

**Speedy Relief? The Default Remedies as set out in the Cape  
Town Convention and the Aircraft Protocol**

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*To my beloved parents and to “Amore Mio”*

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## ABSTRACT

The ability of creditors to establish and enforce claims against a debtor is crucial for the financing of highly valuable moveable assets. The new unified legal framework of the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment* attempts to introduce a legally certain, truly effective, and speedy enforcement system that can assure and encourage the financiers to invest in Aircraft objects. This thesis assesses the default remedies available upon a debtor's default as set out in these legal instruments and the possible problems that the creditors might be confronted with should the *Cape Town Convention* and the *Aircraft Protocol* not be implemented in the way the drafters envisaged. It also provides an overview of the above mentioned *Convention* and the *Protocol*, as well an overview of the evolution of legal regulation in aircraft financing by examining the most important previous legal instrument - the *Geneva Convention on Recognition of Rights in Aircraft*.

## RÉSUMÉ

La capacité des créanciers d'établir et de faire respecter leurs droits envers leurs débiteurs est essentielle pour le financement de matériels d'équipement mobiles d'une grande valeur marchande. Le nouveau cadre normatif de la *Convention relative aux garanties internationales portant sur des matériels d'équipement mobiles* et du *Protocole portant sur les questions spécifiques aux matériels d'équipement aéronautiques à la Convention relative aux garanties internationales portant sur des matériels d'équipement mobiles* tentent d'introduire un système certain et efficace avec une procédure rapide qui pourra encourager les financiers à investir dans les matériels d'équipement mobiles. Ce mémoire évalue les remèdes recours disponibles lorsqu'un débiteur ne règle pas ses dettes échéances *Convention* et les problèmes éventuels qui attendront les créanciers si la *Convention* et le *Protocole* ne sont pas exécutés (de la manière envisagée par leurs rédacteurs). Nous incluons aussi une vue d'ensemble de cette *Convention* et du *Protocole*, en plus d'un regard d'ensemble sur l'évolution de la réglementation juridique du financement des aéronefs, en examinant l'instrument normatif antérieur le plus prestigieux -la *Convention relative à la reconnaissance internationale des droits sur les aéronefs*.

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## **TABLE OF ABBREVIATIONS**

CIME - *The Convention on International Interests in Mobile Equipment*

AP - *The Protocol to the Convention on International Interests in Mobile Equipment  
on Matters Specific to Aircraft Equipment*

CIRR - *The Convention on International Recognition of Rights in Aircraft*



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## INTRODUCTION

*The Convention on International Interests in Mobile Equipment*, also known as the “*Cape Town Convention*”, is an international Treaty which took effect on March 1<sup>st</sup> 2006 and applies to many twin-engine and most jet aircraft. Together with the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment*, known as the “*Aircraft Protocol*”, they form the *Cape Town Convention System*.

*The Cape Town Convention* and *Aircraft Protocol* were negotiated over a five-year period under the auspices of The International Institute for the Unification of Private Law and the International Civil Aviation Organization (ICAO). It was concluded at a Diplomatic Conference in Cape Town, South Africa in November 2001 and since its conclusion it has been signed by only 28, mostly “developing”, Countries and ratified or accepted by only 25 States.<sup>1</sup> So far, the *Aircraft Protocol* has been signed by 28 States and ratified or accepted by 23 States.<sup>2</sup>

The legal framework of the *Convention* and *Protocol*, once fully implemented, was supposed to facilitate the modernization of airline fleets around the world. The economic benefits should have been truly global. A great emphasis was given to less-

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<sup>1</sup> For current status of ratifications of the *Convention on International Interests in Mobile Equipment* please refer to <<http://www.unidroit.org/english/implement/i-2001-convention.pdf>>.

<sup>2</sup> For current status of ratifications of the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* please refer to <<http://www.unidroit.org/english/implement/i-2001-aircraftprotocol.pdf>>.

developed Countries. The *Convention* was drafted to enable airlines to modernize their fleets through easier access to aircrafts at reduced financing costs.

The *Convention*'s objective was to make the world's skies safer and cleaner, as newer aircraft should have replaced those currently in use. "Developed Countries"<sup>3</sup> – the main manufacturers of aircraft - were supposed to benefit from the increase of their exports, since the number of aircraft orders was expected to rise as a result of the adoption of the *Cape Town Convention*.

The introduction of the *Convention on International Interests in Mobile Equipment* and the *Aircraft Equipment Protocol* was heralded as a revolutionary advancement in international protection of Security Interest in moveable assets, introducing a higher level of legal certainty into air finance transactions. With it came an expectation that the *Treaty* would facilitate easier and cheaper access to capital aimed at financing aircrafts, particularly for countries with challenging credit ratings.

The *Convention* system is based on three main principles – the transparent priority principle, the prompt enforcement principle and the bankruptcy law enforcement principle.<sup>4</sup> To fulfill its objectives the provisions incorporating the above-mentioned principles of the *Convention* System must be effectively implemented and enforced by the signatory states' national Courts.

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<sup>3</sup> Countries with advanced economies in which the tertiary and quaternary sectors of industry dominate.

<sup>4</sup> T.Stone, "A Case for Unidroit" (2001) 242 *Airfinance Journal* 40 at 40.

This research will focus on rules pertaining to the enforcement of rights as set out in the *Cape Town Convention* and the *Aircraft Protocol*. This work will explain the remedies available to aircraft creditors upon a debtor's default. It will address the question whether or not the entitled entity can quickly enforce its rights against assets in the case of default as embodied in the above mentioned "prompt enforcement principle", in the way anticipated by the drafters. Eventually, it will attempt to answer whether a new legal scheme is necessary for today's Air Finance Industry and how the Contracting States should act in their implementation of the Cape Town System in order to benefit the creditors.

The first part of this thesis provides an overview of the *Cape Town* Unification and explains the necessity of a prompt enforcement of rights in an industry where a creditor's opportunity cost significantly increases when the moveable asset does not generate revenue. In addition, this chapter will provide an overview of the evolution of legal regulation in Aircraft financing by briefly examining the most important previous legal instrument - the *Geneva Convention on Recognition of Rights in Aircraft*.

The subsequent chapter will provide an in-depth legal analysis of enforcement remedies in cases of a default, as stipulated by the *Convention/Protocol* system. We will examine the default remedies available to three groups of entitled persons – (1) the chargee, (2) the conditional seller or lessor and (3) the assignee, as well as modifications of these default remedies as set out in the Protocol.

The final chapter of our paper aims to determine whether or not the new Legal Unification of *Cape Town* is necessary and how the Contracting States should act to allow the entitled creditor to quickly enforce its rights according to the provisions of the *Cape Town* Legal System. This chapter will also examine the possible problems that may occur in allowing the Signatory States to choose which enforcement provision they will be bound by in the case of a default. We are to examine the possible problems that the creditors might be confronted with should the *Cape Town Convention* and the *Aircraft Protocol* not be implemented in the way the drafters envisaged. The description of the legal issues in this chapter will concentrate on both criticized and praised “Declarations” allowed by the *Convention and Protocol*, which enable the States to tailor the default remedies provisions of the *Convention* and *Protocol* to their needs. Finally, an overview of how the States have “customized” the *Convention* will be provided and possible motives of their actions will be outlined.

## CHAPTER I. THE PROMPT ENFORCEMENT PRINCIPLE AND THE CAPE TOWN CONVENTION

### A. The Prompt Enforcement Principle

The “prompt enforcement” principle is one of the asset-based financing principles contained in the *Convention on International Interests in Mobile Equipment (Cape Town Convention)* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (Aircraft Protocol)*. It embodies the capacity to promptly enforce rights against assets generating proceeds and revenues.

As the mobile equipment is not intended to stay in one country but to move across the borders, in its deployment it might be located in multiple jurisdictions. This imposes additional costs for the concerned creditors, as they must research other potentially applicable laws of the countries where the equipment may be moved. Therefore the traditional conflicts of law approach under which the creation and priority of a security interest in mobile equipment are governed by the law of the equipment’s location seems to be costly and insufficient.<sup>5</sup>

The ability of creditors to establish and enforce claims against a debtor is crucial for the efficient financing of moveable assets. There is a direct correlation between the length of the period between default and repossession or redeployment of the asset into

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<sup>5</sup> Buxbaum, Hannah L. “ Unification of the Law Governing Secured Transactions: Progress and Prospects for Reform“ (2003) 1/2 Unif. L. Rev. 321 at 323.

service and the lower expected recapture-value of the asset, accompanied by greater lost opportunity costs and exposure of the creditor.<sup>6</sup>

In some legal systems, the current enforcing of security agreements (repossessing and selling the goods in which the lender or credit seller has a security interest) by judicial enforcement can take years. A great diversity of Property Law regimes and procedural regimes exist and as a result the creditors contend with a plethora of different legal regulations. This contributes to the creditors' inability to quickly enforce their rights in cases of a default, or to promptly realize the value of the asset and to redeploy the asset in order to generate revenues that could be applied against the owed amounts, in addition to creating legal uncertainty for creditors.

In cases of mobile assets that are also technologically depreciating ones, such as commercial Aircraft, their value as collateral depends for the most part on the speed and legal certainty in which a creditor can repossess the equipment when a default occurs. To assess the risk of their investment, potential investors need to be able to predict the procedure and timing between default and remarketing of the Aircraft.<sup>7</sup> As a result, in Countries where the enforcement of creditor claims over collateralized assets is problematic, the costs of external loan finance tend to be higher.<sup>8</sup> Only a legally certain, truly effective, and speedy enforcement system can assure creditors and encourage them

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<sup>6</sup> A. Saunders & I. Walter, "Proposed Unidroit Convention on International Interests in Mobile Equipment as Applicable to Aircraft Equipment through the Aircraft Equipment Protocol: Economic Impact Assessment, a Study Prepared Under the Auspices of INSEAD and the New York University Salomon Center" (September 2008) online: Aviation Working Group <<http://www.awg.aero/pdf/EIA.pdf>> at 6.

<sup>7</sup> S. McGairl. "Return to Lender" (2002) 248 *Airfinance Journal* 26 at 27.

<sup>8</sup> A. Saunders & I. Walter, *supra* NOTE 6 at 7.

to invest in and finance the Aircraft assets and lower the costs of the credit. The *Cape Town Convention* and the *Aircraft Protocol* - the new unified legal framework - attempt to introduce such an enforcement System.

## **B. The Convention on International Interests in Mobile Equipment and the Aircraft Protocol**

### **B.1. Overview**

*The Convention on International Interests in Mobile Equipment*, which covers the creation, protection and enforcement of proprietary rights in moveable objects, was finalised on 16 November 2001. Its basic purpose is to provide creditors in the aviation industry with more certain and readily enforceable rights, thereby stimulating the provision and enhancing the terms of finance in the big-ticket asset finance industry.

Operating as an umbrella treaty, the *Cape Town Convention* is brought into effect by equipment-specific protocols, which tailor *the Convention* to a particular class of assets. *Protocols* for three categories of moveable assets are proposed: Aircraft objects, rolling stock and space assets. Should inconsistencies between the *Cape Town Convention* and the respective *Protocols* appear, the *Protocols* shall prevail (CIME 6 (1)).



The *Cape Town Convention* entered into force three months after the date of the deposit of the third ratification instrument but only with regards to the category of the objects to which the equipment-specific *Protocol* applies as of the time that *Protocol* enters into force, and is subject to the terms of that *Protocol*, which applies only between State that are parties to both the *Cape Town Convention* and that particular *Protocol* (CIME 49(1)).

Currently, the *Protocol* relating to Aircraft objects (*Aircraft Protocol*)<sup>9</sup> is the only *Protocol* which is in force.<sup>10</sup> The *Convention on International Interests in Mobile Equipment* came into force on 1<sup>st</sup> April 2004. It has been signed by 28 States and among these countries are some of the aviation industry “moguls” such as United States or United Arab Emirates. As the *Cape Town Convention* is a mixed competence Treaty (some of its elements are subject to the competence of EC Law) the European Commission intended that the European Union, as a “Regional Economic Integration Organization” (CIME 48; AP XXVII)<sup>11</sup> would ratify the *Convention* first and the Member States would ratify it subsequently. Due to internal disputes among the Member States of the European Union, the ratification process was blocked for a time. As the dispute

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<sup>10</sup> Railway stock specific protocol (*Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock*) was opened for signature on 23<sup>rd</sup> February 2007 and is not yet in force.

<sup>11</sup> The numbering of The *Convention on International Interests in Mobile Equipment* provisions is transcribed in Arabic numerals, whereas the provisions of the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment* use roman numerals.

between the United Kingdom and Spain now appears to be settled, the ratification process in the European Union can start.<sup>12</sup>

#### B.1.1 Legal Unification as a result of Industry's Involvement

The International Institute initiated the project of an international convention that would set out general rules for asset based financing of different categories of highly valuable mobile equipment that resulted in the *Convention on International Interests in Mobile Equipment* for the Unification of Private Law (Unidroit).

In the process of drafting the *Convention* and the *Aircraft Protocol*, Unidroit joined its forces with the United Nations system Specialized Agency – the International Civil Aviation Organization (ICAO)<sup>13</sup> to tailor the legal framework to the needs of the industry. The aviation industry members together with manufacturers, lessors and financiers, aware of the significant fleet financing requirements in the coming years and the benefits of the proposed unification joined Unidroit and ICAO and took an active role in the preparation of the *Cape Town Convention* and the respective *Aircraft Protocol*. These industry members organized by the Airbus Industrie and the Boeing Company

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<sup>12</sup> A. Croft, “Britain, Spain Settle a Dispute Over Gibraltar”, *Reuters* (8 January 2008) online: Reuters < <http://www.reuters.com/article/newsMaps/idUSL0845118820080108>>.

<sup>13</sup> Weber, Ludwig & Espínola, Silvério. “The development of a new Convention relating to international interests in mobile equipment, in particular aircraft equipment: a joint ICAO-Unidroit project” (1999) 2 *Unif. L. Rev.* 463 at 463.

formed<sup>14</sup> an *ad hoc* Aviation Working Group (AWG).<sup>15</sup> The industry was later joined by the International Air Transport Association (IATA), which represented the interests of its airline members.

In terms of other equipment-specific protocols the involvement of the both specialized intergovernmental organizations and industry members in preparation of the legal framework of the industry was similar. The *Railway Protocol* was drafted under the auspices of Intergovernmental Organization for International Carriage by Rail (OTIF) jointly with the Railway Working Group.<sup>16</sup> In order to promote the space industry's interests in connection with the *Cape Town Convention* and to prepare the *Space Equipment Protocol* the Space Working Group (SWG) was also created. The SWG composes of representatives of aerospace industry, satellite operators and financing providers.<sup>17</sup>

The above mentioned involvement of the industry members in the drafting process makes the *Cape Town Convention* an unique example of cooperation of the industries

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<sup>14</sup> Wool, Jeffrey. "Rethinking the Notion of Uniformity in the Drafting of International Commercial Law: a Preliminary Proposal for the Development of a Policy – based Unification Model" (1997) 1 Unif. L. Rev. 46 at 54.

<sup>15</sup> Among AWG members are – Airbus, Boeing, Bombardier Aerospace, Embraer, Rolls-Royce, General Electric, United Technologies Corporation (Pratt & Whitney Division), AerCap, GECAS and ILFC.

<sup>16</sup> Among the members of the Railway Working Group are railways and railway unions – Deutsche Bahn AG, English Welsh and Scottish Railway, Comité international des transports ferroviaires, Community of European Railways, International Union of Railways; major rolling stock producers – Union of European Railway Industries, Bombardier Industrie; and banks and leasing providers such as Debis Financial Engineering GmbH, European Investment Bank, GE Capital, Global Capital Finance GmbH, HSH Nordbank and NIB Capital Bank N.V..

<sup>17</sup> Among the members of the Space Workig Group are Arianespace, Deutsche Bank, Hughes Communications, Immarsat, Lockheed Martin Global Telecommunications, Space Systems, Tweed, Hadley and McCloy LLP.

who are to benefit from the proposed unification with the law makers. This type of cooperation was very beneficial for both sides. The input of the aviation, railway and space industries gained from the practical experience with asset-based financing of mobile equipment enabled the law makers to customize the *Convention* and the *Protocols* to the special needs of the particular industries.

## **B.2. Objectives of the Cape Town Convention**

The *Cape Town Convention* and the *Aircraft Protocol* were drafted in order to facilitate the financing of high-value Aircraft and other mobile equipment destined for cross-boarder use. The basic objectives of the Cape Town System are the following:

- 1) to provide for the creation of an international interest recognizable in all Contracting States
- 2) to provide the creditor with a range of basic default remedies and a means of obtaining speedy interim relief pending final determination of its claim
- 3) to establish an electronic international register for the registration of international interests which will give notice of existence of these interests to third parties and enable a creditor to preserve its priority

against subsequently registered interests and against unregistered interests

- 4) to ensure that through the relevant *Aircraft Protocol* the specific needs of the aviation industry are met and thereby give intending creditors greater confidence to grant credit, enhance the credit rating of equipment receivables, to reduce borrowing costs and provide broad and mutual economic benefits for all interested parties.<sup>18</sup>

The *Convention* does not attempt to regulate all commercial matters relating to interests in mobile equipment. There is a well-established body of Law in most Legal Jurisdictions relating to the financing and leasing of mobile assets and the *Convention* simply intends to complement it by unifying the most important aspects of Aircraft financing.

### **B.3. International Interests**

#### **B.3.1 Types of International Interests**

The *Convention* creates several new types of interests. An International Interest is an interest in identifiable Aircraft object (as airframes; Aircraft engines; helicopters (CIME 2; AP II)), which is granted by the chargor under a security agreement - (e.g. a

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<sup>18</sup> R. Goode, “*The Cape Town Convention on International Interests in Mobile Equipment: A Driving Force for International Asset-Based Financing*” (2002) 7 Unif. L. Rev. 3 at 4.

mortgage, a charge over an object (CIME 1(ii))), which is vested in a person who is the conditional seller under a title reservation agreement (CIME 1(II)), or vested in a person who is the lessor under a leasing agreement<sup>19</sup>. The national Law determines into which of the above-mentioned categories an agreement falls (CIME 2(4)). The Contracting States, some of which have National Property Laws that have different definitions of terms as they are understood in the Convention<sup>20</sup> (e.g. several States do not recognize mortgage in a movable asset), will need to adjust to their Domestic Laws in order for certain types of security interests to be recognizable in all Convention Member States.

An agreement creating an international interest must be constituted in writing; it has to relate to an object over which the chargor, conditional seller or lessor has power to dispose, enables the object to be identified<sup>21</sup> and, in the case of security agreements, enables the secured obligations to be determined (CIME 7). It should be noted that the agreement constitutes the interest - registration of the interest is only a tool to preserve its priority, as the certificate issued by the Registrar is *prima facie* evidence of the facts recited in it, including the date and time of registration (CIME 24).

Other types of interests covered by the *Convention* are: prospective international interests, national interests, registrable non-consensual rights or interests arising under

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<sup>19</sup> *Convention on International Interests in Mobile Equipment* Art 1(q), a leasing agreement is defined as an agreement by which one person (the lessor) grants a right to possession or control of an object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment. As in wet lease agreement the aircraft object is under the control of the lessor this type of agreement is not covered by the Convention.

<sup>20</sup> B. J.H.Crans, "The Unidroit Convention on International Interests in Mobile Equipment and the Aircraft Equipment Protocol: Some Critical Observations" (1998) XXIII Air & Space L. 277 at 278.

<sup>21</sup> There are three elements required by the Convention to identify an aircraft object: (1) the manufacturer's serial number; (2) the name of the manufacturer, and (3) the model designation<sup>21</sup>.

national Law and non-consensual rights or interests arising under national Law and given priority without registration.

A prospective international interest is an interest that is intended to be created as an international interest in the future, the timing of which is based upon the occurrence of a stated event (CIME 1(y)). If an interest, first registered as a prospective international interest, becomes an international interest, that international interest is treated as registered from the time of registration of the prospective international interest if certain set conditions are fulfilled (CIME 19(4)).

A national interest is an interest created by an internal transaction and registered under national registration. An internal transaction is defined by the *Convention* as a transaction which could give a rise to an international interest but where the main centre of interests of the parties to the transaction is situated in the same Contracting State, as is the relevant Aircraft object, at the time of the conclusion of the contract. A Contracting State can make a Declaration (CIME 1(r); 50(1)) and exclude these transactions from the application of the *Convention*. This can lead to a situation where the equipment is financed solely through internal transactions and the application of the *Cape Town System* is avoided.<sup>22</sup> However, though some provisions of the *Convention* apply also to internal transactions, the very important provisions on default remedies do not apply to internal transactions. The potential risks this exposes the creditor to should be mitigated in a contract between the Parties.

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<sup>22</sup> G. Mauri, "The Cape Town Convention Interests in Mobile Equipment as Applied to Aircraft: Are Lenders Better Off Under the Geneva Convention?" (2005) 5 E.R.P.L 641 at 651.

Registrable non-consensual rights or interests are rights or interests created to secure the performance of an obligation to a State, State entity or an intergovernmental or private organization and conferred under the Law of a Contracting State that has made a Declaration about them - e.g. with regard to the rights of the State relating to taxes (CIME 1(dd); 1(s); 39; 40). These may be registered in the International Registry. If the interest or right is so registered, it will be treated for *Convention* purposes as a registered international interest.

Non-consensual rights or interests arising under national Law and which are given priority without registration are rights or interests arising under the national Law of a Contracting State and contained in a Declaration that this State has made. These rights or interests have priority over a registered international interest, even if unregistered. The purpose of such a Declaration is to make preferred rights public, thus enabling financiers to assess the risks (CIME 1(s); 39).<sup>23</sup>

Contracts for sale or prospective sale do not create an international interest. However, according to the *Aircraft Protocol*, some of the *Convention* provisions apply to sales as they apply to international interests and to prospective sales as to prospective international interests. This enables the parties to these contracts for sale or prospective sale to benefit from the priority rules set out by the *Convention* (AP III).

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<sup>23</sup> The list of Non-consensual rights or interests arising under national law can be found in the Ratification documents submitted by the Contracting States to the Depository of the Convention.



The *Convention* applies when, at the time of the conclusion of the agreement creating the international interest, the debtor is situated in a Contracting State, regardless of where the creditor is situated (CIME 3).

### B.3.2 Objects to Which the Convention as Applied to Aircraft Objects Applies

As stated in the *Convention* and specified in the *Aircraft Protocol*, the *Cape Town System* applies to Aircraft objects – airframes, Aircraft engines and helicopters (CIME 2(3)(a)).

‘Aircraft’ means Aircraft as defined for the purposes of the *Chicago Convention*<sup>24</sup>: either airframes with Aircraft engines installed thereon or helicopters. The Aircraft engines are defined as engines powered either by jet propulsion or turbine or piston technology and having a stated minimum thrust (AP I).

The need to deal with airframes and Aircraft engines separately comes from the fact that Aircraft engines are highly valuable, mobile, independent units that are frequently interchanged between Aircraft and often financed separately. For example, the General Electric GE90-4B engine that powers Boeing 777 has a list price of USD 17 mil.<sup>25</sup> To reflect this and to protect the rights of the engine owners and financiers, the

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<sup>24</sup> This excludes aircraft used in custom, military and police services from the application of the Cape Town Convention (*Convention on International Civil Aviation* Art. 3 (a)(b)).

<sup>25</sup> “Sept 11 Hits Aircraft Engine Production”, *The Hindu Business Line Internet Editions* (24 January 2003) online: The Hindu Business Line <<http://www.reuters.com/article/newsMaps/idUSL0845118820080108>>.

*Convention* states that the ownership or another right or interest in an Aircraft engine shall not be affected by its installation on or removal from an Aircraft (AP XIV(3)).

#### **B.4. Priority Rules and Registration**

##### **B.4.1 Registration and Priority**

The registration of an international interest is valid only if it is made in conformity with the *Convention* and the *Aircraft Protocol*. It is completed upon entry of the required information into the International Registry database, making it searchable (CIME 19). The registration remains effective either until discharged by or with the consent of the party in whose favour it was made (CIME 20) or until the end of period specified in the registration (CIME 21).

The registration of an interest as an International Interest gives a public notice of the interest and enables the creditor to preserve its priority and the effectiveness of the interest in default of and insolvency proceedings against the debtor. The general priority rule is that a registered interest has priority over any other interest subsequently registered and over an unregistered interest (CIME 29(1)). The rule applies even if the registered interest was acquired or registered with actual knowledge of an unregistered interest (CIME 29(2)(3)).

Just as is the case for every rule, the basic priority rule is also subject to exceptions. The main exemption is that priority rules set out in the *Convention* may be altered by agreement between the holders of the relevant interests. However, an assignee of a subordinated interest is not bound by such an agreement to subordinate that interest unless a subordination had been registered relating to that agreement at the time of the assignment (CIME 29(5)).

#### B.4.2. Registry

The *Convention* provides for the creation of an International Registration System. The role of the International Registry is to register all types of International Interests, assignments and prospective assignments of international interests, acquisitions of interests by subrogations under the applicable Law, notices of national interests and subordinations of the above-mentioned interests in mobile equipment (CIME 16), thereby establishing the priority of interests. The *Convention* implies different Registries for the three specified groups of equipment. So far, only the Aircraft Registry has been established.

The International Registry specific to Aircraft objects is based in Dublin, Ireland. It is operated by Aviareto<sup>26</sup>, a joint venture between SITA SC and the Irish Government.<sup>27</sup>

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<sup>26</sup> More information on Aviareto can be found at <<http://www.aviareto.aero/>>

<sup>27</sup> Aviareto has a contract with the Supervisory Authority of the International Registry (CIME 17) - International Civil Aviation Organization to establish and operate the International Registry as required by the *Cape Town Convention* and *Aircraft Protocol*.

The Registry is fully electronic and, for registered users, access to it is available 24 hours a day through its website.<sup>28</sup>

The registration at and approval from the International Registry is required to enable the contracting parties to make, amend or discharge a registration of an International Interest. The specific procedural requisites are regulated by the *Regulations and Procedures for the International Registry*.<sup>29</sup>

In the first ten months of operation, the International Registry certificated approximately 8,000 users or administrators, registered approximately 33,000 interests against approximately 15,000 Aircraft objects and performed approximately 33,500 searches. About 90% of the activity originated from the US. However, as is usual, in the initial phase some technical problems occurred, but they seem to have been solved now.<sup>30</sup>

### **B.5. Insolvency and Debtor's Default**

The *Convention* states that in the case of insolvency proceedings against the debtor, an international interest is effective if it was registered in conformity with the *Convention* (CIME 30(1)) prior to the commencement of the proceedings.

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<sup>28</sup> For the website of the International Registry can be found at <<https://www.internationalregistry.aero/>>.

<sup>29</sup> The Regulations are published on the website of International Civil Aviation Organization Legal Bureau at <[http://www.icao.int/icao/en/leb/Intl\\_registry/](http://www.icao.int/icao/en/leb/Intl_registry/)>.

<sup>30</sup> A. Hall, "The Cape Town Convention – one year on" (2007) 10 Commercial Aviation Report 3 at 10.

According to the *Convention*, “effective” means that the property interest will be recognized and the holder of the international interest will have a claim against the asset for the obligation owed and will not be limited to a *pari passu* sharing with unsecured creditors.<sup>31</sup> Moreover, the *Convention* does not impair the effectiveness of an international interest in the insolvency proceedings where that interest is effective under the applicable Law. Nor does it affect applicable rules of insolvency procedure relating to the enforcement of rights to property which is under the control or supervision of the Insolvency administrator (CIME 30). The rules of National Law of a Contracting State applicable in insolvency proceedings relating to the avoidance of preferences and fraudulent transfers of creditors are also not affected.

The *Aircraft Protocol* defines insolvency-related event as either a commencement of the insolvency proceedings, a declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the *Convention* is prevented or suspended by Law or State action (AP I(m)).

The rights available to the creditor upon the occurrence of an insolvency-related event depend on the Declaration (CIME 57) made by the Contracting States as well as the agreement of the relevant commercial parties.

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<sup>31</sup> R. Goode, *Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters Specific to Aircraft Equipment Official Commentary* (Rome: Unidroit, 2002) at 19.

The Contracting States can make a Declaration and choose if it will apply one of the two *Convention* insolvency regimes – either the rule-based Alternative A or the “soft” discretion-based Alternative B<sup>32</sup> and whether the chosen regime will be applicable to only some or all types of insolvency proceedings (AP XXX(3)). In the Declaration, A State is also allowed to specify the types of insolvency proceeding to which one of the alternatives will apply and to which the second one will apply. Whatever alternative is chosen, it must be applied in its entirety. The interested commercial parties may agree in writing to the exclusion of the *Convention*’s provision on insolvency, even in situations where a Contracting State has made a Declaration.

The *Convention* and *Aircraft Protocol* contain a set of basic remedies on a debtor default; these will be explained in detail in the following chapter.

#### **B.6. Expected Benefits of the *Convention* and the *Aircraft Protocol***

The drafters of the *Convention* and *Aircraft Protocol* expect significant economic gains once the system is adopted and effectively. These gains are to be shared among airlines and manufacturers, their employees, suppliers, shareholders and customers, and the national economies in which they are located.<sup>33</sup>

The underlying objective of the *Convention* is to give intending creditors greater confidence to grant credit and to reduce the borrowing cost - these sums are not

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<sup>32</sup> R.Goode, *supra* NOTE 31 at 200.

<sup>33</sup> A. Saunders & I. Walter, *supra* NOTE 6 at i.

negligible. The world stock of movable capital lies somewhere between USD 7,500 billion to USD 12,000 billion, out of which Aircraft equipment stock stands for 4%<sup>34</sup>, which is quite a substantial amount.

The necessity of uniform regulation provided by the *Cape Town Convention* for secured transactions rests on two economic factors. First, private lenders and credit sellers depend on collateral. Second, producers and financiers depend on movable property. However, movable property can only serve as collateral when the legal framework permits it<sup>35</sup> and the *Cape Town Convention* and the *Aircraft Protocol* attempt to provide this legal framework.

All the interested parties in aviation are expected to gain something from adopting and implementing the *Convention* system. The aviation industry investors are to gain more confidence in the system and thus invest more, whilst benefiting from increased returns on and higher valuation of investments. The airlines are expected to benefit through reduced financing costs and enhanced access to funds and funding sources, reduced transaction costs, increased operating efficiency of new planes and improved profitability. The main benefits for commercial Aircraft manufacturers and their suppliers should be an increase of sales, which will project to higher output and employment levels.

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<sup>34</sup> H. W. Fleisig, “The Proposed UNIDROIT Convention on Mobile Equipment: Economic Consequences and Issues” (1999) 2 Unif. L. Rev. at 253 at 253.

<sup>35</sup> N. de la Pena, “Reforming the Legal Framework for Security Interests in Mobile Property” (1999) 4 Unif. L. Rev. 347 at 347.

Passengers are to benefit from pass-through price reductions and an increased level of service.<sup>36</sup>

For the Contracting States, the *Convention* should reduce the debt levels of governments whose credit is used to finance Aircraft acquisitions, reduce the risk to those governments who provide export credit supporting Aircraft sales, and enhance the privatization potential of state-owned carriers. Overall, the Cape Town System should have a positive macro economic impact on the economies of both industrial Countries, who will produce the assets, and developing Countries, who will obtain and deploy the equipment in such a way as to “lift a great mass of people out of grinding poverty and give tools to many more who work with their bare hands or not much else”.<sup>37</sup>

### **C. Evolution of Air Finance Legal Instruments**

The *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* (the *Aircraft Protocol*) provides for the supersession of the *Cape Town Convention* the *Convention on the International Recognition of Rights in Aircraft*, the *Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft* and *UNIDROIT Convention on International Financial Leasing*.<sup>38</sup> This thesis provides an overview of the *Geneva Convention*, which is still important and applies the International Private Air Law

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<sup>36</sup> A. Saunders & I. Walter, *supra* NOTE 6 at at ii.

<sup>37</sup> H.W. Fleisig, *supra* NOTE 34 at 258.

<sup>38</sup> *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment* Art. XXIII; Art XXIV; Art. XXV.



framework and presents the history of the evolution of air finance legal instruments from the very beginning up until the current *Cape Town Convention*.

### **Convention on International Recognition of Rights in Aircraft**

*The Convention on International Recognition of Rights in Aircraft (Geneva Convention)*, signed on 19<sup>th</sup> June 1948, is an instrument of Private International Air Law covering the relations of creditors and air carriers or air operators<sup>39</sup>. It was designed to protect parties' interests in Aircraft which have been duly registered according to the Laws of the State where the Aircraft nationality was.<sup>40</sup> *The Convention on International Recognition of Rights in Aircraft* has been ratified by 89 States so far, including the United States, France, Netherlands and China.<sup>41</sup>

The *Geneva Convention* does not regulate real rights and the nature of guaranteed rights in Aircraft. It only recognizes these rights and provides Publicity for the registration of real rights in Aircraft and for changes in Aircraft ownership.<sup>42</sup> Moreover, it does not as such protect international credit in all Aircraft but protects it only while the Aircraft is abroad.<sup>43</sup>

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<sup>39</sup> P.H. Sand, "The International Unification of Air Law" (1965) 30 *Law and Contemporary Problems* 400 at 405.

<sup>40</sup> S. Roche, ed., *Repossession of Aircraft and Insolvency in EC Countries* (London: Lloyd's of London Press LTD, 1993) at 6.

<sup>41</sup> For status of ratifications please refer to <<http://www.icao.int/icao/en/leb/Genev.pdf>>.

<sup>42</sup> N. M. Matte, *Treatise on Air-aeronautical Law* (Toronto: Carswell, 1981) at 546.

<sup>43</sup> M. Ghonaim, *The Legal Aspects of Aviation Finance in Developing Countries* (LL.M. Thesis, McGill University Institute of Air & Space Law, 1991) [unpublished] at 21.

The main objectives of the *Convention* could be summarized as: 1) to protect secured creditors who have lent money on the security of an Aircraft; 2) to protect third parties dealing in or with Aircraft against hidden, non-published security interests; 3) to define and protect 'privileged' or priority claims against an Aircraft; and 4) to facilitate the transfer of Aircraft from one Contracting State's national registry to another. The *Convention* does not achieve this by unifying the domestic Laws of Contracting States, but by ensuring that Contracting States recognize validly created and duly recorded security interests.

The Signatory States of the *Convention* undertook to recognize rights of property in Aircraft; rights to acquire Aircraft by purchase coupled with possession of Aircraft; rights to possession of Aircraft under leases of six months or more and mortgages; hypothèques and similar rights in Aircraft which are contractually created as security for the payment of debts (CIRR I(1)(a)-(d)).

The rights to be recognized by the *Convention* need firstly to be constituted in accordance with the Law of the Contracting State where the Aircraft is registered as to nationality<sup>44</sup> at the time of constitution of such interest. Secondly, the rights have to be regularly recorded in a Public Record in that Contracting State (CIRR I(1)(i); I(1)(ii)). If these conditions are fulfilled, the *Geneva Convention* protects secured rights of property and possession of third parties in 'foreign' Contracting States. The nationality of third

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<sup>44</sup> Article 20 of the Chicago Convention on International Civil Aviation requires that all signatory countries register aircraft over a certain weight with a national aviation authority. Upon registration, the aircraft receives its unique "registration" which must be displayed prominently on the aircraft.

parties (e.g. mortgagors, lessors, lenders) holding Security Interests does not affect the applicability of the *Convention*.

*Geneva Convention* postulates a registration. This is why a transfer of a real right in an Aircraft which is not registered as to nationality cannot be completed within the Geneva system.<sup>45</sup> The *Convention* does not provide a clear solution for an Aircraft under construction which is not yet registered as to nationality, but sold before any recordation in the State in which it was built<sup>46</sup>. In these kinds of situations, the Contracting States are allowed to recognize any other right in Aircraft under their domestic Law not enumerated in the *Convention*. However, they shall not admit or recognize any right taking priority over the above mentioned rights (CIRR I(2)).

Given the difference in legal system of Contracting States, each State is allowed to prohibit, in its Register or Record, a recording of any right which cannot validly be constituted according to its national Law (CIRR II(3)).

The *Convention* applies only to Aircraft used in civil aviation (CIRR XII). It defines an Aircraft as “including the airframe, engines, propellers, radio apparatus, and all other articles intended for use in the Aircraft whether installed therein or temporarily separated therefrom” (CIRR XVI). Aircraft used in military, customs or police services are excluded from the scope of the *Convention*.

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<sup>45</sup> J.A. Krupski, *Conflict of laws in aircraft securitisation : jurisdictional and material aspects of the 1998 Unidroit Reform Project relating to aircraft equipment* (LL.M.Thesis, McGill University Institute of Air and Space Law, 1998) [unpublished] at 65.

<sup>46</sup> N. M. Matte, *supra* NOTE 42 at 568.

If the National Law of the Contracting State so allows, recorded rights in an Aircraft and held as security for the payment of indebtedness include the rights to spare parts stored in a specified place or places. To prevent illegal tampering with the spare parts<sup>47</sup>, they must remain in the specified location and a public notice specifying the description of the right, the name and address of the holder and the record in which such right is recorded, is exhibited at the location (CIRR X(1)).

When successive recordings exist in different Contracting States, the *Convention* provides for their regularity to be determined by the National Law of the State where the respective Aircraft was registered as to nationality at the time of each recording (CIRR I).

Since it considers recording of a right itself, the national Law of a Contracting State is to decide about its effect to third parties (CIRR II(1)). To make the search for rights to specific Aircraft easier, the address of authority responsible for maintaining the record has to be stated on every Aircraft's certificate of registration as to the nationality (CIRR III(1)) and all recordings to a given Aircraft must appear in the same record (CIRR II(1)).

Any person has a legal title to receive certified copies or extracts of particulars recorded from the authority responsible for recording the rights in Aircraft, and these

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<sup>47</sup> The spare parts are defined as “parts of aircraft, engines, propellers, radio apparatus, instruments, appliances, furnishings, parts of any of the foregoing, and generally any other articles of whatever description maintained for installation in aircraft in substitution for parts or articles removed” (CIRR X(4)).

constitute *prima facie* evidence of the contents of the record (CIRR III(2)). Thus, the priority of a recorded right is not affected by any inaccurate extract or certificate. People suffering any loss due to an inaccurate record have to bring their claim for compensation under national Law.

The *Convention* did not succeed in unifying the system of preferred claims and it does not solve the problems that arise out of competing domestic priority rules.<sup>48</sup> However, it contains a preferential order rule in very specific situations - in cases of compensation due for salvage of the Aircraft and extraordinary expenses indispensable for the preservation of the Aircraft. If, under the Law of the Contracting State where such operations were terminated, this gives rise to a right conferring a charge against the Aircraft, this right is to be recognized by all Contracting States and must take priority over all other rights in the Aircraft (CIRR IV(1)(a)(b)).

The recognition period for this type of right is of three months (CIRR IV(4)). It can remain valid longer, if it is noted or recorded within three months from the date of the termination of the salvage or preservation operation (CIRR IV(3)), or if another duration has been agreed to or if a judicial action on the right has been initiated (CIRR IV(4)(a)(b)). Preferential rights are to be satisfied in the inverse order of the dates of the incidents in connection with which they have arisen (CIRR IV(2)).

*Geneva Convention* does not contain any provisions on default remedies or insolvency proceedings but it contains rules for the sale of an Aircraft in execution in

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<sup>48</sup> J. A. Krupski, *supra* NOTE 45 at 67; N. M. Matte, *supra* NOTE 42 at 566.

order to satisfy different rights. The drafters of the *Convention* left the procedure to be determined by the Law of the Contracting State where the sale is to take place (CIRR VII(1)). Nevertheless, the sale in execution is not completely abandoned by the *Convention*, as it provides some procedural requirements for such sale.

The date and place of the sale shall be fixed at least six weeks in advance (CIRR VII(2)(a)) and the executing creditor shall supply the Court with a certified extract of the recordings concerning the Aircraft in sale. A public notice of the sale at the place where the Aircraft is registered must be given at least one month before the fixed day and shall simultaneously notify the recorded owner and the holders of recorded rights in the Aircraft, as well as the holders of preferential rights (CIRR VII(2)(b)).

All preferential rights have to be covered by the proceeds of the sale or assumed by the purchaser before the sale in execution is effected (CIRR VII(4)). As the creditors may be located in different Countries, these provisions establish methods of Publicity and of carrying out the sale in order to ensure fairness and legality of this operation with regard to all creditors.<sup>49</sup>

The penalty for a creditor's noncompliance with the *Convention* is to be determined by the local Law of the Contracting State where the sale took place. To make the position of non-executing creditors even more secure, any sale taking place in contravention of the above mentioned requirements might be annulled within six months

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<sup>49</sup> N. M. Matte, *supra* NOTE 42 at 556

from the date of the sale upon demand of any person suffering damage as the result of such a contravention (CIRR VII(3)).

If all the requirements are fulfilled, the ownership of the Aircraft sold in the execution is transferred free from all rights that are not assumed by the purchaser and de-registration of the plane from a national Registry or of a Contracting State and subsequent re-registration in another Contracting State becomes possible (CIRR VIII;IX). However, the above-mentioned situation is the only one in which such a transfer is allowed. In all other cases, all holders of recorded rights have to be satisfied or have to consent to the transfer to the National registry of another Contracting State. The weakness of this provision is that it does not prevent or restrict the transfer of an Aircraft from its current National Registry to one of a state that is not Party to the *Convention*.

As with every mode of transport, air transport also suffers from the existence of the possibility of an accident happening. The difference is that accidents in aviation usually have disastrous consequences and the sums paid in damages might be enormous. The *Geneva Convention* recognizes the rights of the involuntary creditors that result from injury or damage caused to persons or property on the surface of a Contracting State (CIRR VII(5)). It protects the rights of these creditors in situations where the damage was caused by an Aircraft subject to a right recognized by the *Convention* held as a security for indebtedness and where effective and adequate insurance to cover the injury or damage has not been provided by or on behalf of the operator (CIRR VII(5)). In such cases, the national Law of the Contracting State where the damage was caused and where

the execution sale is to take place may provide in that when such Aircraft<sup>50</sup> is seized. The person suffering damage (involuntary creditor) or his representative may put the Aircraft on sale in execution, even if the result of the sale may not satisfy the creditors holding the privileged rights (CIRR VII(5)(a)).

The national Law may also specify that any right recognized by the *Convention* and held as a security for an indebtedness encumbering the Aircraft can not be set against the involuntary creditor or his representative in excess of an amount equal to 80 percent of the sale price (CIRR VII(5)(b)). This provision limits the rights of registered creditors in order to provide substantial recovery to the aggrieved party.

Although the *Geneva Convention* was first signed in 1948, when the rules of international air financing were less sophisticated than today and it does not create substantial “Law” but only recognizes enumerated types of rights, it has greatly contributed to the evolution of Aircraft financing. In the following Chapter an analysis of substantial legal rules aimed to protect the rights of creditors, as set out in the more current legal unification - the *Cape Town Convention*, will be provided.

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<sup>50</sup> The same applies to any other aircraft owned by the same person and encumbered with any similar right held by the same creditor.



## CHAPTER II. DEFAULT REMEDIES OF THE *CAPE TOWN CONVENTION* AND THE *AIRCRAFT PROTOCOL*

### A. Overview: Meaning of Default

The Default Remedies of the *Cape Town Convention* are set out in Chapter III of the *Cape Town Convention* and modified and supplemented by provisions of the *Aircraft Protocol*. Chapter III, named “Default Remedies”, contains a set of basic remedies available on debtor’s Default. Available default remedies for creditors differ depending on whether the creditor is a chargee (CIME 8), or in a position of either lessor or conditional seller (CIME 10). The different categories of remedies are needed because of the different legal position of these two types of creditors - a chargee only has a security interest in the asset while conditional sellers and lessors own the secured asset.

The parties of the Commercial agreement have an option to determine the meaning of default themselves, as the *Convention* provides that they may at any time agree as to the events that constitute a default or otherwise give rise to the rights and remedies specified in the Chapter III of the *Convention* (CIME 11(1)). In order to be valid, such an agreement must be constituted in writing. The agreed events may vary from a single delayed payment up to cases where the event does not constitute a breach of the agreement at all, e.g. changes of control in the lessee Company.<sup>51</sup> In cases where a Debtor and a Creditor have not agreed on the above mentioned meaning of the “default”, the default is defined, for the purposes of the *Convention*, as a default which substantially

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<sup>51</sup> R.Goode, *supra* NOTE 31 at 70.

deprives the creditor of what it is entitled to expect under the agreement (CIME 11). To fall into the *Convention's* definition of a “default“, a debtor’s lack of performance has to seriously deprive the creditor of his legitimate contractual expectation.<sup>52</sup>

## **B. Remedies Available to Chargees**

A Chargee is in the position of a Creditor under a Security agreement. This type of agreement is defined as an agreement by which a chargor grants or agrees to grant an interest in or over the Aircraft object to a chargee to secure the performance of any existing or future obligations of the chargor or of a third party.

The three remedies available to a chargee in the event of default are: 1) to take possession or control of any object charged to it; 2) to sell or grant a lease of any such object; 3) to collect or receive any income or profits arising from the management or use of any such object (CIME 8(1)(a)(b)(c)). The *Convention* does not specifically require the remedies to be exercised exclusively by the senior chargee, so in cases of successive security interests the remedy might be exercised by any of the chargees.

All the aforementioned remedies are generally meant to be self-help remedies that can be exercised extra judicially and thus more quickly. However, the *Convention* provides that all the remedies are subject to Declaration of a Contracting State and can be preformed only to the extend that the chargor has at any time so agreed. (CIME 8(1); 54) In the Declaration, a State can prohibit the application of one of the remedies – to grant a

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<sup>52</sup> R.Goode, *supra* NOTE 31 at 76.

lease of the charged object while the Aircraft object is situated on the territory of the Contracting State. The State has also the option to declare whether or not any of the remedies available to all the creditors under the *Convention's* provisions on default remedies, which do not require application to the Court, may be exercised only with a leave of the Court (CIME 54). Even when such a Declaration has not been made, the chargee may apply for a Court order to authorize or direct the available remedies (CIME 8(2)).

Moreover, all the legal remedies available to the chargee and to the other creditors have to be exercised in a commercially reasonable manner. The motive for this requirement can be found in the Convention's attempt to ensure that a creditor who sells or leases the Aircraft Object under an international interest pursuant to a court order does not sell the relevant object below its market value.<sup>53</sup> According to the *Protocol*, the remedy is considered to be commercially reasonable if it is exercised in conformity with a provision of the agreement between the parties, except where such a provision is manifestly unreasonable (AP IX(3)).

However, the *Convention* remains silent on the situations where parties would fail to reach such an agreement or where the provisions of the agreement are unsustainable.<sup>54</sup> In such cases, the Court having jurisdiction in respect of potential claims would have to determine whether the performance of the remedy is commercially reasonable.

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<sup>53</sup> P. Honnebier, "The Convention of Cape Town on International Interests in Mobile Equipment: The Solution of Specific European Property Law Problems" (2002) 10 E.R.P.L. 377 at 389.

<sup>54</sup> R. Lawrynowitz, "The Final Stage" (2000) 228 Airfinance Journal 37 at 38.

As a chargee is not a full owner of the Aircraft object but only a security interest holder, when he wants to perform the sale or grant a lease of the object, he has to give a reasonable prior notice in writing to “interested persons” who also have rights in the object (CIME 8(4)). These persons are: the debtor; the guarantor; the issuers of a letter of credit and credit insurance and any other persons having rights in or over the object who have given notice of their rights to the chargee prior to the sale or lease (CIME 8(4);1(m)). The requirement of reasonable prior notice is satisfied when a chargee gives such a notice in writing ten or more working days before the proposed sale or lease. This does not prevent the parties from agreeing to a longer period of prior notice (AP IX(4)).

The duty to give prior notice to the chargee is required since he, as the creditor, does not have to be aware of other interested parties (e.g. beneficiaries of prior or subsequent charges that were not registered) and would thus not be able to notice them unless they inform him about the existence of their rights. That is why the chargee who exercises the remedy is under no obligation to inform other persons who may have rights in the object unless they put him on notice.

The sum collected by the chargee as a result of the performance of any of the available remedies has to be applied towards discharge of the amount of the secured obligation according to the security agreement (CIME 8(5)). Any surplus collected by the chargee as a result of exercising available remedies is required to be applied to the holders of subsequently ranking interests which have been registered or of which the

chargee has been given a prior notice of. Any remaining balance is to be paid to the chargor (CIME 8(6)).

The order of subsequently ranking interests will follow the priority rules set up by the Convention. First, the surplus has to be paid to holders of subsequent registered chargees in the order in which their charges have been registered. After their full satisfaction, an unregistered chargee who has given a notice to the chargee that is exercising the remedy can be satisfied (CIME 29).

An additional default remedy available to the chargee is to vest the Aircraft object in satisfaction. After the occurrence of default, the chargee and all interested persons may reach an agreement that ownership of or any other interest of the chargor in any object that is covered by the security interest shall vest in the chargee towards the satisfaction of secured obligations.<sup>55</sup> In this case, the term “interested persons” includes not only other persons having rights in or over the object and who have given notice of their rights to the chargee, but also those who have not. It has to be noted that debtor (chargor) is an interested person, so he has to agree to the vesting the object in the chargee (CIME 1(m); 9(1)). This is to protect the debtor in situations where the value of the object exceeds the value of the secured debt.

The chargee can also use an alternative solution to in order to vest the object - apply to the Court to order the vesting of the object in satisfaction. However, the Court will only grant such an application if the amount of the secured obligation to be satisfied

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<sup>55</sup> The consent of interested persons can not be granted in advance, but only after the default has occurred.

by the vesting is commensurate with the value of the object after taking account of any payment to be made by the chargee to any of the interested persons (CIME 9(2)(3)). In this situation, prior agreement of all the interested parties is not required.

Subject to any lease granted by the chargee as a default remedy according to the *Convention* and to the Court order on the vesting of Aircraft object in satisfaction, the chargor and any of the interested persons are given the possibility of discharging the Security interest by paying the amount secured in full (CIME 9(4)). The timeframe for such an action must be after the default occurs, but before the sale of the charged object or before a Court order to vest the Aircraft in satisfaction of the debt is granted. After the security interest is discharged by the payment of the full amount secured by an interested person other than debtor, that person is subrogated in the rights of the chargee.

The ownership or any other interest of the chargor in the object that is passing on a sale in performance of chargee's remedy or passing by vesting of object in satisfaction of the debt is free from any other interest over which the chargee's security interest has priority under the priority rules of the *Convention* (CIME 9(5)).

### **C. Remedies Available to Conditional Seller and Lessor**

A 'Conditional seller' is a seller under a title reservation agreement. This type of agreement is an agreement for the sale of an Aircraft object where the ownership does not pass until fulfillment of the conditions stated in the agreement (CIME 1(f)(II)).

A ‘Lessor’ is defined by the *Convention* as a person who grants a right to possession of an Aircraft object to another person in return for rental or other payment under the leasing agreement. This agreement may or may not include a purchase option (CIME 1(q)).

Upon the occurrence of a default, the conditional seller or the lessor can terminate the agreement and take possession of any Aircraft object to which the agreement relates (CIME 10(a)). There are fewer remedies available to conditional sellers or lessors. The scope of default remedies available to this group of creditors is sufficient because of the fact that conditional sellers or lessors are effectively in a position tantamount to that of the owner of the Aircraft object who is recovering his own property.

As with the remedies of the chargee, these remedies are also self-help remedies unless the Contracting State has made an Declaration on default remedies for which the leave of Court is required (CIME 54). Eventually, the conditional seller or lessor can apply for a Court order that will authorize performance of either of these remedies (CIME 10(b)).

#### **D. De-registration, Export and Physical Transfer of the Aircraft**

In practice, the use of most of the *Cape Town Convention* default remedies will require de-registration of the Aircraft object from the Aircraft nationality Register so that the Aircraft can be re-registered in another State. The provisions on de-registration in the

*Aircraft Protocol* give the creditor an option to change the nationality of the Aircraft object in accordance with the terms of the respective agreement and the applicable Law. This codifies a practice accepted worldwide, whereby the debtor grants the creditor a power of attorney authorizing the latter to de-register the aircraft. after the occurrence of a default the *Aircraft Protocol* enables the creditor (e.g. the owner of the plane) to register the plane in the Country of its new deployment which might be a Contracting State or any other State.

Any of the creditors recognized by the *Convention* (not only the chargee but also conditional seller and lessor) can, provided that the debtor has at any time so agreed and the creditor has obtained prior written consent of the holders of any registered interest ranking in priority to that of the creditor (AP IX(2)), procure the de-registration of the Aircraft; and procure the export and physical transfer of the Aircraft object from the territory in which it is situated (AP IX(1)). These two remedies introduced by the *Aircraft Protocol* complement the default remedies set out by the *Convention* and, if implemented properly, they enable the creditor to promptly enforce his rights against assets generating proceeds and revenues.

The *Protocol* sets out the rules that govern de-registration of the Aircraft mechanism (AP XIII). However, in a Declaration allowed by the *Protocol*, a Contracting State might declare that it will not apply them (AP XXX(1)).



To activate this mechanism, the debtor has to issue an irrevocable de-registration and export authorization and has to submit it for recordation to the Registry authority (the national Register of the State in which the Aircraft is registered), which is required to record this authorization (AP XIII(2)). The authorization should be substantially in the same form as it is set out in the Annex to the *Protocol* (AP Annex).

Once recorded, the creditor in whose favour the authorization has been issued or its certified designee becomes the only person that has the right to exercise the procurement of de-registration of the Aircraft and procurement of the export and physical transfer of the Aircraft object from the territory in which it is situated. The *Protocol* clearly states that all the actions of the entitled person have to be exercised in accordance with the authorization and applicable aviation safety rules.

The de-deregistration and export request authorization may not be revoked by the debtor without the written consent of the authorized party even if the applicable Law would make it possible. The registration authority can remove such an authorization from the Registry only upon the request of the authorized party (AP XIII(3)).

When a chargee proposes the procurement of the de-registration and export of the Aircraft object as a self-help remedy without a Court order, he has to inform the interested persons (which is similar to a situation when he proposes to sell or grant a lease of an Aircraft object). These include the debtor; the guarantor; issuers of a letter of credit and of a credit insurance and any other persons having rights in or over the object under

the condition that these persons have given notice of their rights to the chargee prior to the de-registration and export of the Aircraft object. (AP IX(6)).

The relevant Registry authority will honor the authorization only if applicable safety Laws and regulations are observed and if the request is properly submitted under a recorded irrevocable de-registration and export request authorization.

The authorized party has to be able to certify to the registry authority upon its request that all registered interests with higher priority have been discharged or that holders of these interests have agreed to the de-deregistration and export (AP IX(6)). To provide the entitled parties with a speedy relief, the registry authority and other administrative authorities in Contracting States shall expeditiously co-operate with and assist the authorized party in the exercise of the de-registration, export and physical transfer of the Aircraft object. (AP XIII(4)) .

The authorities of the Contracting State involved in this process have to make the remedies available<sup>56</sup> no later than five working days after the creditor notifies such authorities that the de-registration or export and physical transfer relief has been granted. In cases of relief granted by a foreign Court, the authorities have to make the remedies available no later than five working days after the judicial relief is recognized by a Court of the Contracting State and the creditor is given right to procure the *Convention* remedies (AP X(6)(a)).

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<sup>56</sup> Availability is subject to a declaration of Contracting State about application of modification of provisions regarding relief pending final determination either wholly or in part (AP XXX(2)),

## **E. Relief Pending Final Determination**

In order to protect the value of the security in the Aircraft object and to enable its quick redeployment into service, the *Convention* provides the creditors with a regime of speedy relief pending final determination of the claim.

A Contracting State shall ensure that a creditor who adduces evidence of default by the debtor may, pending final determination of its claim, obtain speedy relief from a Court in the form of a Court order. The creditor may request one or more of the following: 1) preservation of the object and its value; 2) possession, control or custody of the object; 3) immobilization of the object; 4) lease of the object, management of the object and the income therefrom (CIME 13(1))<sup>57</sup> and 5) sale and application of proceeds therefrom (AP X(3)). The last available remedy of interim relief is applied subject to a Declaration of a Contracting State (AP XXX(2)) in cases where the debtor and the creditor have specifically agreed to it.

Before granting any relief, the Court may require a notice of the request for relief pending final determination to be given to any of the interested persons (CIME 13(3)).

The Court order providing for relief pending final determination may be issued only to the extent that the debtor has at any time so agreed and subject to a Declaration of

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<sup>57</sup> A relief in form of Court order allowing creditor management of the object and the income therefrom, however it can not be combined with the first three of the available forms of relief (CIME 13(1)).

a Contracting State. In its Declaration, a Contracting State may declare that it will not apply provisions on relief pending final determination wholly or in part.

The Declaration has to specify under which conditions the provisions will be applied when partial application will be allowed and must also specify which other forms of interim relief will be applied (CIME 55). The term “speedy” in the context of obtaining a relief is defined as within such number of working days from the date of filing the application for relief as is specified in the aforesaid Declaration of the Contracting State (AP X(2)).

As the *Convention* recognizes the potential risk to interested persons, especially to the debtor in cases where a creditor applies for an interim relief before the claim is finally determined, it also contains provisions to protect the debtor.

In granting a speedy relief pending the final determination, the Court may impose such terms as it considers necessary to protect the interested person in events when the creditor who implements the Court order fails to perform any of its obligations to the debtor under the *Convention* and the *Protocol* or fails to establish its claim on the final determination of that claim either wholly or in part (CIME 13(2)). This might include an order to issue a guarantee covering the liability of the creditor for breach of a *Convention* undertaking. However, the creditor and the debtor or any other interested person may exclude the application of this protective provision, in an agreement in writing. In this case, the debtor is still protected as the liability of the creditor for any breach of the

agreement that relates to the Aircraft object under the applicable Law that is not affected (AP XVI(2)).

As the *Convention* allows the use of other forms of interim relief than those enumerated in the *Convention* (CIME 13(4)), the creditor remains entitled to invoke other forms of interim relief that are available under the applicable Law. Thus, he can benefit from other available ways to enforce his rights.

### **Jurisdiction for Granting Interim Relief**

The general jurisdiction rule according to the *Cape Town Convention* is that the Courts of the Contracting State chosen by the parties to a transaction have jurisdiction in respect of any claim brought under the *Convention*. The chosen forum need not have a connection to the parties of the transaction or with the transaction itself. This jurisdiction is exclusive unless parties to the transaction have made different contractual arrangements (CIME 42).

When a creditor applies for interim relief pending final determination of its claim to enable him to preserve the Aircraft object and its value, not only the Courts of a Contracting State chosen by the parties, but also the Courts of the Contracting State on which territory the Aircraft object is situated have the jurisdiction to grant possession, control or custody of the Aircraft object; immobilization of the Aircraft object or any other form of interim relief provided by the law of the Contracting State(CIME 43(1)).

For applications for interim relief in the form of lease; management of the object and the income therefrom, and, if specifically agreed by the debtor and creditor, in the form of sale and application of the proceeds therefrom (AP X(3)) the jurisdiction is slightly different. The creditor can apply to the Court either according to the general jurisdiction rule or to the Court of a Contracting State on which territory the debtor is situated if the Court order granting the relief is enforceable only in the territory of the Contracting State whose Court has issued the order (CIME 43(2)). The same applies also for applications for any other interim relief enabled by the law of the Contracting State

The fact that the final determination of the claim will or may take place in a different Contracting State or by arbitration does not have any influence on the rules of jurisdiction for granting the interim relief pending the final determination.

## **F. Additional Remedies and Mandatory Provisions**

The *Convention* allows the use of any additional remedies that are permitted by the applicable Law, including any remedies agreed upon by the parties. These additional remedies may be exercised only to the extent that they are not inconsistent with the mandatory provisions of the Chapter III of the *Convention* (CIME 12).

The parties of a contract to which the default remedies apply are free to derogate from or vary the effect of any provision of the Chapter III, except those enumerated as mandatory provisions (CIME 15). These relate to the exercise of a chargee's remedies in

a commercially reasonable manner (CIME 8(3)); the requirement of notice of intended sale by chargee (CIME 8(4)); the application of surplus (CIME 8(6)); restrictions on vesting of a charged object in the chargee (CIME 9(3)); imposing terms for speedy judicial relief by Court (CIME 13(2)) and exercising remedies in accordance with the law of procedure of the place of exercise (CIME 14). A set of mandatory provisions might seem to be in conflict with the principle of party autonomy that is present all over the Convention. However, these mandatory provisions are necessary to protect the rights of third parties.

## **G. Procedure**

The *Convention* states that any of the provided default remedies shall be exercised in accordance with the procedural law of the place of exercise. However the default remedies of the *Cape Town Convention* will prevail against the ones of National Law. The self-help exercise of default remedies is subject to a Declaration of the Contracting State on exercising the remedies available to creditor only with a leave of the Court (CIME 14; 54(2)).

### **CHAPTER III. – SPEEDY RELIEF FROM CAPE TOWN – ITS NECESSITY AND POSSIBLE SHORTCOMINGS**

The *Cape Town Convention* and *Aircraft Protocol* system are introducing a new and substantial Unification of Private Air Law. Although it is being heralded as a big success and most of the authors describe the *Convention* and its supposed benefits very positively, we still can ask a question – is this kind of new unification really necessary? Is the *Geneva* regime really insufficient? Does the *Cape Town Convention* sabotage its own aim?

#### **A. *Cape Town*’s predecessor – should *Geneva* be superseded?**

The *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* stipulates that the provisions on Aircraft and Aircraft objects as defined in the *Aircraft Protocol* of the *Cape Town Convention* (AP XXIII) shall have precedence over the *Convention on the International Recognition of Rights in Aircraft* (*Geneva Convention*) for States that are party to both Conventions. The rights and interests that are not covered by the *Cape Town Convention* should remain governed by the *Geneva Convention*. This provision is understandable, given the need to prevent possible legal collisions. Before making a quick assumption that the use of the *Cape Town Convention* should prevail in today’s Aircraft financing and supersede the *Geneva Convention*, we must determine whether the *Geneva Convention* is really not sufficient for today’s air finance world.



The basic difference between the two Conventions is that the *Geneva Convention* deals with Conflict of Laws, while the *Cape Town Convention* aims to create uniform substantial legal rules.

The ability of the *Geneva Convention* to meet the needs of today's asset-based cross-border financing is generally seen as insufficient. The two reasons that are most often pointed out are: firstly, the fact that the *Geneva Convention*, being a conflict of Laws legal regulation, it does not introduce uniformity in asset-based financing and secondly, the lack of universal acceptance of this *Convention*.

As previously mentioned in this thesis, *Geneva Convention* recognizes only certain enumerated types of validly created and duly recorded security interests. These rights include: rights to proprietary interests in Aircraft; rights to acquire Aircraft by purchase coupled with possession of the Aircraft; rights to possession of Aircraft under leases of six months or more; and mortgages, hypothèques and similar rights in Aircraft, which are contractually created as security for payment of debts (GC I(1)(a)-(d)). The *Convention* does not account for the widely differing approaches of legal systems to security and title reservation rights which might cause uncertainty among intending creditors.<sup>58</sup>

Since the time when the *Convention on the International Recognition of Rights in Aircraft* was drafted, the air finance industry underwent an enormous development and

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<sup>58</sup> N. Humphrey & V. Nase, "The Cape Town Convention 2001: An Australian Perspective" (2006) XXXI Air & Space L. 5 at 13.

new asset-based financing devices have been established. Due to its age, the *Geneva Convention* does not allude to these. Therefore, it does not suitably cover more recent types of asset-based transactions.

One of the important forms of fleet financing that is not covered is the currently widespread cross-border leasing agreement.<sup>59</sup> In comparison, the *Convention* does apply to the leasing agreements, since they are covered as one of the types of international interests in the *Cape Town Convention*. International interests are defined as interests vested in a person who is lessor under a leasing agreement (CIME 2(2)(c)).

The *Geneva Convention* is applicable to rights in Aircraft used in civil aviation. As defined by the *Convention* the term ‘Aircraft’ includes airframes, engines, propellers, radio apparatus and all other articles intended for use in the Aircraft in the Aircraft, whether installed therein or temporarily separated therefrom (GC XVI).

Today, this definition can be seen as one of the shortages of the *Geneva Convention*, as it does not apply to Aircraft engines separately. Therefore, only the right of creditors of the Aircraft are protected and the protection of secured creditors of separate Aircraft engines is not provided for.

As today’s highly valuable engines are often legally unconnected with specific Aircraft and can have their “own life”, the drafters of the more recent *Cape Town Convention* included provisions on the protection of separately used Aircraft engines. The

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<sup>59</sup> P. Honnebier, *supra* NOTE 53 at 383.

Convention uses the term “Aircraft object”, which includes airframes, Aircraft engines and helicopters, providing for the protection for creditors of all of these categories of equipment. This overcomes the problems of engine financing as engines are not currently registered in any public register and therefore interests created on engines are usually governed by the *lex situs*, leaving them prey to all the uncertainties inherent to that system.<sup>60</sup>

Several authors have expressed their skepticism about separate engine financing. They warn that an engine is a component part of an aircraft. This can lead to difficulties since several jurisdictions do not recognize security rights in component parts<sup>61</sup> and therefore, under these jurisdictions, an owner of the frame to which the separately financed engine will be attached would become the owner of the engine.<sup>62</sup> We consider an Aircraft engine to be a separate thing, as it is often a subject-matter of contracts between airlines, leasing companies and engine producers. In terms of Aircraft engines, some adjustments to domestic Property Laws of Contracting States will have to be carried out. However this should not be a hindrance to States’ ability or willingness to ratify the *Convention* as a whole.

The *Geneva Convention* is a Conflict of Laws Convention based on the *lex registry* conflict of Laws rule. This is grounded in the belief that the *lex situs* conflict of

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<sup>60</sup> G. Mauri & B. Van Itterbeek, “Belgian Aircraft Finance: New Perspectives Why Belgium should Ratify the Cape Town Convention on International Interests in Mobile Equipment and its Aircraft Specific Protocol” (2004) XXIX Air & Space L. 208 at 214.

<sup>61</sup> B. Crans, “Analyzing the Merits of the Proposed UNIDROIT Convention on International Interest in Mobile Equipment and the Aircraft Equipment Protocol on the Basis of a Fictional Scenario” (2000) XXV Air & Space L. 51 at 56.

<sup>62</sup> S. McGairl, “The proposed UNIDROIT Convention: international Law for asset finance (aircraft)” (1999) 2 Unif. L. Rev. 439 at 446.

Laws rule, widely used in relation to the security interests in Aircraft, was seen as entirely inappropriate. The feeling of such impropriety is due to the fact that Aircraft are movable equipment<sup>63</sup>, crossing the State borders on every day basis due to their commercial deployment.

Another of the *Geneva Convention*'s legal shortages is therefore relevant - it applies only where both the Country where the Aircraft is registered and the Country where the respective rights are to be enforced are parties to the *Convention* (GC XI). This limits the applicability of the *Geneva* regime. Although the number of Contracting States to *Geneva Convention* might seem impressive<sup>64</sup>, it lacks the acceptance of several Asian and Middle-eastern countries, which are becoming the new aviation "moguls"<sup>65</sup>. With the introduction of the more recent *Cape Town* legal unification, which is attempting to overcome the deficiencies of *Geneva Convention*, it is doubtful that this *Convention* will ever become universally accepted.

In terms of its application, the *Cape Town Convention* took a different approach from the *Geneva Convention*, as its regime applies when the debtor is situated in a Contracting State at the time of the conclusion of the agreement creating or providing for the international interest (CIME 3). The fact that the creditor comes from a non-Contracting State does not prevent the application of the *Convention*. This enables the *Cape Town Convention* to enhance the security of creditors even with a lower number of member States, as only the State where the debtor is situated has to be a Contracting State

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<sup>63</sup> P. Honnebier, *supra* NOTE 53 at 382.

<sup>64</sup> *Convention on the International Recognition of Rights in Aircraft* has 89 Contracting States.

<sup>65</sup> United Arab Emirates, India, Indonesia, Malaysia.

to the *Convention*. Since the enforcement of the rights of creditors in “developed” Countries is efficient and usually speedy, it is more important for the “developing” Countries with judicial systems that are less or indeed not functional to become Contracting States to the *Convention* and to apply the legal scheme it sets out.

Creditors and export credit agencies can motivate the prospective buyer of Aircraft to request their respective States to become members of the *Convention*, with more favorable financing conditions such as those already in force in Europe and the United States.

Both the *Geneva* (GC I(1)(ii)), and the *Cape Town Conventions* (CIME 29(1)) require the rights in Aircraft or Aircraft objects to be recorded or registered in order to be recognized or retain their priority<sup>66</sup>, In any case, the drafters have taken different approaches. The *Geneva Convention* presumes the establishment of a Public Record in every Contracting State in which the rights in Aircraft are to be recorded. However, the *Convention* does not provide for indication of the ranking of recorded rights or for publishing the general Declarations on categories of interests. The recording is to be made in the Public Record of the State where the Aircraft’s nationality is recorded.

Although it is the responsibility of a Contracting State to implement the *Convention* and to create a Public Record, not every Country has done so.<sup>67</sup> This makes it even more complicated for the creditor or any other person who needs to collect

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<sup>66</sup> Although some exceptions exist in the *Cape Town Convention*, please refer to B.3.1 of this work.

<sup>67</sup> G. Mauri & B. Van Itterbeek, *supra* NOTE 60 at 212.

information about several Aircraft registered in different States, since the information is not amassed in one place.

This kind of searching for rights is anything but user-friendly and the fact that there are States who haven't even created the public record defeats one of the aims of the *Geneva Convention* – to protect secured creditors. The creditors who have to rely on representations and warranties given by the other parties of the transaction cannot, in most cases, independently verify whether other security interests have been created on the same Aircraft, and therefore cannot feel secure. A creditor who is not aware of other rights in Aircraft he intends to finance is not protected at all.

The *Cape Town Convention's* system for publicizing the recorded rights is more user friendly, as its system of registration and publishing of rights is easier to deal with. It establishes the International Registry in order to centrally register all types of recognized rights from all the Contracting States. This electronic register is available to its users 24 hours a day. This publicity allows easy access to the information on Aircraft objects for creditors so that they can assess the risks involved in financing them. Having one central registry through the *Cape Town* system appears to be much more efficient than having 89 different national public records of rights in the Contracting State, which is the system set out by the *Geneva Convention*.

The most notable disadvantage of the *Geneva Convention* is that it does not create any uniformity in the enforcement of rights. The risk assessment performed by lenders

and investors is often based on an evaluation of the remedies available in a financing transaction in the event of a debtor's default and on the enforceability of the security interest in the financed asset.<sup>68</sup> Unlike the *Cape Town Convention*, which introduces substantial rules of enforcement, the *Geneva Convention* was drafted to resolve conflict of Laws and thus relies on the national Laws of the Contracting States.

From the analysis carried out above, it can be concluded that the *Cape Town Convention* provides a better and more secure legal framework for the intending financiers with regard to the efficacy of their rights. Although the *Geneva Convention* has been one of the milestones in the field of Private Air Laws, it appears to be inadequate for today's security transactions and hence should be superseded by the *Cape Town Convention*. However, until the *Cape Town Convention* is accepted by a large number of states, the application of the *Geneva Convention* might be needed. As all the remedies given to creditors in cases of debtor's default are available only in the Contracting States of the *Convention*, in case where the debtor will want to deprive the creditor of his rights he can fly the plane to a Country that is not under *Cape Town* Jurisdiction but a might be a Contracting State of the *Geneva Convention*. In this situation, although the *Cape Town* rights can not be enforced, application of a Conflict of Laws legal regulation provided by the *Geneva Convention* would still be possible. Dealing with the two different legal regimes of *Cape Town* and *Geneva* in the transition period towards universal acceptance of the *Cape Town Convention* might be difficult for the Creditors but the value of the Aircraft object financed is worth it.

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<sup>68</sup> G. Mauri *supra* NOTE 22 at 647

**B. Does the Convention Provide a Mean to Sabotage its Aim? - Declarations Allowed under the *Cape Town Convention* and the *Aircraft Protocol***

An international legal unification usually intervenes with national Legal Systems or collides with them. Both the *Convention* and the *Protocol* provide Contracting States with a system of allowed Declarations. In these Declarations, States can choose to apply specific provisions of the *Convention* and the *Protocol* or not to do so. The provisions which can be altered by Declarations are enumerated and thus limited (CIME 56, AP XXXII). These Declarations allow the State parties to the Convention to tailor it to their specific needs.

The subject matter of the *Convention* and the *Protocol* might seem incongruous to certain national Legal Systems and, since the *Convention* and the *Protocol* specifically state that no reservations from Contracting States to the *Convention* are allowed, a system of allowed Declarations was chosen to overcome the reluctance of prospective signatories to ratifying and becoming members of the Convention and protocol.

However, the reluctance to ratify the *Cape Town Convention* might be based on different reasons. Most often, it will be one of the following: either the Legal rules set out by the Convention are not compatible with the national Legal System, or the State concludes that a new regime is not required because their current Legal System provides adequate protection for lessors and holders of security interests.



By allowing Declarations concerning the most “troublesome” provisions in terms of ratification, the drafters of the *Convention* enabled the Contracting States to reflect their national Legal Policies into the Cape Town system, so the *Convention* and the *Protocol* allow for the application of certain provisions, depending on the decisions of the Contracting States. This allows Contracting States to alter the way in which the *Convention* is applied in that State and, as underlined by some authors, in a way that “is highly respectful of State sovereignty, of differing political, economic, and social development, and national requirements as perceived by governments, and it permits and facilitates changes in position in accordance with changing circumstances and needs.”<sup>69</sup> On the other hand, in some scenarios these allowed Declarations can block provisions that were drafted to provide the creditor with a range of basic default remedies and means of obtaining speedy interim relief, pending the final determination of their claim, thus defeating one of the basic objectives of the *Convention* and the *Protocol*.<sup>70</sup> These possible scenarios will be discussed later on in this Chapter.

### **B.1 Types of Declarations**

The *Convention* and the *Protocol* provide four types of Declarations: opt-in Declarations; opt-out Declarations; mandatory Declarations and other Declarations. As

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<sup>69</sup> C. Lorne, “The 2001 Cape Town Convention on International Interests in Mobile Equipment and Aircraft Equipment Protocol: Internationalizing Asset-based Financing Principles for the Acquisition of Aircraft and Engines” (2004) 69 J.Air L. & Com. 3 at 8.

<sup>70</sup> For the basic objectives of the *Convention* please refer to Chapter I, B.2.

the topic of this work is dedicated to the default remedies of the *Cape Town Convention*, only the Declarations regarding default remedies will be discussed in this Chapter.<sup>71</sup>

#### B.1.1 Mandatory Declarations

Mandatory Declarations are Declarations that a Contracting State is required to make in every case. Default remedies are mandatory in the sense that the Contracting State has to make a decision about whether any self-help remedies available to the creditors under the provisions of the *Convention* have to be exercised with a leave of the Court or not. This mandatory Declaration is required by Article 54(2) of the *Convention*. All Declarations other than Mandatory Declarations are optional. Hence, a Contracting State does not have to make them.

#### B.1.2 Opt-in Declarations

Opt-in Declarations are Declarations that a Contracting State is required to make if a particular *Convention* provision, as applied by the *Aircraft Protocol*, is to have effect within that State.

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<sup>71</sup> For the illustration of default remedies and the respective declarations please refer to the Figure1 “Cape Town Convention and Aircraft Protocol Declarations Regarding Default Remedies” in the Appendix.

Opt-in Declarations are required to give effect to Article VIII (Choice of Law), Article X (Modification of provisions regarding relief pending final determination, and time within such relief is to be granted), Article XIII (De-registration and export request authorisation) and Article 39 (Rights having priority without registration).

#### B.1.3 Opt-out Declarations

Opt-out Declarations are Declarations which a Contracting State is required to make in order to exclude the application of a specific provision of the *Convention* and the *Protocol* in that State.

Opt-out Declarations are required to exclude Article 8(1)(b) (Power to lease a charged object while in the declaring State's territory), Articles 8(1), 9(1) and 10 (Extra-judicial remedies), Article 13 (Interim relief), Article 43 (Jurisdiction under Article 13), 54(1) (Prohibiting lease as a remedy), and Article XXIV(2) (superseding of the *Rome Convention on Precautionary Arrest of Aircraft*).

#### B.1.4 Other Declarations

The two “other” Declarations, however, are not specifically connected to the provisions on the default remedies. These are Declarations on the application of the

*Convention* to one or more territorial units (52(1)) and Declarations to determine the relevant “Court” or Courts for the purposes of Article 1 and Chapter XII of the *Convention*.

## **B.2 Time of Declaration**

Declarations under Article 54(1) and (2) (Power to lease a charged object while in the declaring State’s territory and Declarations regarding self-help in default remedies) and Article 55 of the *Convention* (Declarations regarding relief pending final determination of a claim) are to be made at the time of ratification, acceptance, approval of, or accession to the *Aircraft Protocol*.

Declarations allowed by Article XXX of the *Aircraft Protocol* also have to be made at the time of ratification, acceptance, approval of or accession to the *Protocol*. Regarding Article X (*Modification of provisions regarding relief pending final determination,*) a Contracting State also has to declare if it will apply this article wholly or in part.

Although the Declarations are expressed to be made at the time of ratification, a Contracting State is allowed, under Article 57 and Article XXXIII, to make subsequent Declarations at any time after the date on which the Convention or the Protocol entered into force for it, by notifying the Depositary to. This allows all Declarations other than the

ones contained in Article 60 (application of *Convention* to pre-existing right or interest) to be modified, replaced by subsequent Declarations, or withdrawn (CIME 58, AP XXXIV).

### **B.3 Declarations and Legal Certainty**

With regard to the application of the *Convention* and the *Protocol*, only Declarations which are in force in the Contracting State at the time when the transaction is entered into the International Registry are relevant for the parties of the transaction and the transaction itself.

To provide the creditors with a higher level of legal certainty while enabling modification of *Convention's* and *Protocol's* provisions the interests arising prior to the making (AP XXXIII(3)) or withdrawal (CIME 58(2)) of any Declaration which could adversely affect an existing interest are protected. This is also the case if a Contracting State later denounces the *Convention* (CIME 59) by notifying UNIDROIT in writing. A denunciation takes effect on the first day of the month following a year after the date of receipt of the notification of denunciation by UNIDROIT.

## **B.4 Beginners' Guide for Contracting States on how to defeat the speedy relief objective of the *Convention* and the *Protocol***

By allowing for Declarations of Contracting States, the drafters of the *Convention* and the *Protocol* took into consideration possible Reservations of States who might be afraid of losing their Sovereignty in matters of National Law and possible conflicts with existing Statutes.

Many times in Legal History a broad unification of Law has been seen by States as a hostile intrusion into their exclusive “power sphere” and States have therefore always hesitated to accept it. This is even more valid in the field of Commercial Law. Allowing States to alter the *Convention* to their particular needs and make it more “user friendly” is definitely an inviting gesture towards the States. However, it has its cost. In the worst scenario, a Contracting State can effectively block the speed of the default remedies, slow down the enforcement of Law process set out by the Cape Town system and thus deprive the *Cape Town Convention* Creditor of this important “speedy relief”.

### **B.4.1 Mandatory Declaration on Self-Help vs. Default Remedies**

Article 54 of the *Cape Town Convention* requires the Contracting State to make two Declarations. An optional “opt-out” Declaration in which the state may declare that the chargee shall not grant a lease of the object in that territory while the charged object is

situated within its territory; and a mandatory Declaration on “whether or not any remedy available to the creditor under any provision of this *Convention*<sup>72</sup> which is not there<sup>73</sup> expressed to require application to the Court may be exercised only with leave of Court”.

While the first Declaration blocks only one of the default remedies of the chargee, the second Declaration can have a much greater impact on the speedy enforcement of a creditor’s rights.

All the default remedies of the *Convention* are meant to be self-help remedies. Where a Contracting State has allowed for self-help in its Declaration, the only condition that the creditor (chargee,<sup>74</sup> conditional seller or lessor<sup>75</sup>) has to fulfil before exercising the remedies is to ensure that the debtor has, at all relevant times, agreed to the exercising of the remedy.

Self-help performance of the (one or more) available default remedies, which include: to take possession or control of the object; to sell or grant a lease of object; to collect or receive income or profits from the management or use of the object; to de-register the Aircraft object and to procure the export and physical transfer of the Aircraft,

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<sup>72</sup> Meaning *Convention on International Interests in Mobile Equipment* .

<sup>73</sup> Meaning in the provisions of *Convention on International Interests in Mobile Equipment*

<sup>74</sup> For illustration of the relation between the remedies of a chargee and respective declarations please refer to the Figure 2 “Remedies of a Chargee (CIME 8 and CIME 9 )” in the Appendix .

<sup>75</sup> For illustration of the relation between the remedies of a conditional seller or lessor and respective declarations please refer to the Figure 3 “Remedies of Conditional Seller or Lessor (CIME 10)” in the Appendix.

all give creditors confidence that they do not have to rely on the national Courts of the Contracting State in case of default, but can enforce their rights themselves. This allows creditors to promptly realize the value of the asset and redeploy that asset to generate profit. Therefore, this scenario follows the prompt enforcement principle of the *Convention*.

The situation is different in cases where a Contracting State makes a Declaration that prohibits performance of the default remedies without a leave of the Court (self-help exercise of remedies). The financiers will find themselves in a position similar to the *status quo* and will have to verify what remedies are available under Applicable Law in the event of a default.<sup>76</sup>

It exposes the creditor to National Law as well as to the Domestic Procedure, which he may not be familiar with. Problems suffered by the creditors as a result of the Declaration would not be so drastic if the parties of the agreement choose a Court in a “developed” country with an effective judicial system as of the forum for their claims. However, if a Court in a “developing” country is to be chosen, and as the *Convention* is aimed at bringing benefits to “developing” countries<sup>77</sup> this may well happen, the creditor

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<sup>76</sup> G. Mauri *supra* NOTE 22 at 646.

<sup>77</sup> R. Goode, *supra* NOTE 18 at 4.



could wait several months to obtain relief, all the while experiencing the “uniqueness” of the Local Judiciary, particularly in congested or corrupt Court systems.<sup>78</sup>

States may choose not to allow self-help as a remedy because of the particularities of their National Laws. Most Civil Law Countries do not allow self-help remedies. Enforcement of a security on the relevant asset is usually obtained through a judicial channel. In most European countries it is virtually impossible for the creditor, faced with default on the part of the debtor, to have recourse to self-help remedies and to take the possession of the Aircraft and sell it without leave of the Court (CIME 8). The only European Union member State that has ratified the *Convention* and *Protocol* so far is Ireland. In its Declaration, Ireland allowed for the exercise of remedies without leave of a Court; being a Country with a Common Law tradition, this does not collide with its domestic Law.

Moreover, application of other *Cape Town* self-help remedies might be problematic in Civil Law Countries - the States do not allow them as their Public Policies aim to protect the interests of lower ranking creditors<sup>79</sup> and the debtor. These Countries will have to make a choice. They must either prohibit the self-help exercise of available remedies or re-codify their respective statutes. It is not hard to conclude that they will

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<sup>78</sup> According to the Transparency International Corruption Perception Index 2007, most of the developing countries have CPI score reaching from 1.0 to 3.9 on the scale from 0 (highly corrupted) to 10 (highly clean)

<[http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2007](http://www.transparency.org/policy_research/surveys_indices/cpi/2007)>.

<sup>79</sup> G. Mauri & B. Van Itterbeek, *supra* NOTE 60 at 215.

choose the easier way - blocking the self-help remedies – instead of opening up Parliamentary discussions on substantial Domestic Laws.

#### B.4.2 Interim Relief, De-Registration and Export of the Aircraft – How to Make the Life of Creditors easier or Not

##### B.4.2.1 Declarations Regarding Relief, Pending Final Determination of a Claim

Article 55 entitles a Contracting State to issue an opt-out Declaration regarding relief, pending final determination of a claim. This allows the State to declare that it will not apply the provisions on relief pending final determination, either wholly or in part, or choose which forms of interim relief will be applied (CIME 55).<sup>80</sup>

In cases of default, the *Convention* gives the creditor the choice from one of the following: preservation of the object and its value; possession, control or custody of the object; immobilization of the object and lease or management of the object and the income therefrom (CIME 13). Once again, the creditor has to fulfill the condition that the debtor has, agreed for the remedy to be exercised without leave of the Court. To protect the debtor from unruly creditors exercising invalid remedies upon him, the *Convention* imposes one more obligation on the creditor: he has to adduce evidence of the debtor's default. However, the above-mentioned remedies are available only subject to the

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<sup>80</sup> For illustration of the relation between the relief pending final determination of a claim and respective declarations please refer to the Figure 4 “Relief Pending Final Determination of a Claim (CIME 13)” in the Appendix.

Declaration of the Contracting State on the application of the provisions on relief, pending the final determination provided for in Article 55.

Even if a State allows for application for relief pending final determination, there is one more possible way of stalling the granting of relief. The Aircraft *Protocol* modifies provisions regarding relief pending final determination (AP X). It allows one more remedy pending final determination, depending on a specific agreement between the debtor and the creditor over sale and application of the object and proceeds therefrom. With regard to the speed of the relief, the Contracting State is required to declare the number of working days from the date of the filing of the application for relief which will be considered to be a “speedy relief” under the terms of the *Convention* (AP X(2)). This Declaration obliges the Contracting State to grant a speedy relief in a certain specified time, thus providing the creditor with legal certainty and allowing him to assess his risk before deploying the equipment. Although the provisions on relief pending final determination of a claim provide for a speedy relief, a Contracting State has to make an opt-in Declaration under Article XXX(2) to make it reality. According to this Article, the relief scheme will be applied either wholly or in part.

In the worst scenario, a State can opt-out of the provisions on relief pending final determination (CIME 55) and not opt-in *Protocol* modification of provisions regarding relief pending final determination (AP XXX(2)), leaving the creditor dependant on the applicable provisions of domestic Law, which might cause the relief to be far from speedy.

#### B.4.2.2 De-registration and Export of Aircraft Object

The *Aircraft Protocol*, in its provisions modifying the default remedies of the *Cape Town Convention*, introduces two additional remedies – procurement of the de-registration of the Aircraft and procurement of the export and physical transfer of the Aircraft object from the territory in which it is situated (AP IX(1)). The creditor is given the possibility, if the debtor has at anytime so agreed and if he has given his consent in writing to all the registered creditors of higher priority ranking, to de-register the Aircraft or, if de-registration is not necessary, to seize the plane and transfer it from its current location in a Contracting State to another State of his choice.

As these remedies are included in the remedies available pending final determination, application of these two additional remedies depends on the Declaration of Contracting State under Article 55.<sup>81</sup>

The timeframe for de-registration and procurement of export is based on a Declaration of a Contracting state under XXX(2). If he decides to opt into it, then the registry authority and other administrative authorities of the Contracting State have to make the remedies available no later than five working days after the creditor notifies them that the relief is granted or recognized by the domestic Court. Applicable authorities are also obliged to “expeditiously co-operate with and assist the creditor in the exercise of such remedies” (AP X(6)). If a Contracting State fails to make a Declaration, the

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<sup>81</sup> For illustration of the relation between the de-registration of aircraft object and procurement of the export and physical transfer and respective declarations please refer to the Figure 5 “De-registration of Aircraft Object and Procurement of the Export and Physical Transfer (AP IX, AP XIII)” in the Appendix.

timeframe is based on the domestic administrative Law and procedure, which may cause the Aircraft to remain grounded for a long period of time.

Another provision aimed at strengthening the position of the creditor is the provision on de-registration and export request authorization (AP XIII). This provision entitles the holder of the irrevocable de-registration and export request authorization issued by the debtor and recorded in national Aircraft Register to procure the de-registration and export of the Aircraft object. As the domestic authorities shall honour a request for de-registration and export based on the irrevocable authorization if properly submitted (AP IX(1)(5)), the holder is not dependant on the exercise of their discretion. However, provisions on de-registration and export request authorization apply only where a Contracting State has made a Declaration under Art XXX(1) and opted into this provision. If the State has made no such Declaration, the de-registration and export authorization scheme does not apply and the creditor is once again left with domestic Law and Procedure.

#### **B.5. Deposited Declarations of the Contracting States and Their Possible Motives**

As of July 2008, all the Contracting States to the *Aircraft Protocol* had submitted their Declarations.<sup>82</sup> Only two signatories of the *Cape Town Convention* have not become Contracting States of the *Aircraft Protocol*.<sup>83</sup>

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<sup>82</sup> Afghanistan, Albania, Angola, Cape Verde, Columbia, Ethiopia, India, Indonesia, Ireland, Kenya, Malaysia, Mexico, Mongolia, Nigeria, Oman, Pakistan, Panama, Senegal, South Africa, United Arab Emirates, United States of America.

<sup>83</sup> Syrian Arab Republic, Zimbabwe.

When one looks at the list of Declarations<sup>84</sup> submitted by the Contracting States, one can get the impression that the signatories have been (so far) good at promoting the unification of Cape Town, including the *Convention* and *Aircraft Protocol* default remedies scheme.

Till today, almost all of the mandatory Declarations under Article 54, allow default remedies available to the creditor which are not expressed in such a way as to require application to the Court to be exercised without a leave of the Court.<sup>85</sup>

None of the declaring States have used the option provided by Article 55 (CIME) to opt-out of the provisions on relief pending final determination under Article 13 (CIME). However, the situations in Declarations under article XXX(2) (AP) on application of article X (AP) on modification of provisions regarding relief pending final determination of a claim are more diverse. Most of the Countries decided to apply the whole of Article X, which means that they had to set a timeframe for the action of their administrative authorities in providing speedy relief. Most of the Countries define speedy relief in case of creditor's request for relief in form of preservation of the object and its value as ten days (CIME 13(a)). This is also valid for possession, control or custody of the object (CIME 13(b)) and immobilization of the object (CIME 13(c)). Thirty days is the timeframe for speedy relief in cases of lease, management of the object and the income therefrom (CIME 13(d)) and in case of sale and proceeds therefrom (CIME

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<sup>84</sup> List of declarations can be found online at <<http://www.unidroit.org/english/implement/i-2001-convention.pdf> and <http://www.unidroit.org/english/implement/i-2001-aircraftprotocol.pdf> >

<sup>85</sup> Columbia, Mexico, United Arab Emirates require application of the remedies with leave of the Court only.

13(e)). Interestingly enough, the United States of America, one of the biggest Aircraft producers and most prominent Nations in the aviation field, decided not to apply Article X. In addition, Ireland is the one and only European Union member State that decided to apply it only partially.<sup>86</sup> This might be a sign of how “developed” countries will react to this article. The reasons for this stance are most likely to be the way in which these Countries have developed and the effective domestic procedures which they rely on.

A vast majority of Contracting States also decided to opt-in to Article XIII (AP), allowing procurement of de-registration of the Aircraft and procurement of the export and physical transfer of the Aircraft object from the territory on which it is situated, based on the irrevocable de-registration and export request authorization issued by the debtor and recorded in the National Aircraft Registry.<sup>87</sup>

Why have most of the states behaved responsibly in response to this unification? The answer to this is very easy – it is all about money. Since 2003, the Export – Import Bank of the United States has offered a one-third reduction of its exposure fee, leaving it as low as two percent, on asset-backed financings of new U.S.-manufactured large commercial Aircraft and spare engines for buyers in Countries that sign, ratify and implement the *Cape Town Convention* and the related *Aircraft Protocol*, including certain optional provisions. The preferential financing terms are also available to leasing companies but only if the Aircraft leasing company and the airline lessee under the initial

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<sup>86</sup> Ireland decided to opt-in for the default remedy - sale and application of proceeds. Albania and Mexico will not apply article X (AP) in whole. Columbia according to its declaration considers 30 days to be a “speedy” relief. Panama decided in its declaration to apply the whole but did not specify the time period thus did not act according to the provisions of article XXX(2) (AP) .

<sup>87</sup> Columbia and Mexico decided not to opt-in article XIII (AP).

operating lease are both based in a Country that has ratified and implemented the *Cape Town Treaty* and have made the appropriate Declarations under the treaty and the related Aircraft-equipment *Protocol*. This offer is currently valid for planes scheduled for delivery before December 31, 2010 or under a firm contract entered into after April 30, 2007.<sup>88</sup>

Since July 2007, when the new Sector Understanding on Export Credits for Civil Aircraft concluded through the involvement of the Organization for Economic Cooperation and Development (OECD), an agreement assuring that European export credit agencies would provide a “Cape Town Discount” as well. The European discount is based on the same terms as the American one and it is a result of a common approach of the United States’ Export-Import Bank of the and the European export-credit agencies. The “common discount” will also be offered after 2010.

The essential elements needed to satisfy the discount requirements are not only signature, ratification and implementation of the *Cape Town Convention* but also the adoption of appropriate Declarations. These appropriate Declarations are summarized in the Model National Implementing Legislation and in the Declarations Matrix and Economically-Based Recommendations prepared by the Aviation Working Group<sup>89</sup>, one of the main participants in the development of the *Cape Town Convention* and the

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<sup>88</sup> Export-Import Bank of the United States, News Release, “EX-IM Bank Extends Offer of Reduced Exposure Fee Through December 2010 for Buyers In Countries Implementing The Cape Town Treaty” (7 September 2006), online Exim Bank <<http://www.exim.gov/pressrelease.cfm/4D2DABE3-F1FC-7074-73A179C6054BCE87/>>.

<sup>89</sup> The implementation resource materials can be found on Aviation Working Group website at <<http://www.awg.aero/pdf/IRM0508.pdf>>



*Aircraft Protocol*.<sup>90</sup> These Declarations include provisions allowing default remedies without leave of Court (self-help), not opting-out of Article 13 (CIME) on relief pending final determination, application of Article X (AP) with respective time periods 10 days for remedies in 13(a)(b)(c) and 30 days for remedies in 13(d)(e).

It comes as no surprise that the airlines of the Contracting States were considering placing large Aircraft orders or actually doing so shortly before or after national ratifications took place.<sup>91</sup> We can therefore understand that the relationship between the Contracting States and the legal unification provided by the *Cape Town Convention* and *Aircraft Protocol* resembles a “marriage of convenience.”

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<sup>90</sup> Members of the Aviation Groups are all major aircraft producers – Airbus, Boeing, Bombardier Aerospace, Embraer; main engines producers - Rolls-Royce, General Electric, United Technologies Corporation (Pratt & Whitney Division) and big aircraft leasing providers such as AerCap, GECAS, ILFC.

<sup>91</sup> K. Daly, “Ariana upgrades with Boeing”, *Airline Business* (November 2006) online: Air Transport Intelligence <<http://www.rati.com>>.

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## CONCLUSION

The *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* were drafted to facilitate the financing of high-value Aircraft objects which are used across borders. These Conventions reflect the need to ensure that Interests in mobile equipment are universally recognized and protected.

Following our analysis of the default remedies available to creditors in case of a debtor's default, as set out by the *Cape Town Convention* and the *Aircraft Protocol*, we can conclude that this new Unification of Private Air Law provides a consistent and predictable approach to the enforcement of rights concerning Aircraft objects. However, for existing or intending financiers of Aircraft objects to feel "secure", two additional conditions are to be fulfilled. We consider these conditions to be crucial and that failure to fulfill them would seriously jeopardize the enforcement of rights in case of a debtor's default and thus deprive the creditors of the speedy relief.

The first condition is that the Convention has to be accepted by substantial number of States. If the Convention and the Protocol were not to be ratified by an extensive number of States, the debtors could easily avoid being exposed to the enforcement of creditors' rights by flying the aircraft objects, subject-matter of the commercial agreement, to a Country that is not a member State of the Convention. It is very hard to

predict if the Cape Town System will achieve universal acceptance. However, with possible 26 Signatories from the European Union, it has the best chances of doing so.

The second condition is related to the permitted Declarations by Contracting States. Firstly, for the enforcement system as drafted to be effective, the Contracting States need to allow for the exercise of the default remedies without a leave of the Court. Secondly, all Declarations must be made in such a way as to allow interim relief pending final determination; de-registration of the Aircraft and procurement of the export and physical transfer of the Aircraft objects from the territory in which they are situated. Although the Contracting States have behaved responsibly in these matters so far, we will be able to further judge Signatories' behavior, after the Member States of the European Union become parties to the Convention and the Protocol and deposit their Declaration. The way in which these States will implement the system for default remedies may influence the degree of success and the future efficiency of the whole Cape Town System.

## **APPENDIX**

**FIGURE 1 – CIME AND AP DECLARATIONS REGARDING DEFAULT REMEDIES**

**CIME 54**      Declarations regarding remedies

**CIME 54(1)**

Preventing lease as a remedy



CIME8(1)(b)      Remedies of a chargee

**CIME 54(2)**

Requiring leave of court for  
application of a remedy



CIME (8)      Remedies of a chargee



CIME 9(1)      Vesting of object in satisfaction



CIME10      Remedies of conditional seller or lessor



AP.IX      Modification of default remedies provisions

**CIME 55**

Declarations regarding relief  
pending final determination



CIME 13      Relief pending final determination



CIME 43      Jurisdiction under ART. 13



AP X      Modification of provisions regarding relief  
pending final determination

**AP XXX**

Declarations relating to certain  
provisions

**AP XXX(1)**

Application of provision



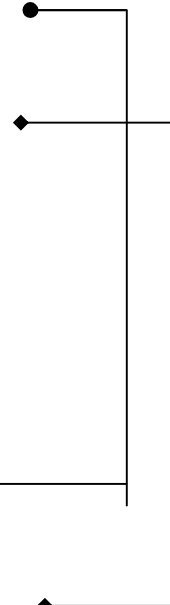
AP XIII      De-registration and export request  
authorization

**AP XXX (2)**

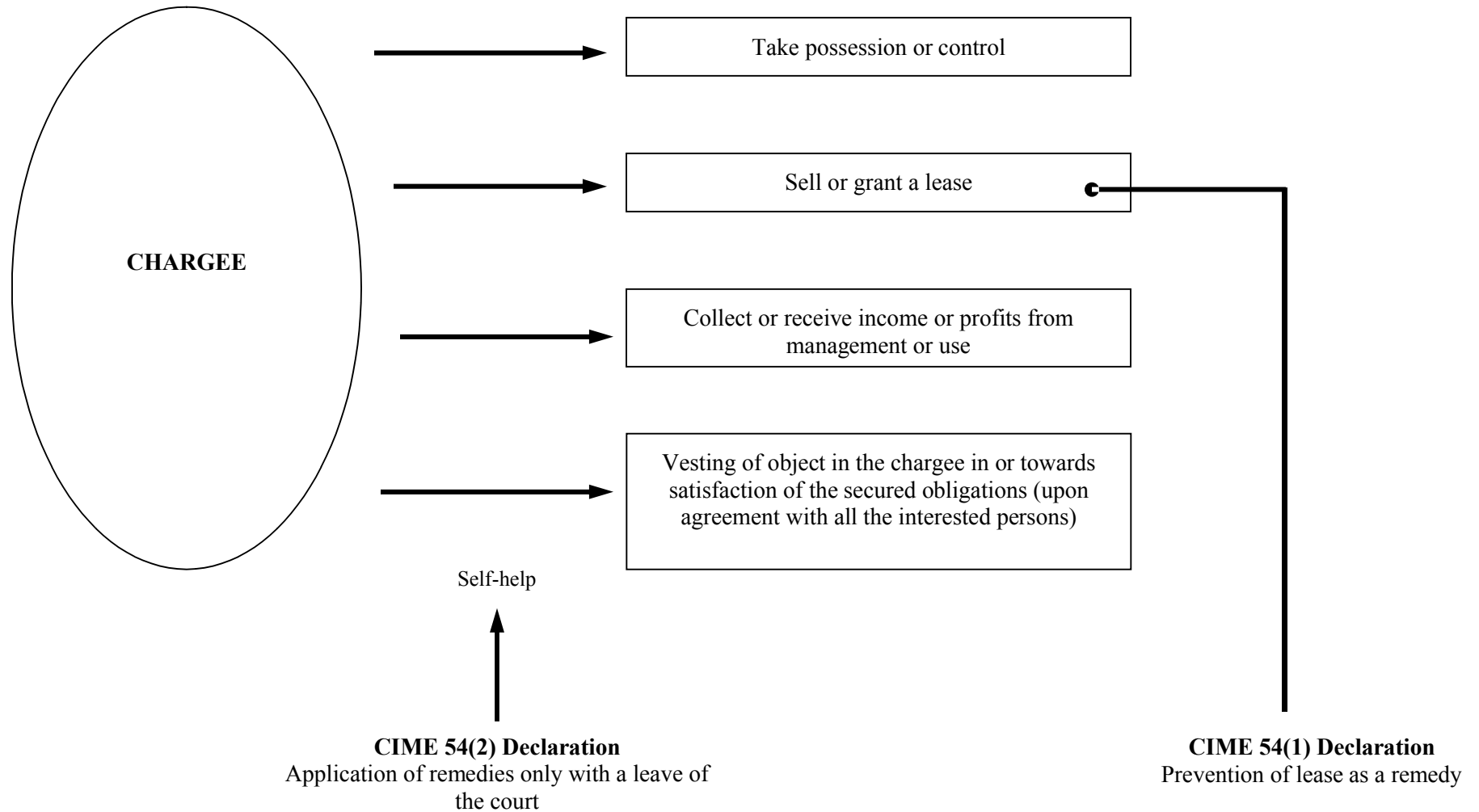
Application of provision



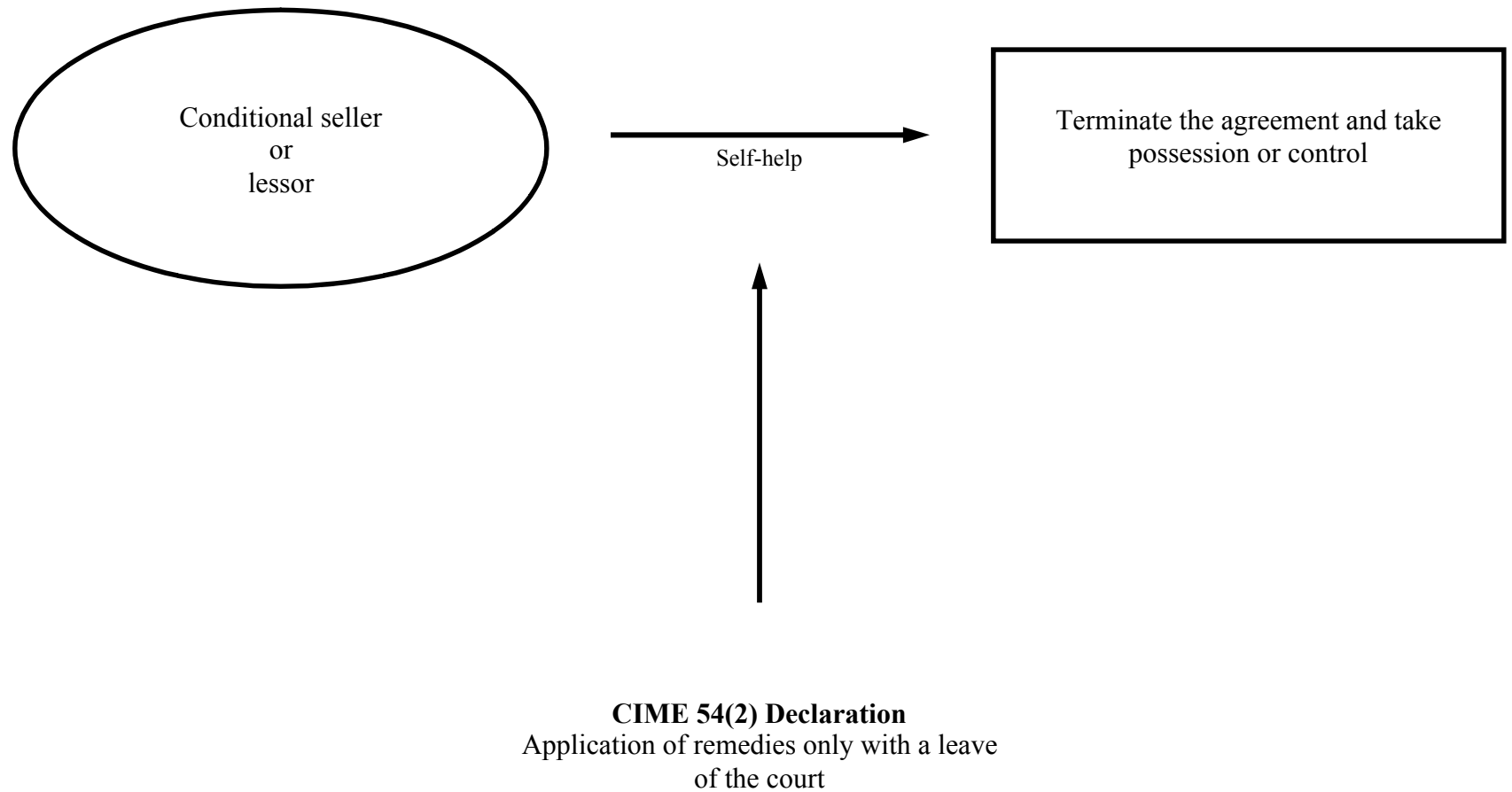
AP X      Modification of provisions regarding relief  
pending final determination



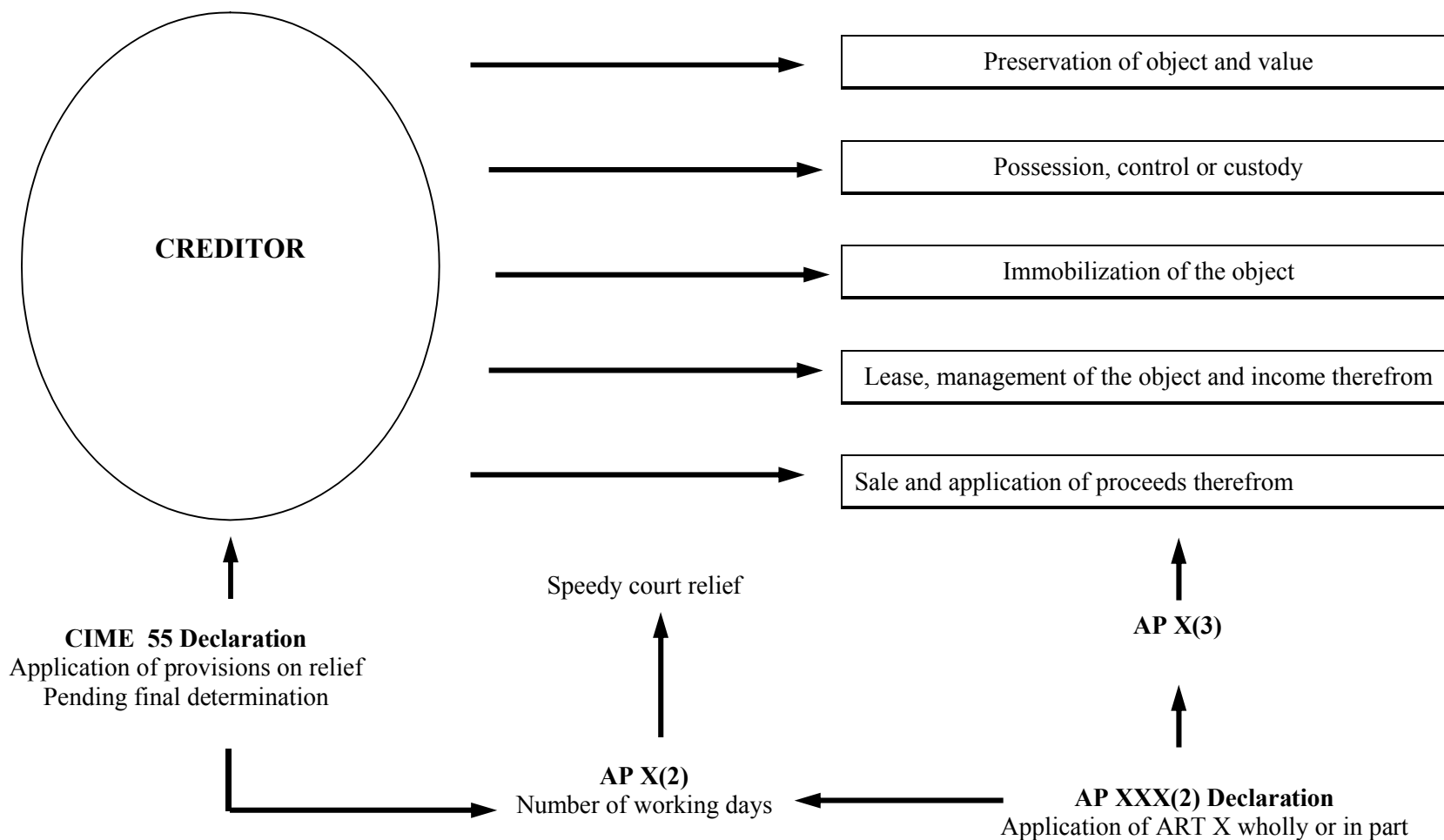
**FIGURE 2 - REMEDIES OF A CHARGE (CIME 8, CIME 9)**



**FIGURE 3 - REMEDIES OF CONDITIONAL SELLER OR LESSOR (CIME 10)**

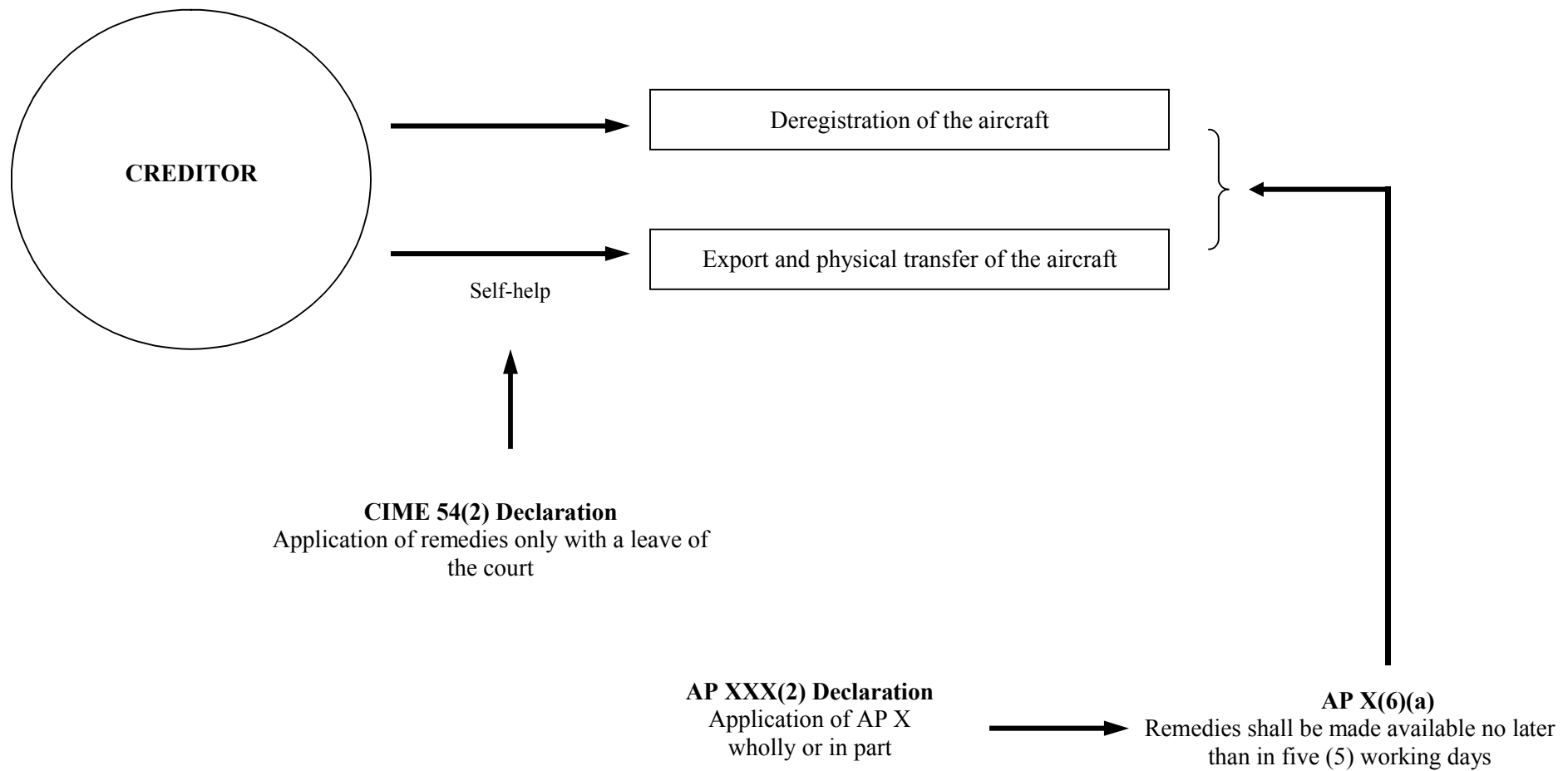


**FIGURE 4 - RELIEF PENDING FINAL DETERMINATION OF A CLAIM (CIME 13)**





**FIGURE 5 - DE-REGISTRATION OF AIRCRAFT OBJECT AND PROCUREMENT OF THE EXPORT AND PHYSICAL TRANSFER (AP IX, AP XIII)**



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