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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 THE DRAFT CONVENTION AND THE DRAFT AIRCRAFT PROTOCOL

(Presented by Uruguay)

1. DOUBLE STRUCTURE OF A GENERAL CONVENTION AND SPECIFIC PROTOCOLS

1.1 We consider that the separation of what was originally conceived as a single document applicable to all categories of high-value mobile equipment into two instruments: 1) a base Convention, establishing the general rules applicable to all of the different categories of equipment of that type; and 2) separate Protocols for the different, specific types of equipment, establishing the special rules necessary to adapt the provisions of the Convention to the special characteristics of each category of equipment, has comparative advantages that make this solution preferable.

1.2 The reason for this decision was to facilitate the prompt entry into force of the new international system proposed in relation to aircraft equipment, since the representatives of the aviation industry who participated in the Working Group emphasized the need to have this instrument as soon as possible, avoiding delays resulting from the consideration of the special needs of other categories of equipment, whose interest groups have not achieved the same degree of progress as has been obtained by the aviation industry.

1.3 Perhaps the main advantage of this double structure of a general Convention and specific Protocols is that of providing a basic body of rules applicable to the whole spectrum of high-value mobile equipment and also a set of rules that refer exclusively to the characteristics particular to some specific categories of mobile equipment. In the terminology proposed by AWG and IATA, the Convention would be the general part, to be complemented for each category of equipment by a Protocol drafted specially to meet the specific needs of the respective category.

1.4 This proposed double structure makes it possible for the Convention to establish the basic principles with regard to interests in mobile equipment while the Protocols, for their part, make those principles operational. This appears to be extremely useful for the following reasons, in addition to what has already been stated:

- It avoids useless repetitions that would be incurred if the general principles had to be repeated in relation to each specific category of mobile equipment.
- It makes it possible to have a set of basic standards in a Convention that is generally applicable to all types of mobile equipment (provided that this equipment is “uniquely identifiable”, as required by Article 2.2 of the Convention) and also applicable to situations not provided for at the time of developing and approving the Convention. This appears to be especially useful for countries such as ours where there has not been up until now considerable development of the air and space industry, but where it may prove to be very useful for industrialists in general to have a clear and reliable system of interests that allows them access to the international credit necessary to acquire or renew high-value equipment.
- It allows more specific and detailed regulation of matters particular to some specific categories of mobile equipment that it would be impossible to provide for and include in a single, general Convention.
- It allows the different sectors involved in the respective categories of mobile equipment to advance at their own pace in the development of their specific Protocols. All the sectors, not only the aviation sector, could see themselves benefit from the outset from a general Convention, leaving open the possibility of promoting, given the specific needs particular to their own sector, the development of a specific Protocol that provides for their own needs. This last possibility is expressly provided for in Article 50 of the Convention.
- It gives governments greater flexibility to adopt only those Protocols that refer to categories of equipment that prove to them to be useful, without losing the benefits given to them by the general Convention.

2. METHODOLOGY USED AND PUBLIC INTERNATIONAL LAW

2.1 We consider that there are no objections either from the methodological point of view since the 1986 Vienna Convention on the Law of Treaties (approved by Uruguay by Act No. 16.173 of 30 March 1991) establishes in Article 2 that a “treaty means an international agreement ... , whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”.

3. NUMBER OF RATIFICATIONS REQUIRED FOR THE ENTRY INTO FORCE OF THE CONVENTION

3.1 We share the arguments put forward by AWG and IATA in their comments of 31 August 2001 in favour of the solution provided for by Article 47 of the Convention which establishes its entry into force “on the first day of the month following the expiration of six months after the date of deposit of the [third/fifth] instrument of ratification, ...”.

3.2 All the arguments put forward in favour of requiring a larger number of ratifying States for these instruments to enter into force, collapse with a single argument: three States represent more than 60 per cent of the volume of transactions, while around 120 States represent less than 10 per cent of that volume. The possibility of entry into force with that minimum number is a positive one. Consequently, there is no necessary linkage between the number of ratifying States and the actual volume of transactions.

3.3 With regard to the system for the regulation of the supply agreement, as well as to the interests, this is determined by the sphere of application (Article 3); with regard to interpretation and applicable law provided for in Article 5.3, there is subjection to the rules of private international law of the forum State. Consequently, jurisdiction becomes a decisive element, for the regulation of which there prevails the autonomy of the will provided for in Articles 41 and 42 of the Convention, in accordance with Article XX of the Protocol.

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