



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

(Cape Town, 29 October to 16 November 2001)

DRAFT FINAL PROVISIONS OF THE DRAFT CONVENTION

(Presented by the ICAO Secretariat)

This paper presents proposals for the Final Provisions of the Draft Convention, based on DCME Docs Nos. 3 and 16. They are also suggested to apply, *mutatis mutandis*, to the Final Provisions of the Draft Protocol (DCME Doc No. 4).

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 until it enters into force in accordance with Article 49.

2. – This Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a “Regional Economic Integration Organisation” means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a “Contracting State” or “Contracting States” in this Convention, applies equally to a Regional Economic Integration Organisation. For the purpose of Articles 49 and 60, the references to “Contracting States” or “States” shall not apply to a Regional Economic Integration Organisation.

3. – This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.

4. – Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time.

Article 48
Depositary and its Functions

1. – Instruments of ratification, acceptance, approval or accession shall be deposited with 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;
 - (iv) the withdrawal of any declaration; and
 - (v) the notification of denunciation of this Convention 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 Registrar with a copy of each instrument of ratification, acceptance, approval or accession, of each declaration or withdrawal of a declaration, and of each ratification of denunciation, so that the information contained therein is easily and fully available.

Article 49
Entry into Force

1. – This Convention shall enter 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 with the Depositary between the States which have deposited such instrument 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.

An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.

2. – For other States and for other Regional Economic Integration Organisations, this Convention shall take effect 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 with the Depositary 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.

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3. – This Convention and the Protocol shall be read and interpreted together as one single instrument.

Article 50
Internal Transactions

1. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Convention, declare that the Protocol 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
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 signature, ratification, acceptance, approval or accession, declare that this Convention shall 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 be notified to the Depositary and 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 Contracting 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 52
Determination of Courts

A Contracting State may, at the time of signature, 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 53
Declarations Regarding Remedies

1. – A Contracting State may, at the time of signature, 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 signature, ratification, acceptance, approval of, or accession to this Convention, 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 54

Declarations Regarding Relief Pending Final Determination

A Contracting State may, at the time of signature, 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 55

Reservations, Declarations and Non-application of Reciprocity Principle

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

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

3. – Any declaration or subsequent declaration made under this Convention shall be notified in writing to the Depository.

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 viz-à-vis the reserving or declaring State Party.

Article 56

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 Depository 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 Depository. 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 Depository.

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

Article 57

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 Depository in writing. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the Depository.

Article 58
Denunciations

1. – Any State Party may denounce this Convention by written notification to the Depository.
2. – 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 Depository.
3. – Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such denunciations had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

Article 59
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 60
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 Depository every five years after the entry into force of this Convention, a Conference of the Contracting States may be convened to consider:
 - (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

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- (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.

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

DONE at Cape Town on the 16th day of November of the year two thousand and one in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the, and certified copies thereof shall be transmitted by the Depositary to all Contracting States to this Convention.

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