



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

(Cape Town, 29 October to 16 November 2001)

REPORT OF THE FINAL CLAUSES COMMITTEE PART I

(Presented by the Chairman of the Final Clauses Committee)

1. INTRODUCTION

1.1 At its Fourth Plenary Meeting on 31 October 2001, the Conference established the Final Clauses Committee with the following composition:

Canada, China, Cuba, Egypt, France, Jamaica, Kenya, Pakistan, Saudi Arabia, Senegal, Singapore, Sweden, Switzerland and United States.

1.2 At the first meeting of the Committee on 7 November 2001, on a proposal made by France and seconded by Singapore, Dr. Kenneth Rattray (Jamaica) was elected Chairman of the Committee.

1.3 The Committee held its second meeting on 8 November 2001. It decided to recommend the following final provisions of Articles 47 to 59 for the Convention (Part II to follow).

2. DRAFT FINAL PROVISIONS FOR THE CONVENTION

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 the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article 49.

2. – This Convention shall be subject to ratification, acceptance or approval by States which have signed it.

3. – Any State which does not sign this Convention 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 48
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 Convention may similarly sign, accept, approve or accede to this Convention. 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 Convention. Where the number of Contracting States is relevant in this Convention, 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 Convention 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 Convention applies equally to a Regional Economic Integration Organisation unless otherwise provided.

Article 49
Entry into force

1. – This Convention enters into force on the first day of the month following the expiration of **six** months after the date of the deposit of the third instrument of ratification, acceptance, approval or accession 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.

2. – For other States this Convention 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 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.

Article 50

Internal transactions

1. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare 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.

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

Future Protocols

1. – The Depositary may create working groups, in co-operation with such relevant non-governmental organisations as the Depositary considers appropriate, to assess the feasibility of extending the application of this Convention, through one or more Protocols, to objects of any category of high-value mobile equipment, other than a category referred to in Article 2(3), each member of which is uniquely identifiable, and associated rights relating to such objects.

2. – The Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all States Parties to this Convention, all member States of the Depositary, member States of the United Nations which are not members of the Depositary and the relevant intergovernmental organisations, and shall invite such States and organisations to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

3. – The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental organisations as the Depositary considers appropriate. Such non-governmental organisations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.

4. – When the competent bodies of the Depositary adjudge such a draft Protocol ripe for adoption, the Depositary shall convene a diplomatic conference for its adoption.

5. – Once such a Protocol has been adopted, subject to paragraph 6, this Convention shall apply to the category of objects covered thereby.

6. – Article 46 applies to such a Protocol only if specifically provided for in that Protocol.¹

Article 52

Territorial units

1. – If a Contracting State has 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 ratification, acceptance,

¹ The Final Clauses Committee has not taken a decision with respect to paragraph 6 pending the Report of the Drafting Committee.
(5 pages)

approval or accession, declare that this Convention is to 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 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 State.

4. – Where a Contracting State extends this Convention to one or more of its territorial units, declarations permitted under this Convention may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

Article 53

Determination of courts

A Contracting State may, at the time of 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 54

Declarations regarding remedies

1. – A Contracting State may, at the time of 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 ratification, acceptance, approval of, or accession to the Protocol, 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 55

Declarations regarding relief pending final determination

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will not apply the provisions of Article 12, wholly or in part.²

Article 56

Reservations and declarations

1. – No reservations may be made to this Convention but declarations authorised by Articles 38, 39, 50, 52, 53, 54, 55, 57 and 58 may be made in accordance with these provisions.

² The Final Clauses Committee has not taken any decision on this Article pending the decision of the Commission of the Whole.
(5 pages)

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

Article 57
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 declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article 58
Withdrawal of declarations

Any State Party having made a declaration under this Convention may withdraw it at any time by notifying the Depository. 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 Depository.

Article 59
Denunciations

1. – Any State Party may denounce this Convention by notification in writing to the Depository.

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 Depository.

3. – Notwithstanding the previous paragraphs, this Convention 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.

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