



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

(Cape Town, 29 October to 16 November 2001)

DRAFT FINAL ACT

**of the Diplomatic Conference to Adopt a Mobile Equipment Convention
and an Aircraft Protocol held under the joint auspices of the
International Institute for the Unification of Private Law and the
International Civil Aviation Organization
at Cape Town from 29 October to 16 November 2001**

The Plenipotentiaries at the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol, held under the joint auspices of the International Institute for the Unification of Private Law and the International Civil Aviation Organization, met at Cape Town, at the invitation of the Government of the Republic of South Africa, from 29 October to 16 November 2001 for the purpose of considering the draft *Convention on International Interests in Mobile Equipment* and the draft *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*, prepared by three Joint Sessions of a Committee of Governmental Experts of the International Institute for the Unification of Private Law and a Legal Sub-Committee of the International Civil Aviation Organization, as well as by the Legal Committee of the International Civil Aviation Organization.

The Governments of the following fifty-six States were represented at the Conference and presented credentials in due and proper form:

Angola, the Republic of
Argentine Republic, the
Australia
Bahrain, the State of
Belgium, the Kingdom of
Benin, the Republic of
Botswana, the Republic of
Brazil, the Federative Republic of
Burundi, the Republic of
Cameroon, the Republic of
Canada
Chile, the Republic of
China, the People's Republic of
Iran, the Islamic Republic of
Ireland
Italy, the Republic of

Congo, the Republic of
Costa Rica, the Republic of
Côte d'Ivoire, the Republic of
Cuba, the Republic of
Czech Republic, the
Ethiopia, Federal Democratic Republic of
Finland, the Republic of
French Republic, the
Germany, the Federal Republic of
Ghana, the Republic of
Hellenic Republic, the
India, the Republic of

Jamaica
Japan
Jordan, the Hashemite Kingdom of

Revised

Kenya, the Republic of
Lebanese Republic, the
Lesotho, the Kingdom of
Libyan Arab Jamahiriya, the Socialist People's
Malawi, the Republic of
Mexican States, the United
Netherlands, the Kingdom of the
Nigeria, the Federal Republic of
Oman, the Sultanate of
Republic of Korea, the
Russian Federation, the
Singapore, the Republic of
South Africa, the Republic of

Spain, the Kingdom of
Sudan, the Republic of the
Sweden, the Kingdom of
Swiss Confederation, the
Thailand, the Kingdom of
Tonga, the Kingdom of
Turkey, the Republic of
Uganda, the Republic of
United Arab Emirates, the
United Kingdom of Great Britain and
Northern Ireland, the
United Republic of Tanzania, the
United States of America, the

The following eleven international Organisations and groups were represented by Observers:

African Civil Aviation Commission (AFCAC)
Aviation Working Group (AWG)
European Organisation for the Safety of Air Navigation (EUROCONTROL)
European Community
Hague Conference on Private International Law
International Air Transport Association (IATA)
Intergovernmental Organisation for International Carriage by Rail (OTIF)
International Mobile Satellite Organization (IMSO)
Rail Working Group (RWG)
Space Working Group (SWG)
United Nations

The Conference unanimously elected as President Mr. Medard Rutoijo Rwelamira (South Africa) and further unanimously elected as Vice-Presidents:

First Vice-President – Mr. Harold S. Burman (United States)
Second Vice-President – Mr. Gao Hongfeng (China)
Third Vice-President – Mr. Souleiman Eid (Lebanon)
Fourth Vice-President – Mr. Jorio Salgado Gama Filho (Brazil)
Fifth Vice-President – Mr. John Atwood (Australia)

The Joint Secretariat of the Conference was the following:

For the International Institute for the Unification of Private Law:

Secretary General – Mr. Herbert Kronke, Secretary-General
Executive Secretary – Mr. Martin Stanford, Principal Research Officer
Deputy Secretary and Conference Officer – Ms. Marina Schneider, Research Officer
Deputy Secretary – Ms. Frédérique Mestre, Research Officer
Assistant Secretary – Ms. Lena Peters, Research Officer

For the International Civil Aviation Organization:

Secretary General – Mr. Ludwig Weber, Director of the Legal Bureau
Executive Secretary – Mr. Silvério Espínola, Principal Legal Officer

Deputy Secretary – Mr. Jiefang Huang, Legal Officer
Assistant Secretary – Mr. Arie Jakob, Legal Officer
Conference Officer – Mr. Michael J. Blanch, Chief, Conference & Office Services

Section

Other officials of both Organisations also provided services to the Conference.

The Conference established a Commission of the Whole which was chaired by Mr. Antti T. Leinonen (Finland) and the following Committees:

Credentials Committee

Chairman: Mrs. Joyce Thompson (Ghana)

Members: Costa Rica
Ghana
Oman
Singapore
Spain

Drafting Committee

Chairman: Sir Roy Goode (United Kingdom)

Members: Argentina
Canada
China
France
Germany
Jamaica
Japan
Lebanon
Mexico
Nigeria
Russian Federation
South Africa
United Arab Emirates
United Kingdom
United States

Final Clauses Committee

Chairman: Mr. Kenneth O. Rattray (Jamaica)

Members: Canada
China
Cuba

Egypt
France
Jamaica
Kenya
Pakistan
Saudi Arabia
Senegal
Singapore
Sweden
Switzerland
United States.

Following its deliberations, the Conference adopted the texts 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*.

The said Convention and Protocol have been opened for signature at Cape Town this day.

The Conference furthermore adopted by consensus the following Resolutions:

DRAFT RESOLUTION NO. 1

RELATING TO THE CONSOLIDATED TEXT 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

MINDFUL of the objectives 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*;

DESIROUS of facilitating the application and implementation of the Convention and the Protocol;

TAKING INTO ACCOUNT Article 6, paragraph 1 of the Convention, which states that the Convention and the Protocol shall be read and interpreted together as a single instrument;

HAVING AGREED to entrust the Joint Secretariat of the Conference, namely the Secretariats of the International Civil Aviation Organization (ICAO) and of the International Institute for the Unification of Private Law (UNIDROIT), with the drawing up of a consolidated text to facilitate the implementation of the rules contained in the Convention and the Protocol in a user-friendly manner;

THE CONFERENCE:

HEREBY TAKES NOTE OF the Consolidated Text of the *Convention on International Interests in Mobile Equipment* and the *Protocol thereto on Matters specific to Aircraft Equipment* as set out in the **Attachment** to this Resolution.

DRAFT RESOLUTION NO. 2

**RELATING TO THE ESTABLISHMENT OF THE SUPERVISORY AUTHORITY
AND THE INTERNATIONAL REGISTRY FOR AIRCRAFT OBJECTS**

THE CONFERENCE,

HAVING ADOPTED 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*;

HAVING REGARD to Article XVI, paragraph 1 of the Protocol;

CONSCIOUS of the need to undertake preparatory work regarding the establishment of the International Registry in order to ensure that it is operational by the time the Convention and the Protocol enter into force;

CONSIDERING that the Council of the International Civil Aviation Organization (ICAO), following a recommendation made by the 31st Session of its Legal Committee, decided during its 161st Session to accept, in principle, the role of Supervisory Authority of the International Registry for the purpose of the Protocol, and to defer further decisions on this matter until after the Diplomatic Conference;

RESOLVES:

TO INVITE ICAO to accept the functions of Supervisory Authority upon the entry into force of the Convention and the Protocol;

TO INVITE ICAO to establish a Commission of Experts consisting of not more than 15 members appointed by the ICAO Council from among persons nominated by the Signatory and Contracting States to the Convention and to the Protocol, having the necessary qualifications and experience, with the task of assisting the Supervisory Authority, upon the entry into force of the Convention and the Protocol;

TO SET UP, pending the entry into force of the Convention and the Protocol, a Preparatory Commission to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry, under the guidance and supervision of the ICAO Council. Such Preparatory Commission shall be composed of persons, having the necessary qualifications and experience, nominated by the following States: (insert names of States).

TO DIRECT the Preparatory Commission to carry out, under the guidance and supervision of the ICAO Council, the following functions:

- (1) to ensure that the international registration system be set up, in accordance with an objective, transparent and fair selection process, and that it become ready to be operated with a target date of one year from the adoption of the Convention and the Protocol, and at the latest by the time of the entry into force of the Convention and the Protocol;
- (2) to ensure the necessary liaison and coordination with private industry which will be users of the International Registry; and
- (3) to work on such other matters relating to the International Registry as may be required with a view to ensuring the establishment of the International Registry.

TO URGE the States participating in the Conference and interested private parties to make available, at the earliest possible date, the necessary start-up funding on a voluntary basis for the tasks of the Preparatory Commission and of ICAO, required under the two preceding resolving clauses, and to entrust ICAO with the task of administering such funds.

DRAFT RESOLUTION NO. 3

PURSUANT TO ARTICLE 2(3)(b) AND (c) OF THE CONVENTION

THE CONFERENCE,

HAVING ADOPTED, in Article 2(3)(b) and (c) of the Convention, provisions contemplating the adoption of Protocols on Matters specific to Railway Rolling Stock and Space Assets;

CONSIDERING that such Protocols will be applied together with the terms of the Convention and are expected also to include analogous provisions to those contained in the Aircraft Protocol;

CONSIDERING that considerable progress has already been made in relation to the development of such Protocols and such progress has been welcomed by the Conference;

CONSIDERING that the completion of such Protocols is to be expected to confer significant benefits on the international community as a whole, in particular for developing States; and

CONSIDERING IT DESIRABLE to involve as wide a range of States as possible in the process for the adoption of such Protocols and to keep the costs of such adoption to a reasonable minimum;

RESOLVES:

TO INVITE the negotiating States to work towards expeditious adoption of the draft Protocols under preparation in respect of those objects falling within Article 2(3)(b) and (c);

TO INVITE the International Institute for the Unification of Private Law (UNIDROIT) to use its good offices to facilitate such objective;

TO INVITE UNIDROIT to give all Member States of UNIDROIT and Member States of the United Nations which are not members of UNIDROIT an opportunity to participate in the negotiation and adoption of such Protocols in a cost-effective manner; and

TO INVITE the competent bodies of UNIDROIT to consider favourably the implementation of an expedited procedure for the adoption of such Protocols, and in particular to consider the diplomatic Conference required for their adoption being as short as possible consistently with the need for States to give such Protocol proper consideration.

DRAFT RESOLUTION NO. 4

**RELATING TO TECHNICAL ASSISTANCE WITH REGARD
TO THE IMPLEMENTATION AND THE USE OF THE
INTERNATIONAL REGISTRY**

THE CONFERENCE,

MINDFUL of the objectives of the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on Matters specific to Aircraft Equipment*;

DESIROUS of facilitating the implementation of the Convention and the Protocol as well as the prompt implementation and use of the International Registry;

RESOLVES:

TO ENCOURAGE all negotiating States, international Organisations, as well as private parties, such as the aviation and financial industries, to assist the developing negotiating States in any appropriate way, including facilities and know-how necessary to use the International Registry, so as to allow them to benefit from the Convention and the Protocol as early as possible.

DRAFT RESOLUTION NO. 5

**RELATING TO THE OFFICIAL COMMENTARY ON THE CONVENTION
AND AIRCRAFT PROTOCOL**

THE CONFERENCE,

HAVING ADOPTED 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*;

CONSCIOUS of the need for an official commentary on these texts as an aid for those called upon to work with these documents;

RECOGNISING the increasing use of commentaries of this type in the context of modern, technical commercial law instruments; and

MINDFUL that the Explanatory Report and Commentary (DCME-IP/2) provides a sound starting point for the further development of this official commentary;

RESOLVES:

TO REQUEST the preparation of a draft official commentary on these texts by the Chairman of the Drafting Committee, in close cooperation with the ICAO and UNIDROIT Secretariats, and in coordination with the Chairman of the Commission of the Whole, the Chairman of the Final Clauses Committee and interested members of the Drafting Committee and observers that participated in its work;

TO REQUEST that such draft be circulated by the two Secretariats to all negotiating States and participating observers no later than 90 days from the conclusion of the Conference inviting comments thereon; and

TO REQUEST that a revised final version of the official commentary be transmitted by the two Secretariats to all negotiating States and participating observers no later than 180 days from the conclusion of the Conference.

IN WITNESS WHEREOF the Delegates,

GRATEFUL to the Government of the Republic of South Africa for having invited the Conference to South Africa and for its generous hospitality,

HAVE SIGNED this Final Act.

DONE at Cape Town on the sixteenth day of November of the year two thousand and one in two originals of which the English, Arabic, Chinese, French, Russian and Spanish languages are equally authentic. The Convention and the Protocol shall be deposited with the International Institute for the Unification of Private Law. A certified copy of each instrument shall be delivered by the said Organisation to the Governments of each of the negotiating States.