



DCME Doc No. 49
7/11/01

**DIPLOMATIC CONFERENCE TO ADOPT A MOBILE EQUIPMENT
CONVENTION AND AN AIRCRAFT PROTOCOL**

(Cape Town, 29 October to 16 November 2001)

**REVISED DRAFT FINAL PROVISIONS CAPABLE OF EMBODIMENT
IN THE DRAFT CONVENTION**

(Presented by the UNIDROIT and ICAO Secretariats on the basis of DCME Doc No. 16
and DCME Doc No. 41)

Article 47

Signature, ratification, acceptance, approval or accession

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

Article 48

Regional Economic Integration Organisations

1. – A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a [Contracting] State [Party], to the extent that that Organisation has

competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organisation shall not count as a [Contracting] State [Party] in addition to its Member States which are [Contracting] States [Parties].

2. – The Regional Economic Integration Organisation shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the Depository specifying the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depository of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. – Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Convention applies equally to a Regional Economic Integration Organisation unless otherwise provided.

Article 49 ***Entry into force***

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

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

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

Article 50 ***Internal transactions***

1. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that this Convention shall not apply to a transaction which is an internal transaction in relation to that State.

2. – Notwithstanding paragraph 1, the provisions of Articles 7(3) and 8(1), Chapter V, Article 28, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

Article 51
Future Protocols

1. – The Depositary ~~UNDP~~ may create working groups, in co-operation with such relevant non-governmental Organisations as the Depositary considers appropriate, to assess the feasibility of extending the application of this Convention, through one or more ~~PP~~protocols, to objects of any category of high-value mobile equipment, other than a category referred to in Article 2(3), each member of which is uniquely identifiable, and associated rights relating to such objects.

2. – The Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all States Parties to this Convention, all member States of the Depositary and member States of the United Nations which are not members of the Depositary and shall invite such States to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

3. – The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental Organisations as the Depositary considers appropriate. Such non-governmental Organisations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.

4. – The Protocols referred to in the preceding paragraph – When the competent bodies of the Depositary adjudge such a draft Protocol ripe for adoption, the Depositary shall convene a diplomatic Conference for its adoption.

5. – Once such a Protocol has been adopted, subject to paragraph 6, this Convention shall apply to the category of objects covered thereby.

6. – Article 46 applies to such a Protocol only if specifically provided for in that Protocol. ~~shall be prepared and adopted in accordance with the procedures provided for under Article 49.~~

Article 52
Territorial units

1. – If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. – Any such declaration shall state expressly the territorial units to which this Convention applies.

3. – If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.

4. – Where a Contracting State extends this Convention to one or more of its territorial units, declarations and reservations permitted under this Convention may be made in respect of each such territorial unit, and the declarations and reservations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

Article 53
Determination of courts

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

Article 54
Declarations regarding remedies

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

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

Article 55
Declarations regarding relief pending final determination

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will not apply the provisions of Article 12, wholly or in part.

Article 56
Reservations, declarations and non-application of reciprocity principle

1. – No reservations are permitted except those expressly authorised in this Convention and the Protocol.

2. – No declarations are permitted except those expressly authorised in this Convention and the Protocol.

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

4. – The provisions of this Convention subject to any reservation or declaration validly made shall be binding on the States Parties that do not make such reservations or declarations in their relations vis-à-vis the reserving or declaring State Party.

Article 57
Subsequent declarations

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

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

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

Article 58

Withdrawal of declarations and reservations

Any State Party having made a declaration under, or a reservation to this Convention may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

Article 59

Denunciations

1. – Any State Party may denounce this Convention by notification in writing to the Depositary.

2. – Any such denunciation shall take effect on the first day of the month following the expiration of [six/twelve] months after the date on which notification is received by the Depositary. Where a longer period for that denunciation to take effect is specified in the notification of denunciation, it shall take effect upon the expiration of such longer period after its notification to the Depositary.

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

Article 60

Transitional provisions

Alternative A

[This Convention does not apply to a pre-existing right or interest, which shall retain the priority it enjoyed before this Convention entered into force.]

Alternative B

1. – Except as provided by paragraph 2, this Convention does not apply to a pre-existing right or interest.

2. – Any pre-existing right or interest of a kind referred to in Article 2(2) shall retain the priority it enjoyed before this Convention entered into force if it is registered in the International Registry before the expiry of a transitional period of [10 years] after the entering into force of this Convention in

the State Party under the law of which it was created or arose. Where such a pre-existing right or interest is not so registered, its priority shall be determined in accordance with Article 28.

3. – The preceding paragraph does not apply to any right or interest in an object created or arising under the law of a State which has not become a Party to this Convention.]

Article 61 *

[Review Board and Review Conferences

1. – A five-member Review Board shall promptly be appointed by ..., in order to prepare yearly reports for the States Parties, Contracting States and negotiating States, addressing the matters specified in sub-paragraphs (a)-(d) of paragraph 2. The composition of the Review Board, its terms of reference and its organisation and administration shall be determined, in consultation with other relevant interests, by

2. – At the request of not less than twenty-five per cent of the States specified in the preceding paragraph, Review Conferences of those States shall be convened from time to time to consider:

(a) the practical operation of this Convention and the Protocol and their effectiveness in facilitating the asset-based financing and leasing of the objects covered by their terms;

(b) the judicial interpretation given to, and the application made of the terms of this Convention, the Protocol and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority; and

(d) whether any modifications to this Convention and the Protocol or the arrangements relating to the International Registry are desirable.]

[Amendments and related matters

1. – At the request of not less than twenty-five percent of the Contracting States at any time, or at the initiative of the Depositary every five years after the entry into force of this Convention, a Conference of the Contracting States may be convened to consider:

* On this Article the draft Final Provisions prepared by the two Secretariats differ. That prepared by the UNIDROIT Secretariat contemplates only the establishment of a Review Board and the convening of Review Conferences, whereas that prepared by the ICAO Secretariat contemplates the convening of Conferences of Contracting States for the amendment of the Convention. It is to be recalled however that the Convention is only intended to enter into force in respect of a given category of objects at such time as a Protocol has entered into force for that category and that the particular Protocol is in all ways intended to control. The Public International Law Working Group set up by the UNIDROIT /ICAO Joint Sessions, as recalled in DCME Doc No. 16 at pages 15 and 16, agreed that the only binding review mechanism for a particular category of equipment should therefore be via the Protocol relating to that category and that only a Review Conference of States Parties, Contracting States and negotiating States in respect of a given Protocol should have the power to propose amendments binding on such States. The Public International Law Working Group nevertheless agreed as to the desirability of States Parties, Contracting States and negotiating States in respect of the Convention having the power periodically to call general Review Conferences, although with any amendments that might be proposed by such Conferences only being able to be implemented in relation to a particular category of equipment following confirmation by the States Parties, Contracting States and negotiating States in respect of the Protocol concerned.

- (a) the practical operation of this instrument and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
- (b) the judicial interpretation given to, and the application made of the terms of this Convention;
- (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority; and
- (d) whether any modifications to this Convention or the arrangements relating to the International Registry are desirable.

2. – Any amendment to this Convention shall be approved by at least a two-third majority of States participating in the Conference referred to in the preceding paragraph and shall then come into force in respect of States which have ratified such amendment when ratified by ... (the same number as in paragraph 1 of Article 48) States.]

Article 62

Depositary and its Functions

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

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

Authentic text and witness clause

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

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original of which the English, Arabic, Chinese, French, Russian and Spanish texts are equally authentic.

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