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

(Cape Town, 29 October to 16 November 2001)

COMMENTS ON DRAFT CONVENTION

(Presented by the Government of the United Kingdom)

1. The United Kingdom has identified a transitional problem with Article 39 of the Convention which deals with non-registrable non-consensual rights and interests. We regard it as essential that this problem be resolved in the text of the Convention and propose a draft to deal with the point.
2. Article 39(1) enables a State to make a declaration, either general or specific, as to categories of non-consensual rights and interests which are under the State's law to have priority over interests equivalent to international interests and over registered international interests. Article 39(3) provides that an international interest has priority over non-consensual rights or interests of a category not covered by a declaration deposited prior to the registration of the international interest. This means that a State is unable to use a declaration to protect the priority of non-consensual rights and interests over international interests which have already been entered on the register by virtue of the earlier ratification of the Convention by other States.
3. Upon its ratification the United Kingdom would intend to make a declaration including, for example, the rights to detain aircraft for non-payment of landing fees and the rights of aircraft repairers to retain possession of an aircraft as security for payment of the costs of repair. In such cases the person with the right to retain possession or to detain the aircraft has the right to sell the aircraft if the debt secured by the right is not paid. However, such rights would not have priority over interests which were already on the register by virtue of another Contracting State having ratified the Convention earlier. The problem will be increasingly acute for States which ratify the Convention late and may be a disincentive for them to ratify at all.
4. Two examples will illustrate the operation of Article 39(3):
 - (a) Airline A buys an aircraft and an international interest is registered against it after the U.K. has ratified and made its declaration. When the aircraft lands in the U.K. the right to unpaid landing fees secured by detaining the aircraft has priority over the international interest.
 - (b) An aircraft of Airline A is registered in State A which has ratified the Convention. An international interest is registered against the aircraft. The U.K. subsequently ratifies the Convention making a declaration that a non-consensual right to detain aircraft to secure payment of landing fees has priority.

When the aircraft lands in the U.K. the right to unpaid landing fees secured by detaining the aircraft does not have priority over the existing registered interest. This is because the interest was registered before the U.K.'s declaration (but the declaration could not have been earlier than the U.K.'s ratification).

For any given aircraft the person with the right to retain possession or to detain the aircraft would not know without consulting the international registry whether or not their right had priority over a registered international interest.

The United Kingdom proposes that Article 55 of the Convention be amended as set out in the *Annex* to these comments. This straightforward amendment would have the effect that a declaration made at the time a State ratified the Convention would give the declared non-consensual rights or interests priority over existing registered international interests.

*Revised texts of Article 55**Alternative A*

1. 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.
2. Notwithstanding Article 39(3) a State may declare time of ratification of the protocol that a non-consensual right or interest of a category covered by a declaration deposited at the time of ratification shall have priority over an international interest registered prior to the date of such ratification.

Alternative B

1. [Except as provided by paragraphs 2 and 3, the Convention does not apply to a pre-existing right or interest.
2. Unchanged.
3. Notwithstanding Article 39(3) a State may declare time of ratification of the protocol that a non-consensual right or interest of a category covered by a declaration deposited at the time of ratification shall have priority over an international interest registered prior to the date of such ratification and declaration.
4. Paragraph 2 does not apply to any right or interest in an object created or existing under the law of a State which has not become a Contracting State.]

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