Transcending the Boundaries of Earth and Space: the Preliminary Draft UNIDROIT Convention on International Interests in Mobile Equipment

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This article briefly describes the current draft of what promises to be one of the most significant international conventions ever to be made in the field of private transnational commercial law, the UNIDROIT Convention on International Interests in Mobile Equipment. The purpose of the convention is to establish an international legal regime for security and related interests in equipment of a kind normally moving from one state to another in the normal course of business – for example, aircraft and railway rolling stock – and in satellites and other space objects, which are not, of course, located on earth at all.

EVOLUTION OF THE DRAFT CONVENTION

This ambitious project resulted from a proposal by Mr T.B. SMITH QC, the Canadian member of the Governing Council of UNIDROIT, shortly after the conclusion in Ottawa of the 1988 UNIDROIT Convention on International Financial Leasing. Studies by Professor Ronald CUMING and a UNIDROIT restricted exploratory working group established both the need for and the feasibility of such a project, and a study group was set up by the Governing Council to carry it forward. From an early stage the project attracted the keen interest of the aviation industry, and an Aviation Working Group, co-ordinated by Mr Jeffrey WOOL (who was subsequently appointed expert consultant to UNIDROIT on the aviation aspects) was set up to work with UNIDROIT on the proposed convention as it affects aircraft. Intensive work covering a period of several years was then undertaken by the study group, its sub-committee and its drafting group, a registration working group set up under the chairmanship of Professor CUMING to examine registration aspects, and the Aviation Working Group. At a later stage the International Air Transport Association

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(IATA) lent its strong support and contributed its own expertise, and more recently the International Civil Aviation Organization (ICAO), the intergovernmental organisation for aviation, has agreed to participate in the work in relation to aircraft. These organizations came together as the Aircraft Protocol Group to prepare a protocol ("the aircraft protocol") on international interests in aircraft equipment.[1] The study group completed its task in November 1997, producing a draft[2] which was approved by the Governing Council in February 1998. The two texts are to be revised by a Steering and Revisions Committee in the light of comments received and will then be transmitted to governments with a view to the first meeting of government experts in January 1999.

Successive drafts of the convention have been exposed to comment by governments and interest groups and have been the subject of numerous seminars around the world. It is clear from these that there is a widespread acceptance of the need for such a convention, and support for the approach adopted by the study group. The Aviation Working Group and IATA have been particularly vigorous in promoting an awareness of the draft convention and have invested a considerable amount of resources towards securing a regime that is suitable for interests in aircraft. The Aircraft Protocol Group commissioned an economic impact study under the auspices of the *Institut Européen d'Administration des Affaires (INSEAD)* and the New York University Salomon Center. This study, currently in final draft form, is being conducted by Professors SAUNDERS and WALTER and concludes that the proposed convention has the potential to attract significant microeconomic and macroeconomic benefits, including reductions in borrowing costs for airlines. More recently, separate working groups have been established to examine the draft convention in the context of space objects and railway rolling stock, and they are now making good progress.

The draft convention embodies a number of innovative techniques which break new ground in treaty-making. The most striking is the concept of a framework convention supplemented by a series of equipment-specific protocols. These techniques undoubtedly help to make the convention an unusually complex instrument but greatly enhance its utility.

THE NATURE OF THE PROBLEM

Few areas of law are subject to such wide diversity of legal regimes as security and related interests in personal property.[3] In a number of jurisdictions, particularly common law jurisdictions, the attitude towards security is very liberal. Security interests

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1 For a description of the protocol concept, see *post*, p. 58.

2 The text of the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment as established by the Study Group is reproduced in this issue on p. 76.

3 As will be seen, the draft convention covers not only security interests as traditionally conceived but the interests of those who are sellers under conditional sale agreements or lessors under leasing agreements. Except as otherwise indicated, the term "security interest" will be used to embrace all these types of interest and the term "debtor" to include the buyer under a conditional sale agreement and the lessee under a leasing agreement.

may be freely created in any kind of property, tangible or intangible, and may readily be perfected by registration without the need for the creditor to take possession. The parties to a security agreement are allowed a wide degree of autonomy in agreeing on the rights and remedies of the secured party, and self-help – for example, by repossession and sale without a court order – is generally permitted so long as there is no breach of public order. At the other end of the spectrum are states whose laws are hostile to non-possessory security interests of any kind and, indeed, may be unwilling to recognise security rights at all in anything other than land. Between these two ends of the spectrum are laws occupying diverse intermediate positions. Many of these do not accept the concept of self-help, nor will they necessarily be prepared to recognize security interests created in another jurisdiction which have no analogue in their own. Moreover, there is no guarantee that a security interest which is created in one jurisdiction and is valid against the debtor's trustee in bankruptcy in that jurisdiction will be treated as effective in a bankruptcy in another state.

It will be evident that these problems cannot be addressed by a uniform conflict of laws rule, even if a satisfactory rule could be devised. The *lex situs*, widely adopted in relation to dealings in movable property, is manifestly unsuitable for mobile equipment. There are, it is true, international conventions governing security rights in aircraft and ships, and based on the concept of nationality registration, but the aircraft conventions, valuable though they have been, are now seen as inadequate for the future requirements of the aviation industry, while the 1993 convention on maritime liens has not yet received the number of ratifications required to bring it into force. Given that a single commercial aircraft can cost in excess of US$ 100 million and that the total value of orders anticipated over the next 20 years has been estimated at no less than one trillion dollars, the importance of an effective international legal regime which lays down substantive law rules, not merely conflicts rules, cannot be over-stated.

OBJECTS AND KEY ELEMENTS OF THE DRAFT CONVENTION

The draft Convention on International Interests in Mobile Equipment has four primary objectives: to give international protection to security interests in high-value, uniquely identifiable mobile equipment; to provide the holders of such interests with a basic range of default remedies that can be expeditiously exercised; to provide a regime by which those interests can be perfected by registration, thereby enabling third parties to discover their existence; and to lay down rules for the recognition and priority of those interests, both within and outside the debtor's bankruptcy. At the heart of the convention are the provisions for the creation of an autonomous international interest in mobile equipment, an interest constituted by the convention itself and not derived from or dependent on national law. This interest, if created in accordance with the very simple formalities prescribed by the convention, will be enforceable against the debtor whether or not the interest has been registered. But registration will be necessary to ensure priority over subsequent interests, including those of creditors in the debtor's bankruptcy. The convention also contains rules governing the assignment of inter-

national interests, and tentative provisions permitting the registration of certain kinds of non-consensual interest.

THE FRAMEWORK AND THE PROTOCOLS

As work on the convention progressed it became clear that it would be impossible to devise rules that would be equally suitable for all types of equipment. For example, the remedy of deregistration from a nationality register[4] was specific to aircraft; space objects involved rules incapable of application to earth-bound equipment; even priority rules might need to vary with the type of equipment involved. At first, it was thought that these problems could be addressed by having separate parts of the convention for distinct types of equipment. But in the course of drafting other difficulties emerged. For example, the Aircraft Protocol Group found that it was far from easy even to define airframes and aircraft engines. This was partly because of the need to take account of accessories and partly because the definitions had to incorporate elements that would confine the convention to uniquely identifiable objects of high unit-value. However, the Group was eventually able to work out appropriate definitions as well as a criterion for identifiability and other provisions of particular application to aircraft.

But other interest groups had not yet reached this point. The problem, then, was how to avoid slowing up the whole project while waiting for these other sectors to catch up. One way would have been to confine the equipment-specific parts of the convention to aircraft and those other types of equipment (if any) for which the relevant industry group was in a position to supply the requisite data and equipment-specific rules in sufficient time to avoid delaying the convening of the projected diplomatic conference. But this approach would have had several drawbacks. It would have made the convention excessively long; it would have given undue emphasis to one or two types of equipment, creating the false impression that the convention was aimed exclusively at those types; and it would have deprived states of the ability to choose from a menu of equipment-types, or to add new types subsequent to the adoption of the convention, except by going through the full panoply of further diplomatic conferences. An alternative would be to have a series of stand-alone conventions, each confined to a particular type of equipment. But this approach too has its drawbacks in that it would involve a good deal of duplication and also a risk of inconsistency between the general (*i.e.* non-equipment-specific) provisions of the different conventions, as well as losing the advantages of a projected fast-track procedure for the adoption of subsequent protocols.

The ingenious solution that came forward from the Aviation Working Group and IATA was to require that for each type of mobile equipment the convention should be modified by a protocol containing provisions specific to that type which would add to or vary the generic provisions of the convention.[5] The protocol device not only overcomes

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4 This is a necessary condition of effective disposal of an aircraft in order to enable the buyer to register it in the country where it is to be operated or (dependent on the local law) owned.

5 *Cf.* Jeffrey WOOL, "Rethinking the Notion of Uniformity in the Drafting of International Commercial Law: a Preliminary Proposal for the Development of a Policy-based Unification Model", *Uniform Law Review*, 1997-1, 46.

what might otherwise have been an insuperable delay problem but it has a number of other advantages. By ensuring that the convention is not equipment-specific it facilitates its extension to new categories of equipment when the definitions, descriptions and special provisions required for such equipment have been fashioned; it enables the convention to be kept down to a reasonable length and avoids cluttering it with detail; and it allows states to choose from a menu of protocols as these are brought into being. Moreover, it is envisaged that a fast-track procedure will be devised for the making of additional protocols after the conclusion of the convention. Thus the convention is a framework convention which will come into force as regards any particular type of equipment only when a protocol has been made in relation to that type, and on the terms of, and as between Contracting States parties to, that protocol. Reference has been made earlier to the aircraft protocol prepared by the Aircraft Protocol Group.

STRUCTURE OF THE CONVENTION

The current draft contains ten chapters:

Chapter 1 – Sphere of application and general provisions
Chapter 2 – Constitution of an international interest
Chapter 3 – Default remedies
Chapter 4 – The international registration system
Chapter 5 – Modalities of registration
Chapter 6 – Effects of an international interest as against third parties
Chapter 7 – Assignments of international interests
[Chapter 8 – Non-consensual rights and interests] [tentative adoption]
Chapter 9 – Relationship with other conventions [to be drafted]
Chapter 10 – Other final clauses [partly drafted]

The final clauses permit a Contracting State to avail itself of opt-outs from particular provisions it might consider insufficiently sensitive to its public policy, and parallel provisions are to be found in the draft aircraft protocol.

SPHERE OF APPLICATION

The provisions on the draft convention's sphere of application cannot be fully understood without some perception of the evolution of the thought-processes that led up to them. It was originally intended to follow the model of Article 9 of the Uniform Commercial Code by adopting a functional approach to the concept of a security interest so as to take in conditional sale agreements and leases intended as security, and by utilising a system of debtor registration that would allow the perfection of security interests in after-acquired property and proceeds. But it soon became clear that this approach would cause serious difficulties. In the first place, the equation of title retention with security is confined to North American jurisdictions. Elsewhere, in the common law as well as the civil law world, a sharp distinction is drawn between the grant of security by a debtor over an asset it currently owns and an agreement between seller and buyer that title should not pass to

the buyer at all until completion of payment. Security interests are in general registrable, title reservation is not, and there are other fundamental differences in treatment. While there was much admiration for Article 9, it became evident that the recharacterization that would be involved was too great to be accommodated in those jurisdictions that were not attuned to it. There were also concerns, particularly among leasing interests, that to treat conditional sale and leasing agreements as security agreements might influence their treatment for tax purposes, with potentially adverse consequences. Moreover, leasing interests objected even to having leasing agreements characterized as title-retention agreements. So in the end it was decided to have three categories: security agreements, conditional sale agreements and leasing agreements. Secondly, extension of the convention to after-acquired property and proceeds would lead to its application to classes of asset quite outside those for which it was designed. For example, application of the convention security interest to accounts resulting from the sale of an aircraft would lead to the detachment of the security interest from the aircraft itself and take the convention into the realm of security in receivables. This would not only be inconsistent with the *raison d'être* of the convention, it could also bring it into conflict with the proposed UNCITRAL convention devoted specifically to receivables financing.

It was therefore decided to restrict the convention to equipment in existence at the time of the security agreement, and to exclude interests in proceeds other than insurance proceeds. In line with this, the register of security interests would be organised by asset, not by debtor, thus making it necessary for the equipment to be uniquely identifiable, typically by serial number. This approach, while restricting the convention in one way, enables it to be extended to payment and other rights dealt with in association with registered interests in equipment.

The sphere of application of the convention is determined by reference to four key factors, some of which feature in the convention while others will appear in the relevant protocol:

(1) The convention is focused on consensual interests within one of three categories: that granted by the chargor under a security agreement; that vested in a person who is the seller under a conditional sale agreement; and that vested in a person who is the lessor under a leasing agreement.[6] The characterisation of the agreement is left to be determined by the applicable law. Consideration is being given to tentative provisions allowing Contracting States to declare types of non-consensual interest that would be registrable in the international registry,[7] but no final decision has been taken on this. The draft aircraft protocol also provides for extension of the convention to outright transfers.

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6 The difference in the formulation of paragraph (a) and paragraphs (b) and (c) is necessitated by the fact that the interest of the seller or lessor does not derive from the conditional sale or leasing agreement but exists prior to and independently of that agreement. For the same reason phrases such as "vested in a person *as* conditional seller under a conditional sale agreement" and "vested in a person *as* lessor under a leasing agreement" were replaced by the present text.

7 See *post*, p. 72.

(2) The convention will be restricted to mobile equipment (in the sense of equipment normally moving from one state to another in the normal course of business or existing as space objects) of a uniquely identifiable kind and of high unit-value.

(3) The convention will be confined to equipment in existence at the time of the security agreement.

(4) There will need to be an appropriate connection to a Contracting State.[8]

The internationality element is considered satisfied by the mobile character of the equipment. This focus on the nature of the equipment rather than on its actual use does allow the possibility of an international interest in equipment which never leaves its home base. An example given in discussion was that of a train running round a circular rail track in Kansas! But the problems involved in establishing whether at any given time equipment had in fact moved from one state to another made it desirable to have a simple rule, with a proviso that a Contracting State could declare that it would not apply the convention in relation to a purely domestic transaction.[9]

OTHER GENERAL PROVISIONS

Article 6 reflects the general principle of party autonomy underlying the convention. Security agreements relating to mobile equipment are typically large transactions in which both parties are highly experienced. Indeed, many of the world's leading airlines either are or were owned by governments. So Article 6 allows the parties, in their relations with each other, to derogate from or vary most of the provisions of the convention, though there are some that are mandatory.[10] Article 7, which deals with the interpretation of the convention, is modelled on Article 7 of the 1980 Vienna Convention on Contracts for the International Sale of Goods (CISG), which has now been ratified by 51 states. But while Article 7 has become the paradigm for transaction-related conventions, such as UNIDROIT's own conventions on International Financial Leasing and International Factoring, the text of the present draft contains two significant departures. The reference to good faith has been dropped, on the ground that in transactions potentially involving very large sums it introduced too great a degree of uncertainty. In its place is an emphasis on the need to promote predictability in the application of the convention.

CONSTITUTION OF AN INTERNATIONAL INTEREST

Article 8 provides a straightforward regime for the constitution of an international interest. All that is required is that the agreement creating or providing for the interest is in writing, relates to an object in respect of which the debtor has power to enter into the agreement, enables the object to be identified in accordance with the applicable protocol and, in the

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8 See Art. 4. This is likely to require some revision.

9 Article W. Contrast the provisions in the aircraft protocol, which would disapply this Article.

10 These relate to default remedies and are designed to preserve requirements for the observance of reasonable behaviour by the secured party. They are to be found in Arts. 9(2)-(6), 10(2) and (3), 13(1) and 14, and 34(2).

case of a security agreement, enables the secured obligations to be identified. An agreement which fulfils these requirements is effective to constitute an international interest whether or not it would be effective to create a security interest under the otherwise applicable law. This represents a major advance. The international interest derives solely from the convention and is not dependent on national law. In many cases a security agreement conforming to Article 8 will also satisfy the requirements of local law for a domestic security interest but that is not a prerequisite of a valid international interest. Article 8 will thus be of particular value in relation to those countries whose law is hostile to security in general or is still in a state of development in its treatment of security interests. Conversely, an interest provided for by an agreement which does not conform to Article 8 will not be an international interest even if under the applicable law it would be effective to create a security interest.

DEFAULT REMEDIES

Chapter III is devoted to the default remedies of the secured party. This is capable of coming into play in relation to any international interest created under Article 8, whether or not it has been registered in the international register. This reflects the principle that the function of registration is to give public notice to third parties and to determine priorities outside and within the debtor's bankruptcy. Outside bankruptcy, registration has no rôle to play as regards the relations between the parties themselves, for the debtor obviously knows already that it has granted the interest. The provisions relating to default remedies are default provisions in a different sense in that (except where they are mandatory) they apply only to the extent that the security agreement does not otherwise provide. So in principle it is open to the parties to enlarge, restrict or modify the remedies given by Chapter III and the conditions in which these become exercisable. There are some kinds of remedy that are equipment-specific and are thus appropriately provided by the relevant protocol rather than in the convention. Thus in aircraft financing, as previously stated, an important remedy is deregistration of the aircraft from the nationality register in which it is registered, and the draft aircraft protocol makes express provision for this.

The bulk of the provisions are devoted to the rights of the chargee under a security agreement. The reason for this is that such an agreement gives rights over the debtor's property, and thus necessitates more detailed provisions than are considered necessary for the recovery by a seller or lessor of equipment which has always remained in its ownership. The prescribed remedies, which may be exercised singly or in combination, are to take possession of the equipment, to sell or grant a lease, to collect or receive any income or profits and to apply for a court order authorizing or directing any of the above acts. There are, however, certain non-excludable rules governing the exercise of some of these remedies. Remedies are required to be exercised in a commercially reasonable manner[11] and a chargee proposing to sell or grant a lease must first give reasonable prior notice in writing to interested parties. Any surplus resulting from sale must be paid to the

11 Art. 9(2). A remedy is deemed to be exercised in a commercially reasonable manner where exercised in conformity with a provision of the security agreement except where the court determines that such a provision is manifestly unreasonable. This provision is modified in the aircraft protocol.

next registered chargee, or if there is none, to the chargor. Article 10 allows equipment to be forfeited to the chargee in satisfaction of the debt but only if all interested parties agree or the court so orders. In the case of conditional sale and leasing agreements the remedies specified are termination of the agreement and repossession, but agreements will invariably add a range of other remedies.

In general, remedies not specified as requiring leave of the court may be exercised without such leave except in a Contracting State which has made a declaration to the contrary. Subject to this, remedies are required to be exercised in accordance with the procedural law of the place of exercise.[12]

Article 15 contains an important provision enabling the secured party who adduces *prima facie* evidence of default to obtain speedy judicial relief designed to protect or maintain the value of the equipment pending final determination of its claim. Such relief takes the form of one or more of the following orders, namely, preservation of the equipment and its value, possession, control, custody or management of the equipment, sale or lease of the equipment and application of the proceeds or income of the equipment or immobilisation of the equipment.

THE INTERNATIONAL REGISTRATION SYSTEM

Central to the operation of the convention is the International Registry in which would be recorded international interests and prospective international interests[13] and assignments, prospective assignments and subordinations of such interests. In practice, there would be separate registers for different types of equipment. Under the current text each registry would be established and overseen, and each Registrar would be designated, by an International Regulator and would be administered by the Registrar and operated by a duly appointed operator.[14] In the exercise of their respective functions under the convention and the relevant protocol the Registrar, the operator and the International Registry would be deemed to be an international organisation and in principle would be immune from suit in the courts of the states in which they are situated. However, it is likely that qualifications will be introduced to this immunity. In the first place, the extent of it will depend upon the terms of the agreement with the host State in which the International Registry is established. Secondly, it will be necessary to provide in the relevant protocol for the liability of the International Registry for loss caused by errors, omissions or systems failures, for example, failure to register or an error in the name of the registrant. Such provisions, and any limitations of liability, have yet to be worked out. So also has the rôle of the operator of the registry. Is its task essentially administrative or has it a quasi-judicial function to perform in evaluating eligibility for registration? For example, should the Registrar concern himself with whether a security agreement appears to conform to the requirements of the convention?

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12 Art. 13.

13 See *post*, p. 70.

14 The aircraft protocol includes an alternative provision by which an intergovernmental body would both operate and regulate the registry.

Procedures will also have to be devised by which a party aggrieved by an improper registration can have it discharged or amended. It seems clear that the International Registry, as an international organization, could not be made subject to orders of national courts. This would not only run counter to general principles of international law but would also raise the problem of conflicting orders from courts of different countries. The remedy for the aggrieved party is either to apply to expunge or amend the registration or to obtain an *in personam* order from a court of competent jurisdiction directing the secured party to procure the discharge or amendment of the registration. It will also be necessary to prescribe the court or other tribunal which is to determine claims relating to any defects in the system or any errors or omissions in its operation.

MODALITIES OF REGISTRATION

Chapter V contains detailed provisions governing the modalities of registration. These will be supplemented by the relevant protocol and by registration regulations. They provide for the registration of international interests and for the amendment, extension or discharge of a registration. Particularly useful is the provision of Article 21(b) permitting registration of a *prospective* international interest, that is, an interest that is intended to be created or provided for as an international interest in the future. This provision, which borrows from a similar concept in Article 9 of the American Uniform Commercial Code, permits a prospective secured creditor, with the consent of the debtor, to protect its priority during negotiations for the security by registering a notice of its intended interest in identified equipment within the scope of the convention. Any international interest resulting from such negotiations would then be deemed to have been registered as from the time of its registration as a prospective international interest[15] and its priority would be determined on this basis.

PRIORITIES

The ordering of priorities of competing security interests in national legal systems is usually a matter of considerable complexity. For example, should a party who has notice of an unregistered interest be bound by it or should it be entitled to rely on the want of registration? Where security is taken to secure future advances, should the secured creditor, after receiving notice of a second security interest, be permitted to tack such further advances to its security in priority to the second chargee? After considering the different ways in which problems of this kind might be dealt with, the Study Group opted for simplicity rather than sophistication. The result is a remarkably simple set of priority rules confined to a single Article. A registered interest has priority over any other interest subsequently registered and over an unregistered interest. This priority is given even where the registered interest was acquired or registered with actual knowledge of an earlier unregistered interest. This rule may seem hard but has numerous precedents in national legal systems and is designed to avoid factual disputes as to whether a party did or did not have knowledge of an earlier interest and thus to maintain the integrity of the registration system. Again, the priority will extend to further advances even if made with actual knowledge of another interest. It is for the person holding or intending to take such other interest to negotiate a priority agreement with the senior creditor.

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15 Art. 20(2).

There is one special rule. The outright buyer[16] of equipment takes subject to an interest registered at the time of the purchase but free from an unregistered interest even if taking with actual knowledge of it. This rule is necessary because the interest acquired by an outright buyer is not an international interest and is therefore not registrable under the convention, and it would be unfair to give priority to the holder of a registered interest over an earlier buyer who lacked the machinery for giving public notice of its interest.[17]

BANKRUPTCY OF THE DEBTOR

Under Article 29(1) an international interest is valid against the debtor's trustee in bankruptcy if registered in conformity with the convention prior to the commencement of the bankruptcy. This is a rule of validity, not a rule of invalidity. Accordingly even an international interest not so registered will be effective against the trustee where it is valid under the applicable law. For example, the international interest may also constitute a national interest under the applicable law which has been perfected in accordance with the requirements of that law so as to be valid against the trustee; and in many jurisdictions the interest of a conditional seller or lessor is not registrable but can nevertheless be asserted against the trustee of the buyer or lessee.

ASSIGNMENTS

Chapter VII allows an assignment of an international interest in accordance with the same simple formalities as apply to the creation of such an interest. For this purpose "assignment" is widely defined,[18] covering outright transfers, transfers by way of security and charges or hypothecations which do not involve any transfer at all but merely constitute an encumbrance on the equipment, entitling the chargee to look to the proceeds of the equipment in priority to other creditors. An assignment operates to transfer to the assignee the priority enjoyed by the assignor and any associated rights of ownership, possession or rights to payment, to the extent agreed by the parties to the assignment. The debtor becomes bound to pay the assignee on being given a notice of assignment which complies with the requirements of Article 33(1). The rules governing priority of competing international interests are applied *mutatis mutandis* to the priority of competing assignments.

NON-CONSENSUAL RIGHTS AND INTERESTS

Article 38(1), which has been only provisionally adopted, is designed to broaden the scope of the convention by permitting a Contracting State to make a declaration that categories of non-consensual interests it might designate should be registrable as international interests and should thereafter be treated as such for priority purposes. It is envisaged that a state might wish to avail itself of this right in relation to non-consensual interest which do not already enjoy preferential status under its domestic law, such as claims for taxes

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16 As opposed to a buyer under a conditional sale agreement.

17 The aircraft equipment protocol provides for the extension of the convention to cover outright transfers of aircraft equipment, and as a corollary it disapplies this special provision, which then becomes unnecessary, since the outright buyer will be able to register its interest.

18 Art. 30(3).

or unpaid wages, the priority of which does not depend on registration.[19] Categories to which such a declaration might relate are, for example, the claims of a creditor who has attached equipment by way of execution of a judgment or provisional relief or the claims of a lien creditor for work carried out on the object. Article 38(2) deals with non-consensual interests which under the applicable law would have priority over the local equivalent of an international interest, and makes the giving of such priority over an international interest dependent on the state setting out that priority in an instrument deposited with the depositary, thus alerting potential secured creditors. Again, Article 38(2) has only been provisionally adopted.

RELATIONSHIPS WITH OTHER CONVENTIONS

A chapter yet to be drafted will deal with relationships between the draft convention and existing conventions and prospective conventions, such as the UNCITRAL draft convention on receivables financing. This is a highly complex matter involving numerous conventions. There are some conventions which defer both to past conventions and to future ones. It only needs two such conventions in the same field to produce a total impasse! The importance of a careful study of such relationships is highlighted by the fact that the British section of the International Law Association has set up a committee under the chairmanship of Sir Robert JENNINGS, a former President of the International Court of Justice, to examine the problems in detail. It is hoped that the committee will assist our project by adding the UNIDROIT draft convention to the public law treaties it is currently examining.

FUTURE PROGRESS

The UNIDROIT draft convention has now gained considerable motive power and support. This is in no small measure due to the work of the Aviation Working Group and the larger Aircraft Protocol Group, including ICAO and IATA, co-ordinated by Mr Wool. Progress is now being made by the working groups for space objects and railway rolling stock. It is planned to hold the first meeting of government experts in January 1999 to consider the latest texts, and subject to the agreement of ICAO the aircraft protocol would proceed under the joint aegis of UNIDROIT and ICAO, with a continuing involvement of IATA and representation of the Aviation Working Group. The hope is to bring the finalised text, together with the aircraft protocol and any protocols then prepared, before a Diplomatic Conference before the start of the third millennium. Much work still needs to be done, but the potential benefits are immense. There seems little doubt that the UNIDROIT Convention on International Interests in Mobile Equipment will make a significant contribution to the future development of transnational commercial law.

19 Art. 38(2) would require the Contracting State to set out such preferential claims in an instrument deposited with the depositary as a condition of their retaining priority over an international interest.