Alternative B raised many complications which would require far more time than the Drafting Group had at its disposal. In line with its preference for Alternative A of Article 26(2), the Drafting Group indicated its preference for Article 26(4) shorn of sub-paragraph (b).

49. – It was agreed that the matter of the relationship between preferred national creditors and holders of international interests should not be dealt with in the priority rules of the future Convention but rather under Chapter VIII.

Re Article 28

50. – The Drafting Group expressed itself to be against the idea of introducing the obligor's written consent as a requirement for a valid assignment under the Convention. It took the view that such a rule would create as many problems as those it sought to solve and would contradict Article 30(1).

Re Article 29

51. – The Drafting Group, noting that it would be important for parties not to have to look at local formalities regarding the assignment of contract rights in order for these to be assignable under Article 29(1), accordingly agreed to introduce in the chapeau of Article 29(1) a reference to the conditions of validity for the assignment of an international interest set forth in Article 28.

52. – The Drafting Group noted that the words “to the extent agreed by the parties” in the chapeau of Article 29(1) served merely to enable the parties to qualify the terms of the assignment and not to extend the same.

53. – The Drafting Group, after discussing whether the provisions of Article 29(1)(b), dealing with the transfer of the assignor’s contract rights as opposed to his real rights under the Convention (dealt with under Article 29(1)(a)), should be confined only to the case of an assignment of a security interest, concluded that they should rather cover the transfer of all contract rights arising under the relevant agreement (whether this be a security agreement, a title reservation agreement or a leasing agreement) to the extent that such an assignment was not inconsistent with the applicable law.

Re Article 31

54. – The only significant amendment to Article 31 proposed by the Drafting Group concerns the introduction of the qualifying words “in the case of an assignment within Article 29(1)(b)” in respect of the obligor’s duty to make payment or give other performance to the assignee.

Re Article 32

55. – The only amendment to Article 32 proposed by the Drafting Group concerned the deletion of the words “by the security interest” which had previously featured after the words “the amount secured” in Article 32(2).

Re Article 34

56. – The Drafting Group agreed that it would be necessary to make it clear, by means of an explanatory note to Article 34(2), that an assignment which might otherwise be valid against the trustee in bankruptcy and attachment or execution creditors under Article 34(1) might be invalidated by virtue of a special national insolvency law rule.

Re Chapter VIII

57. – The Drafting Group agreed to propose amending the heading of Chapter VIII to take account of its decision to relocate to this Chapter from Chapter VI the provision dealing with the relationship between preferred national creditors and holders of international interests. It accordingly proposed amending this heading to read “Non-consensual interests”.

Re Article 35

58. – The only changes proposed to the former Article 34(1) in the new Article 35(1), dealing with registrable non-consensual interests, were in the nature of drafting improvements.

59. – The contents of the previous Article 34(2) having been relocated to Article 20(1)(c), the Drafting Group agreed to propose that its place be taken by the rule, previously located in Chapter VI, dealing with the relationship between the holder of an international interest and those preferred national creditors in respect of which a State has made a declaration under the Convention.

Re Definitions

60. – The Drafting Group proposed not only the deletion of a number of definitions (essentially those, such as “assignment notice”, “notice”, “registration amendment notice”, “registration discharge notice”, “registration notice” and “subordination notice”, drafted at a time when the registration provisions of the future Convention were conceived more in terms of a paper-based system than the on-line system envisaged in the text proposed by the Registration Working Group at the conclusion of its second session) but also the introduction of a number of new definitions designed to take account, on the one hand, of the recommended extension of the sphere of application of the future Convention to “associated rights” and, on the other hand, of certain proposals emanating from the Registration Working Group (concerning “obligor”, “Protocol” and “Registrar”). It will be noted that the Drafting Group also proposed a broadening of the definition of “object” to accommodate a proposal from the Space Working Group referred to above.⁽⁶⁾ The Drafting Group in addition proposed new definitions of “chargor” and “chargee” and of “registered interest” and “unregistered interest”.

⁽⁶⁾ Cf. § 9 *supra*.

**REVISED DRAFT ARTICLES
OF A FUTURE UNIDROIT CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT**

(as proposed by the Drafting Group at its fourth session, held in Würzburg
from 24 to 26 July 1997)^(*) ⁽⁷⁾

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1

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

2. – For the purposes of this Convention an international interest in mobile equipment is an interest in an object of a kind listed in Article 2:

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

[3. – An interest which under the applicable law falls within sub-paragraph (a) of the preceding paragraph does not fall within sub-paragraph (b) or (c) of that paragraph for the purposes of this Convention.]

4. – A Protocol to this Convention may provide for the application of Chapters V and VI to transfers (otherwise than under a title reservation agreement) of real rights in an object of a kind listed in Article 2.]

Article 2

1. – This Convention applies in relation to an object[, and rights associated with an object,] of any of the following kinds:

- (a) airframes;
- (b) aircraft engines;
- (c) helicopters;
- (d) [registered ships];
- (e) oil rigs;
- (f) containers;

^(*) The use of an asterisk (*) against a particular provision indicates that the provision in question is envisaged as part of the Final Clauses of the future Convention.

⁽⁷⁾ It will be necessary in due course to prepare a draft Preamble to the Convention.

- (g) railway rolling stock;
- (h) space property;
- (i) objects of any other category each member of which is uniquely identifiable and habitually moves from one State to another in the ordinary course of business.

* 2. – [This Convention shall come into force as regards any category of object in respect of which there is in force a Protocol.]

[3. – A Protocol shall not derogate from or vary any of the provisions set out in Articles ... of this Convention.]

[4. – Add provision for procedure for making of Protocols]

Article 3

[Add provision on connection to a Contracting State]

Article 4

Terms used in this Convention and defined in the Appendix or in any Protocol have the meanings there stated. ⁽⁸⁾

Article 5

In their relations with each other the parties may, by agreement in writing, derogate from or vary the effect of any of the provisions of Chapter III except as stated in Articles [...].

Article 6

Alternative A

[1. – In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity and predictability in its application and the observance of good faith in international trade.

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

Alternative B

⁽⁸⁾ See below at p. xvi *et seq.*

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

2.– Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based [and the principle of good faith in international trade] [or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law]].

CHAPTER II

CONSTITUTION OF AN INTERNATIONAL INTEREST

Article 7

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

- (a) is in writing;
- (b) relates to an object in respect of which the chargor, seller or lessor has power to enter into the agreement;
- (c) identifies the object in conformity with the applicable Protocol;
- (d) in the case of a security agreement, identifies the secured obligations expressly or by reference to another document.

CHAPTER III

DEFAULT REMEDIES

Article 8

1. – In the event of default in the performance of a secured obligation, the chargee may exercise any one or more of the following remedies:

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

2. – Any remedy given by sub-paragraph (a), (b) or (c) of the preceding paragraph shall be exercised in a commercially reasonable manner. In determining what is reasonable the court shall have regard to any terms of the security agreement relating to the manner of exercise of such remedies.

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

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

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

6. – In this Article and in Article 9 “interested persons” means:

- (a) the chargor;
- (b) any guarantor or surety under a guarantee (including a demand guarantee or standby letter of credit) given to the chargee;
- (c) any person entitled to the benefit of any international interest which is registered after that of the chargee;
- (d) any other person having rights subordinate to those of the chargee in or over the object of which notice in writing has been given to the chargee within a reasonable time before exercise of the remedy given by paragraph 1(b) or vesting of the object in the chargee under Article 9(1), as the case may be.

Article 9

1. – At any time after default in the performance of a secured obligation, all the interested persons may agree, or the court may on the application of the chargee order, that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in satisfaction of all or any part of the secured obligations.

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

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

4. – Ownership or any other interest of the chargor passing on a sale under Article 8(1) or passing under paragraph 1 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 26.

Article 10

In the event of default by the buyer under a title reservation agreement or by the lessee under a leasing agreement, the seller or lessor, as the case may be, may terminate the agreement and take possession or control of any object to which the agreement relates.

Article 11

1. – The parties may provide in their agreement for any kind of default, or any event other than default, as giving rise to the rights and remedies specified in Articles 8 to 10 or 14.

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

Article 12

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

* 2. – Any remedy available to the obligee under Articles 8 to 10 which is not there expressed to require application to the court may be exercised without leave of the court except to the extent that the Contracting State where the remedy is to be exercised has made a declaration under Article X or in the applicable Protocol.

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

* 4. – For the purposes of this Convention, “court” in relation to any Contracting State means such court or administrative or arbitral tribunal as may from time to time be specified in a declaration made by that State under Article Y or in the applicable Protocol.

[5. – Consider provision for limitation of actions]

Article 13

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

Article 14 ⁽⁹⁾

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

⁽⁹⁾ It is envisaged that this Article will ultimately feature in a separate Chapter of the Convention.

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

2. – A court of a Contracting State has jurisdiction to grant judicial relief under the preceding paragraph where the object is within the territory of that State or one of the parties has its place of business within that territory, even if the trial referred to in that paragraph will or may take place in a court of another State.

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

4. – The applicable Protocol may authorise the parties to confer by agreement jurisdiction to grant judicial relief under this Article on the courts of a specific Contracting State.

5. – A Contracting State may make a declaration under Article Z or, in respect of a particular category of object, in the applicable Protocol that it will not apply the provisions of this Article, wholly or in part.

CHAPTER IV

THE INTERNATIONAL REGISTRATION SYSTEM

Article 15

1. – An international registry shall be established for registrations of:
- (a) international interests, prospective international interests [and registrable non-consensual interests];
 - (b) assignments and prospective assignments of international interests; and
 - (c) subordinations of interests referred to in sub-paragraph (a) of this paragraph.

2. – For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

3. – Different registries may be established for different categories of asset [and associated rights].

[Article 16

1. – The Protocol shall designate an intergovernmental regulator to exercise the functions assigned to it by this Chapter, Chapter V and the Protocol.

2. – The Protocol may provide for Contracting States to designate operators of registration facilities in their respective territories. Such operators shall be transmitters of the information required for registration and, in such capacity, shall constitute an integral part of the registration system of this Convention. The Protocol may specify the extent to which the designation of such an operator shall preclude alternative access to the International Registry.

3. – The Intergovernmental Regulator shall establish the International Registry and designate the Registrar. The Intergovernmental Regulator shall oversee the International Registry and the operation and administration thereof. The manner in which such oversight is conducted and the responsibilities of the Registrar and the operators of registration facilities shall be prescribed in the Protocol and Regulations.

4. – In the exercise of their respective functions under this Convention and the Protocol, the Registrar, the operators of registration facilities and the International Registry shall be deemed to be an international Organisation and, in the carrying out of the functions set out in this Convention and the Protocol, shall not be subject to the law or jurisdiction of the courts of the States in which they are situated. ⁽¹⁰⁾

5. – The Protocol shall provide for:

(a) the designation of an adjudicator empowered to review acts or omissions of the Registrar or operators of registration facilities alleged to be in contravention of this Convention, the Protocol or the Regulations and, where necessary, to order the remedial action to be taken; and

(b) the procedures to be followed in reviews under sub-paragraph (a) of this paragraph.

6. – The Protocol may prescribe the procedures pursuant to which the Registrar and the operators of registration facilities may request advice from the Intergovernmental Regulator regarding the exercise of their respective functions under this Convention, the Protocol and the Regulations.

7. – The Intergovernmental Regulator shall make, and may from time to time amend, Regulations under this Chapter and Chapter V.]

CHAPTER V

REGISTRATION OF INTERNATIONAL INTERESTS, PROSPECTIVE INTERNATIONAL INTERESTS AND PROSPECTIVE ASSIGNMENTS OF INTERNATIONAL INTERESTS

[Article 17

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

⁽¹⁰⁾ It is envisaged that this provision will ultimately feature in Chapter IX - Jurisdiction.

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

Article 18

The information required for a registration shall be transmitted, by any medium prescribed by the Protocol or Regulations, to the International Registry or registration facility prescribed therein.

Article 19

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

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

3. – Paragraph 2 applies with necessary modifications to the registration of a prospective assignment of an international interest.

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

5. – A registration shall be searchable in the International Registry data base according to the criterion or criteria prescribed in the Protocol.

Article 20

1. – By the transmission of the required information to the International Registry in conformity with the Protocol and Regulations:

(a) an international interest may be registered by the holder thereof if the agreement relating to it conforms to the provisions of Article 7 and, in the case of a security agreement, the chargor has, therein or elsewhere, consented in writing to the registration;

(b) a prospective international interest or a prospective assignment of an international interest may be registered by the intended grantee or assignee respectively if the intending grantor or assignor has consented in writing to the registration;

(c) [a registrable non-consensual interest in relation to which a declaration has been made pursuant to Article 35(1) may be registered by the holder thereof;

(d)] the registration of a registered international interest may be amended by the holder but, if the amendment adversely affects the interest of a chargor, the holder may do so only if the chargor has consented in writing thereto;

[(e)] the assignment of an international interest conforming to the provisions of Article 28 may be registered by the assignee;

[(f)] the registration of a registered international interest [or registrable non-consensual interest] may, prior to the expiry of the registration period, be extended by the holder of such interest;

[(g)] a subordination of a registered international interest [or registrable non-consensual interest] may be registered by the person in whose favour the subordination was made;

[(h)] a discharge of a registered international interest, a registered prospective international interest, a registered prospective assignment of an international interest [or a registered registrable non-consensual interest] may be registered by the holder thereof.

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

3. – The holder of a registered international interest [or registrable non-consensual interest] may at any time discharge the registration.

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

Article 21

Registration of an international interest remains effective for the period of time specified in the Regulations as extended in conformity with Article 20(1)(f).

Article 22

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

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

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

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

[Article 23

The Registrar shall maintain a list of categories of preferred national creditor declared by Contracting States in the Protocol. Such information shall be made available as provided in the Protocol and Regulations to any person requesting it.]

Article 24

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

- (a) that it has been so issued; and
- (b) of the facts recited in it, including the date and time of registration of the information referred to Article 20(1).

[Article 25

The liability rules for errors and omissions in the operation and administration of the International Registry shall be set forth in the Protocol.]

CHAPTER VI

EFFECTS OF AN INTERNATIONAL INTEREST
AS AGAINST THIRD PARTIES

Article 26

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

Alternative A

- [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.]

Alternative B

[2. – However, where the holder of the first-mentioned interest gives value after registration of the other interest and with actual knowledge of it, the first-mentioned interest is subordinate to the other interest except to the extent that such value:

- (a) does not exceed the sum or maximum sum (if any) secured by the first-mentioned interest and specified as so secured in any registration taking effect under Article 19(1) before the creation of the other interest; or
- (b) is given pursuant to an obligation entered into without actual knowledge of the other interest.]

3. – The buyer of an object acquires its interest in it:

- (a) free from an unregistered interest even if it has actual knowledge of it; and
- (b) subject to an interest registered at the time of its acquisition of that interest.

4. – [(a)] Subject to the preceding paragraph, priority between a registered international interest and an interest which is not registrable under this Convention is determined by the order of their creation.

(b) Notwithstanding the preceding sub-paragraph, the interest first created is subordinate to the other interest as regards value given by the holder of the first-mentioned interest with actual knowledge of the other interest except to the extent provided by paragraph 2(a) and (b)].⁽¹¹⁾

5. – The priority of competing interests under this Article may be varied by agreement between the holders of those interests, but an assignee of such an 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 insurance proceeds payable in respect of the loss or physical destruction of that object.

Article 27

1. – An international interest is valid against the trustee in bankruptcy and creditors of the obligor, including creditors who have obtained an attachment or execution, if prior to the commencement of the bankruptcy, attachment or execution that interest was registered in conformity with this Convention.

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

3. – Nothing in this Article affects the validity of an international or other interest against a person referred to in paragraph 1 where that interest is valid against that person under the applicable law.

4. – Nothing in this Article affects any special rules of insolvency law [(other than a rule within Article 35(2))] applicable to the insolvency of the obligor.

⁽¹¹⁾ This paragraph will apply only where Alternative B of paragraph 2 is adopted.

CHAPTER VII

ASSIGNMENTS OF INTERNATIONAL INTERESTS

Article 28

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

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

- (a) is in writing;
- (b) identifies expressly or by reference to another document the international interest and the object to which it relates;
- (c) in the case of an assignment by way of security, identifies the obligations secured by the assignment.

3. – For the purposes of this Convention “assignment” means an outright transfer or any other kind of transfer or agreement, whether by way of security or otherwise, which confers on the assignee rights in or over the international interest.

Article 29

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

- (a) all the rights and priorities of the assignor under this Convention; and
- (b) all the rights of the assignor under the agreement creating or providing for the international interest, so far as such rights are assignable under the applicable law.

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

Article 30

The provisions of Chapter V (other than Article 20(1)(a)) shall apply to the registration of an assignment or prospective assignment of an international interest as if the assignment or prospective assignment were the international interest or prospective international interest and as if the assignor were the grantor of the interest.

Article 31

To the extent that an international interest has been assigned in accordance with the provisions of this Chapter, the obligor in relation to that interest is bound by the assignment, and, in the case of an assignment within Article 29(1)(b), has a duty to make payment or give other performance to the assignee, if but only if:

- (a) the obligor has been given notice of the assignment in writing by or with the authority of the assignor;
- (b) the notice identifies the international interest; and
- (c) the obligor does not have [actual] knowledge of any other person's superior right to payment or other performance.

Article 32

1. – In the event of default by the assignor under the assignment of an international interest made by way of security, Articles 8, 9 and 11 to 14 apply as if references:

- (a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the international interest and the security interest created by that assignment;
- (b) to the chargee and chargor were references to the assignee and assignor of the international interest; and
- (c) to the object included references to the assigned rights relating to the object.

2. – Where, in the case of an assignment by way of security, the sums collected or received by the assignee of the international interest as the result of the exercise of the remedies provided by virtue of the preceding paragraph exceed the amount secured, then unless otherwise ordered by the court the assignee shall pay the excess to the holder of the assignment registered immediately after its own or, if there is none, to the assignor of the international interest.

Article 33

Where there are competing assignments of international interests and at least one of the assignments is registered, the provisions of Article 26 [(other than paragraph 2)]⁽¹²⁾ apply as if the references to an international interest were references to an assignment of an international interest.

Article 34

1. – An assignment of an international interest is valid against the trustee in bankruptcy and creditors of the assignor, including creditors who have obtained an attachment or execution, if prior to the commencement of the bankruptcy, attachment or execution that assignment was registered in conformity with this Convention.

2. – Nothing in this Article affects any special rules of insolvency law applicable to the insolvency of the assignor.

[CHAPTER VIII

NON-CONSENSUAL INTERESTS

⁽¹²⁾ The words in brackets apply only where Alternative B to Article 26(2) is adopted.

Article 35

1. – A Contracting State may at any time in an instrument deposited with the depositary declare that the non-consensual interests arising under an attachment or execution against an object, or by way of lien to secure payment for services rendered in respect of that object, shall be registrable under this Convention as regards any category of object as if the interest were an international interest and be regulated accordingly.

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

(a) set out by that State in any instrument deposited with the depositary prior to the time when the registration of the international interest takes effect; and

(b) that, without any act of publication, the non-consensual interest would under the national law of that State have priority over a registered interest of the same type as the international interest.]

[CHAPTER IX
JURISDICTION]

[CHAPTER X
RELATIONSHIP WITH OTHER CONVENTIONS]

[CHAPTER XI
OTHER FINAL PROVISIONS]

APPENDIX

DEFINITIONS

In this Convention:

(a) [“associated rights” means rights relating to ownership, possession, use or control of an object as defined in the relevant Protocol;

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

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

[(d)] “international interest” means an interest to which Article 1 applies;

[(e)] “leasing agreement” means an agreement by which one person (“the lessor”) grants a lease or sub-lease of an object (with or without an option to purchase) to another person (“the lessee”) for such minimum period (if any) as may be specified in the relevant Protocol;

[(f)] “object” means an object of a kind listed in Article 2(1) [or, for the purposes of paragraph (q), such rights in relation to the object as the chargor may have under the applicable law];

[(g)] “obligee” means the chargee, seller or lessor under a security agreement, title reservation agreement or leasing agreement;

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

[(i)] “prospective assignment” means an assignment that is intended to be made in the future;

[(j)] “prospective international interest” means an interest that is intended to be created or provided for as an international interest in the future;

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

[(l)] “registered” means registered in the International Registry pursuant to Chapter[s] V [or VIII];

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

[(n)] [“registrable non-consensual interest” means an interest registrable pursuant to a declaration made under Article 35(1)];

[(o)] “Registrar” means, in respect of any category of object [and associated rights] to which this Convention applies, the person designated under Article 16(3);

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

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

[(r)] “title reservation agreement” means an agreement by which one person (“the seller”) agrees to sell an object to another person (“the buyer”) on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement;

[(s)] “unregistered interest” means an international interest [or a registrable non-consensual interest] which has not been registered;

[(t)] “writing” means an authenticated record of information (including information sent by teletransmission) which is retrievable in tangible form for subsequent reference.

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