



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

(Cape Town, 29 October to 16 November 2001)

COMMENTS ON THE DRAFT CONVENTION

(Presented by Japan)

1. **ARTICLE 2(4) — DETERMINATION OF CHARACTERISATION**

1 This paragraph only mentions that the Convention does not determine the characterisation of a certain international interest among the three categories as provided in paragraph 2 of the same Article, and does not explicitly provide for the rule of determination. We believe that the consensus among us with respect to this point, which is further confirmed by Comment 3 to this Article in the Explanatory Report and Commentary, is the applicable law of the forum State. We also acknowledge its history that the paragraph was so provided in the early draft texts, but later changed to the current wording.

2

3 Having considered the historical reason, as well as being hesitant to re-open the same issue, we still believe that the paragraph explicitly provides that the applicable law determines the characterisation. Since the characterisation is always the first step to determine the applicability of relevant provisions, i.e. the remedies, under the Convention, and thus, this paragraph seems to be so important to be argued and interpreted repeatedly by the relevant parties in future, the explicit provision is preferable to avoid possible future confusions and misinterpretations. Our proposed wording is as follows:

4

“The applicable law, including the rules of private international law of the forum State, shall determine whether an interest to which paragraph 2 applies falls within sub-paragraph (a), (b) or (c) of that paragraph.”

1. **ARTICLE 17(2) — EVIDENCE OF CONSENT**

2.

1 Although this Article grants to the Protocol and regulations the broad authority and discretions to specify the registration requirements and formalities, the only restriction as explicitly provided is paragraph 2. However, we are concerned that the registration system would be easily exposed to the risk of possible fraudulent filings if no evidence that the consent of the relevant party was given is required at all.

2

3

4

5

(2 pages)

6

7

8

9

10 We very much appreciate the intention and observation of this paragraph based on the
electronic and the notice-filing nature of the system, and thus, we agree that the Registrar or a designated
entry points should not search or require the evidence of authenticity or verification of the consent.
However, we believe that the system should have a certain instrumental role (i.e. the receipt of the consent
apparently signed by a party in whose disfavour a registration is made), in order to protect such party from
the fraudulent or improper registration. Since the kind and level of the evidence of the consent is largely
dependent upon the system to be built in future and its trustworthiness, it would be difficult to specify these
in the Convention at this moment. Thus, we propose that paragraph 2 be deleted.

11

12

13

14

– END –