



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

(Cape Town, 29 October to 16 November 2001)

**REVISED DRAFT FINAL PROVISIONS FOR THE PROTOCOL
TO BE CONSIDERED BY THE FINAL CLAUSES COMMITTEE**

(Presented by the ICAO and UNIDROIT Secretariats)

Article XXV

Signature, ratification, acceptance, approval or accession

1. – This Protocol 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 Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article XXVII.
2. – This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.
3. – Any State which does not sign this Protocol may accede to it at any time.
4. – Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

Article XXVI

Regional Economic Integration Organisations

1. – A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the

Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. – The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. – Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation unless otherwise provided.

Article XXVII

Entry into force

1. – This Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of the ...th instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.

2. – For other States this Protocol enters into force 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.

Article XXVIII

Declarations relating to certain provisions

1. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply any one or more of Articles VIII, XII and XIII of this Protocol.

2. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article X of this Protocol wholly or in part. If it so declares with respect to Article X(2), it shall specify the time-period required thereby.

3. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XI and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XI.

4. – The courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

Article XXIX
Declarations under the Convention

Articles 50, 52, 53, 54 and 55 of the Convention shall apply for the purposes of this Protocol.

Article XXX
Reservations and declarations

1. – No reservations may be made to this Protocol but declarations authorised by Articles XXVIII, XXIX, XXXI and XXXII may be made in accordance with these provisions.

2. – Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

Article XXXI
Subsequent declarations

1. – A State Party may make a subsequent declaration at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary 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 Depositary. 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 Depositary.

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

Article XXXII
Withdrawal of declarations

Any State Party having made a declaration under this Protocol may withdraw it at any time by notifying the Depositary. Such withdrawal is to 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 Depositary.

Article XXXIII
Denunciations

1. – Any State Party may denounce this Protocol by notification in writing to the Depositary.

2. – Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which notification is received by the Depositary.

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

Article XXXIV*
[Review Board and Review Conferences]

1. – A five-member Review Board shall promptly be appointed by ..., in order to prepare yearly reports for the States Parties, Contracting States and negotiating States, addressing the matters specified in sub-paragraphs (a)-(d) of paragraph 2. The composition of the Review Board, its terms of reference and its organisation and administration shall be determined, in consultation with other relevant interests, by

2. – At the request of not less than twenty-five per cent of the States specified in the preceding paragraph, Review Conferences of those States shall be convened from time to time to consider:

(a) the practical operation of this Protocol and its effectiveness in facilitating the asset-based financing and leasing of aircraft objects;

(b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority; and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.]

[Amendments and related matters]

1. – At the request of not less than twenty-five per cent of the Contracting States at any time, or at the initiative of the Depositary every five years after the entry into force of this Protocol, 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 Protocol;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority; and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

2. – Any amendment to this Protocol 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 XXVII) States.]

* On this Article the draft Final Provisions prepared by the two Secretariats differ. That prepared by the UNIDROIT Secretariat contemplates only the establishment of a Review Board and the convening of Review Conferences, whereas that prepared by the ICAO Secretariat contemplates the convening of Conferences of Contracting States for the amendment of the Protocol.

Article XXXV
Depositary and its Functions

1. – Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), 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 Protocol;
 - (iii) each declaration made in accordance with this Protocol, together with the date thereof;
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Protocol to all States specified in sub-paragraph (a);
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
- (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original of which the English, Arabic, Chinese, French, Russian and Spanish texts are equally authentic.

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