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Addendum
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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 II

(Presented by the Chairman of the Final Clauses Committee)

1. INTRODUCTION

1.1 The Committee held its Third Meeting on 12 November 2001. It made the following amendments to Part I of its report:

1.2 In Article 49, paragraph 1, the term “six months” in the second line is replaced by “three months”.

1.3 Article 51, paragraph 6 shall be revised pending decision of the Commission of the Whole with respect to Article 46.

1.4 In accordance with the decision of the Commission of the Whole (DCME Doc No. 52, Article 53, which was approved with editorial changes as suggested by the Drafting Committee), Article 55 should read:

“A Contracting State may declare at the time of ratification, acceptance, approval of, or accession to, the Protocol that it will not apply the provisions of Article 12 and the related provisions of Article 42, wholly or in part. Where the effect of the declaration is that Article 12 and the related provisions of Article 42 will be applied only in part, the declaration shall specify in which conditions that part will be applied and which other forms of relief will be available.”

1.5 With respect to the issues raised in Flimsies Nos. 2 and 3 of the Final Clauses Committee, the Committee did not take any decision pending informal consultations among interested States, which will report directly to the Commission of the Whole.

1.6 With respect to Article 60 of the Draft Convention, different views were expressed. It has been proposed that Alternative A be retained with the following modification: “Unless otherwise declared by a Contracting State at the time of ratification, acceptance, approval of, or accession to the Convention, 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.” The Committee decided to refer this Article back to the Commission of the Whole for decision.

1.7 The Committee decided to recommend the rest of the final provisions as follows.

2. FINAL PROVISIONS FOR THE CONVENTION

Article 61

Review Conferences, amendments and related matters

1. – The Depositary shall prepare yearly reports for the States Parties as to the manner in which the international regime established in this Convention has operated in practice.

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

(a) the practical operation of this Convention 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 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 Convention or the arrangements relating to the International Registry are desirable.

3. – 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 three States.

Article 62

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 Convention;

(iii) each declaration made in accordance with this Convention, 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 Convention together with the date thereof and the date on which it takes effect;

(b) transmit certified true copies of this Convention to all Contracting States;

(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 Convention.

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.

3. FINAL PROVISIONS FOR THE PROTOCOL

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.

5. – A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

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.

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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 third¹ 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.

5. – A Contracting State may declare at the time of ratification, acceptance, approval of, or accession to, the Protocol that it will not apply the provisions of Article 12 and the related provisions of Article 42, wholly or in part. Where the effect of the declaration is that Article 12 and the related provisions of Article 42 will be applied only in part, the declaration shall specify in which conditions that part will be applied and which other forms of relief will be available.

Article XXIX***Declarations under the Convention***

Declarations made under the Convention, including those made under Articles 38, 39, 50, 52, 53, 54, 55, 57 and 58 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

¹ Four States made a reservation with respect to the number of ratifications required for entry into force.

– 5 – Addendum

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 Conferences, amendments and related matters

1. – The Depositary, in consultation with the Supervisory Authority, shall prepare yearly reports for the States Parties as to the manner in which the international regime established in the Convention as amended by the Protocol has operated in practice.

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

- (a) the practical operation of the Convention as amended by the Protocol 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 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.

3. – 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 three States.

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 - (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 Contracting States;
- (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.

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