



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

(Cape Town, 29 October to 16 November 2001)

COMMENTS ON ARTICLE 48 OF THE DRAFT CONVENTION

(Presented by the Rail Working Group (RWG))

Article 48(1) of the proposed Convention permits Contracting States to disapply parts of the Convention to “internal transactions”.

Article 1(n) defines an “internal transaction” as

“a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object is located (as specified in the Protocol), in the same Contracting State at the time of the conclusion of the transaction”

As drafted however, this is an “all or nothing” option for the States. This will potentially cause problems unnecessarily for some States, particularly in relation to the rail sector, since it precludes selective disapplication. For example, a Contracting State may wish to disapply parts of the Convention in relation to underground/metro railway systems or tram systems but not exclude transactions relating to rolling stock on suburban standard gauge railways even if these are still “internal transactions”. As currently drafted, Article 48(1) gives no scope for this and could place Contracting States in a difficult position where they either disapply in relation to all internal transactions or none. Whilst this may be less of an issue in the Aircraft and Space sectors, we see no disadvantage in giving Contracting States the flexibility, in relation to a Protocol, to designate that only certain types of equipment transactions are excluded. Accordingly, in the proposed amended text for Article 48(1) set out below, we suggest that this flexibility is given.

Proposed changes to Article 48(1)

Article 48

Internal transactions

1. – A Contracting State may declare at the time of ratification, acceptance, approval of, or accession to the Protocol that this Convention shall not apply to a transaction which is an internal transaction in relation to that State with regard to all types of objects or some of them.

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