



Cape Town Convention Journal

ISSN: 2049-761X (Print) 2049-7628 (Online) Journal homepage: <https://www.tandfonline.com/loi/rcap20>

Depositary Update

Unidroit Secretariat

To cite this article: Unidroit Secretariat (2014) Depositary Update, Cape Town Convention Journal, 3:1, i-xiv, DOI: [10.1080/2049761X.2015.1092287](https://doi.org/10.1080/2049761X.2015.1092287)

To link to this article: <https://doi.org/10.1080/2049761X.2015.1092287>



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Published online: 09 Oct 2015.



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Depositary Update

UNIDROIT Secretariat

UNIDROIT as Depositary

UNIDROIT is designated as the Depositary under the Cape Town Convention and each of its three Protocols (Aircraft, Rail and Space). Given the complexity of the systems of declarations and notifications under these instruments, the depositary functions are particularly important. They are set out in each instrument. For example, Article 62 of the Convention provides that instruments of ratification and accession are to be deposited with UNIDROIT, and that UNIDROIT is to provide Contracting States with notification of each new ratification or accession and withdrawal or amendment of declaration, and provide notifications and copies of instruments to the Supervisory Authority and the Registrar of the International Registry.

UNIDROIT provides assistance to intending or potential Contracting States by way of providing information on the ratification/accession process, and assistance in relation to the drafting of instruments of ratification/accession and declarations. For example, UNIDROIT has produced guides on Model Instruments of Ratification and Accession, and a Memorandum containing information and model forms for the making of declarations under the Convention and protocols. These documents do not venture into the policy choices to be made by Contracting States, and in its capacity as Depositary UNIDROIT is not able to provide advice to States in relation to their policy choices.

The Depositary is required to prepare regular reports on the manner in which the international regime established by the Convention has operated in practice. These reports, which are provided to Contracting States and posted on the UNIDROIT website, are issued every 2 years so as to coincide with the reporting cycles of the Supervisory Authority. The report covering the period 1 January 2012 to 31 December 2014 was issued in August 2014.

In addition to its formal depositary functions, UNIDROIT has also been involved in a number of promotion activities and seminars which have been designed to advance awareness and understanding of the Cape Town Convention regime. These have included the participation of the Deputy Secretary-General on behalf of UNIDROIT at the third annual conference of the Cape Town Convention Academic Project in Oxford on 9 and 10 September 2014, and a European Seminar on the Luxembourg Rail Protocol, jointly organised by the German Federal Ministry of Justice and Consumer Protection and the Rail Working Group, which was held on 22 September 2014 in Berlin. It was addressed to governmental and rail authorities, officials and professional experts, and was designed to promote the implementation of the Rail Protocol. Experts on the Cape Town Convention and Railway Protocol from all over the world contributed to the seminar. Moreover, on 31 March and 1 April 2014, the Secretary-General of UNIDROIT attended the 53rd session of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space (UN/COPUOS) in Vienna as an observer for UNIDROIT, where he presented a statement on the Space Protocol and its possible economic benefits with particular regard to the promotion of private investments in space activities.

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UNIDROIT has also hosted visits by Government officials to discuss the requirements for ratifying or acceding to the Convention, to supplement advice provided through web-site resources.

The UNIDROIT website contains an archive of documents relevant to the development of the Convention and its protocols, and status lists which are updated to show the signatory and Contracting States of the Convention and its protocols. An email update service also provides update information.

Status of the Convention and protocols

As at 1 October 2014, the status of the Convention and its Protocols were as follows:

- Cape Town Convention: 62 Contracting States and 1 Regional Economic Integration Organisation, entered into force 1 May 2006;
- Aircraft Protocol: 56 Contracting States and 1 Regional Economic Integration Organisation, entered into force 1 May 2006;
- Rail Protocol: 1 Contracting State, not yet in force;
- Space Protocol: not yet in force.

Annex 1 hereto is a table listing the Contracting States and Regional Economic Integration Organisations to each instrument.

The Convention and the Aircraft Protocol (and, subsequently, the Rail and Space Protocols) were developed with a view to ensuring that their provisions would be capable of being adopted by States in all geographic regions, irrespective of the type of legal system. In this regard, the Convention and Aircraft Protocol have been extremely successful, with their Contracting States to date being drawn from all regions of the world, and representing States at all levels of economic development and a broad range of legal systems. The Convention is also the most successful treaty – in terms of the number of ratifications – to have been developed by UNIDROIT.

The difference in the number of Contracting States for the Convention and the Aircraft Protocol is explained by the fact that a number of Contracting States to the Convention have only deposited an instrument of ratification/accession in respect of the Convention and have not also deposited an instrument in respect of a Protocol, or have not deposited a declaration pursuant to Article 54(2) of the Convention (the making of a declaration pursuant to that Article is a mandatory requirement that must be fulfilled before a State is able to ratify or accede to a Protocol). Although the Convention is a framework Convention, it is possible for a State to ratify the Convention without also ratifying a Protocol, as a few of the Convention's Contracting States have done.¹ However, being a framework Convention it is designed to operate in conjunction with a Protocol,² and the ratification by a State of only the Convention would have very limited legal effects for that State (for example, the State would be eligible to receive notifications under Article 62(2)).³ A State wishing to apply the Cape Town Convention would need to ratify at least one of the Protocols.

Preparatory Commissions – Rail and Space Protocols

In relation to the Rail Protocol, a Preparatory Commission was set up by Resolution No. 1 of the Luxembourg diplomatic Conference for the establishment of an International Registry under the

¹ The following six (6) States are Contracting States to the Convention, but not to the Aircraft Protocol: Costa Rica, Gabon, Seychelles, Spain, Syria and Zimbabwe.

² Article 6(1) of the Convention provides: 'This Convention and the Protocol shall be read and interpreted together as a single instrument.'

³ Article 49 states that the Convention applies 'only as regards a category of objects to which a Protocol applies', and does so, *inter alia*, 'subject to the terms of that Protocol ... and as between [parties to the] Convention and that Protocol'.

Luxembourg Protocol. Since its last full session in 2011, the Preparatory Commission appointed a team to conduct negotiations with SITA SA for the conclusion of a contract with the Registrar which were successfully concluded in July 2014, with the approval of the draft Registry Contract, the Master Services Agreement and their appendices and annexes. At the same time, issues relating to the establishment of a definitive Supervisory Authority continued to be discussed with the Intergovernmental Organisation for International Carriage by Rail (OTIF) and a meeting was held in Rome on 1 July 2014.

In relation to the Space Protocol, pursuant to Resolution 1 of the diplomatic Conference for the adoption of the Protocol (Berlin, 27 February – 9 March 2012), a Preparatory Commission was set up to act as Provisional Supervisory Authority for the establishment of the International Registry for Space Assets under the guidance of the UNIDROIT General Assembly.

The first session of the Preparatory Commission was held at UNIDROIT's Headquarters in Rome on 6 and 7 May 2013, under the Chairmanship of the delegate from Italy Professor Sergio Marchisio, former Chairman of the Commission of the Whole during the Berlin Conference. It appointed two Working Groups: one entrusted with the development of rules for the international registry for space assets, and another with the drafting of a request for proposals for the selection of a Registrar.

The second session of the Preparatory Commission was held in Rome on 27 and 28 February 2014 and considered the revised draft of the Registry Regulations and the accompanying explanatory report prepared by Sir Roy Goode. An agreement in principle was reached on the vast majority of the provisions of the draft Registry Regulations as a result of the session. The representatives of ITU restated the interest of their organisation in considering the acceptance of the role of Supervisory Authority for the future Registry for space assets.

At the third session, held in Rome on 11 and 12 September 2014, the Preparatory Commission finalised the text of the Regulations, leaving open only the issue of the identification criteria to apply to parts of spacecraft, for which a quick consultation procedure on an agreed draft text was suggested in order to receive further practical insights from the operators in the market. The consultation is expected to take place before the end of 2014. On the basis of the results of that consultation, the Preparatory Commission will decide on the next steps to ensure final approval of the Regulations.

Declarations

In relation to declarations, the Convention and its Protocols are unique amongst commercial law treaties in providing Contracting States with a large number of choices to make declarations which modify the application of the instruments. Apart from the Article 54(2) declaration noted above, none of the declarations are mandatory, and the Contracting States to the Convention and Aircraft Protocol have each made different choices as to which other declarations, if any, they will make. Annexes 2-A and 2-B show the number of Contracting States that have made each of the declarations under the Convention and Aircraft Protocol.

The benefits to be derived by a Contracting State may depend upon which declarations it has made. For example, the OECD Aircraft Sector Understanding under the Arrangement on Officially Supported Export Credits incorporates a material discount for certain aircraft backed export credit provided to a borrower in a State that has ratified the Cape Town Convention and Aircraft Protocol, but only if that State has also made the 'qualifying declarations' that are specified in the Understanding and implemented them so as to prevail over other national law.⁴

A declaration will affect the application of the Convention and Protocols for the Contracting State that has made it. It is therefore important that Contracting States ensure that their declarations are

⁴ Annex 3 hereto sets out the provision relating to the qualifying declarations under the Aircraft Sector Understanding.

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expressed in clear, unambiguous language to avoid uncertainty arising about how the Convention and its protocols apply in relation to that State. Any such uncertainty could, in turn, impact the extent to which the Contracting State is able to realise the legal and economic advantages of the Convention. The text of each declaration is publicly searchable: it is provided to the International Registry and made available for public search on the International Registry site, in addition to being posted on the UNIDROIT website. UNIDROIT encourages all intending Contracting States to consult the Declarations Memorandum when drafting their declarations and to base their declarations on the forms set out in the memorandum so as to ensure that their declarations comply with the requirements of the Convention and Aircraft Protocol. To date, the large majority of Contracting States have based their declarations on the model forms contained in that memorandum.

Annex 1 LIST OF PARTIES (as at 1 October 2014)

CONTRACTING STATE	CONVENTION	AIRCRAFT PROTOCOL	RAIL PROTOCOL	SPACE PROTOCOL
Afghanistan	✓	✓		
Albania	✓	✓		
Angola	✓	✓		
Bahrain	✓	✓		
Bangladesh	✓	✓		
Belarus	✓	✓		
Bhutan	✓	✓		
Brazil	✓	✓		
Cameroon	✓	✓		
Canada	✓	✓		
Cape Verde	✓	✓		
China	✓	✓		
Colombia	✓	✓		
Congo	✓	✓		
Costa Rica	✓	✓		
Cuba	✓	✓		
Ethiopia	✓	✓		
Fiji	✓	✓		
Gabon	✓	✓		
India	✓	✓		
Indonesia	✓	✓		
Ireland	✓	✓		
Jordan	✓	✓		
Kazakhstan	✓	✓		
Kenya	✓	✓		
Kuwait	✓	✓		
Latvia	✓	✓		
Luxembourg	✓	✓	✓	
Madagascar	✓	✓		
Malawi	✓	✓		
Malaysia	✓	✓		
Malta	✓	✓		
Mexico	✓	✓		

(Continued)

Annex 1 Continued.

CONTRACTING STATE	CONVENTION	AIRCRAFT PROTOCOL	RAIL PROTOCOL	SPACE PROTOCOL
Mongolia	✓	✓		
Mozambique	✓	✓		
Myanmar	✓	✓		
Netherlands	✓	✓		
New Zealand	✓	✓		
Nigeria	✓	✓		
Norway	✓	✓		
Oman	✓	✓		
Pakistan	✓	✓		
Panama	✓	✓		
Russian Federation	✓	✓		
Rwanda	✓	✓		
San Marino	✓	✓		
Saudi Arabia	✓	✓		
Senegal	✓	✓		
Seychelles	✓	✓		
Singapore	✓	✓		
South Africa	✓	✓		
Spain	✓	✓		
Syrian Arab Republic	✓	✓		
Tajikistan	✓	✓		
Togo	✓	✓		
Turkey	✓	✓		
Ukraine	✓	✓		
United Arab Emirates	✓	✓		
United Republic of Tanzania	✓	✓		
United States of America	✓	✓		
Viet Nam	✓	✓		
Zimbabwe	✓	✓		
REGIONAL ECONOMIC INTEGRATION ORGANISATIONS	CONVENTION	AIRCRAFT PROTOCOL	RAIL PROTOCOL	SPACE PROTOCOL
European Union	✓	✓		
TOTAL	63	57	1	0

Annex 2

ANNEX 2-A – DECLARATIONS MADE BY EACH CONTRACTING STATE AND REGIONAL ECONOMIC INTEGRATION ORGANISATION UNDER THE CONVENTION

ANNEX 2-B – DECLARATIONS MADE BY EACH CONTRACTING STATE AND REGIONAL ECONOMIC INTEGRATION ORGANISATION UNDER THE AIRCRAFT PROTOCOL

ANNEX 2-C – GLOSSARY OF DECLARATIONS CAPABLE OF BEING MADE UNDER THE CONVENTION AND AIRCRAFT PROTOCOL

Annex 2-A Table Showing the Declarations made under the Cape Town Convention by each Contracting State and Regional Economic Integration Organisation Thereto (as at 1 October 2014)

CONTRACTING STATE	39	39						54(2) – No	54(2) – COURT		60	
	(1)	(1)	39	40	50	52	53	(1)	REQUIRED	REQUIRED	55	(1)
Afghanistan	✓	✓		✓		✓	✓		✓			
Albania	✓	✓							✓			
Angola	✓	✓		✓					✓			
Bahrain	✓	✓		✓					✓			
Bangladesh	✓	✓		✓		✓	✓		✓			
Belarus									✓			
Bhutan	✓								✓			
Brazil	✓	✓	✓				✓			✓		
Cameroon	✓	✓		✓			✓	✓	✓			
Canada ⁵	✓	✓	✓				✓	✓	✓			✓
Cape Verde	✓	✓		✓			✓	✓	✓			
China	✓	✓	✓	✓	✓		✓	✓		✓	✓	
Colombia	✓	✓							✓			
Congo	✓	✓		✓		✓	✓		✓			
Costa Rica							✓					
Cuba										✓		
Ethiopia	✓			✓					✓			
Fiji									✓			
Gabon									✓			
India	✓	✓		✓		✓	✓		✓			
Indonesia	✓	✓		✓			✓		✓			
Ireland	✓	✓							✓			
Jordan	✓	✓							✓			
Kazakhstan	✓	✓	✓	✓			✓		✓			
Kenya	✓	✓		✓			✓		✓			
Kuwait										✓		
Latvia									✓			
Luxembourg							✓		✓			
Madagascar	✓	✓		✓			✓		✓			
Malawi	✓	✓		✓			✓		✓			
Malaysia	✓	✓		✓			✓		✓			
Malta	✓	✓	✓	✓			✓		✓			
Mexico	✓	✓			✓		✓			✓		✓
Mongolia	✓	✓					✓		✓			
Mozambique	✓	✓		✓			✓		✓			
Myanmar	✓	✓		✓		✓	✓		✓			
Netherlands ⁶	✓	✓					✓	✓	✓			
New Zealand ⁷	✓	✓				✓	✓				✓	
Nigeria	✓	✓		✓			✓		✓			

(Continued)

Annex 2-A Continued.

CONTRACTING STATE	39	39						54	54(2) – No	54(2) – COURT	55	60
	(1)	(1)	39	40	50	52	53	(1)	COURT	REQUIRED	55	(1)
	(A)	(B)	(4)						REQUIRED	REQUIRED		
Norway	✓	✓		✓					✓			✓
Oman	✓	✓		✓		✓	✓		✓			
Pakistan	✓	✓	✓	✓		✓	✓		✓			
Panama	✓	✓	✓		✓		✓		✓			
Russian Federation	✓	✓					✓		✓			
Rwanda	✓	✓		✓		✓	✓		✓			
San Marino	✓	✓	✓	✓			✓		✓			
Saudi Arabia	✓	✓							✓			
Senegal	✓	✓		✓		✓	✓		✓			
Seychelles												
Singapore	✓	✓	✓				✓		✓			
South Africa	✓	✓		✓					✓			
Spain ⁸						✓				✓		
Syria												
Tajikistan									✓			
Togo	✓	✓		✓			✓		✓			
Turkey	✓	✓		✓	✓				✓			
Ukraine					✓	✓	✓		✓			
United Arab Emirates	✓	✓		✓		✓	✓			✓		
United Republic of Tanzania									✓			
United States of America	✓	✓							✓			
Viet Nam	✓	✓		✓			✓		✓			
Zimbabwe												
REGIONAL ECONOMIC	39	39	39	40	50	52	53	54	54(2) – No	54(2) – COURT	55	60
INTEGRATION	(1)	(1)	(4)					(1)	COURT	REQUIRED		(1)
ORGANISATION	(A)	(B)							REQUIRED			
European Union ⁹									✓			✓
TOTAL	46	33	9	31	5	15	36	1	50	8	4	2

⁵The Government of Canada declared, in accordance with Article 52 of the Convention, that the Convention is to apply to the following provinces and territories: Alberta, British Columbia, Manitoba, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan and Yukon.

⁶At the time of its accession to the Convention and the Aircraft Protocol, the Kingdom of the Netherlands also made declarations applying the Convention and the Aircraft Protocol to the following territorial units (only): Aruba, Curaçao, Sint Maarten and the Caribbean part of the Netherlands (the islands of Bonaire, Saba and Sint Eustatius).

⁷New Zealand declared, in accordance with Article 52, that, “consistent with the constitutional status of Tokelau and taking into account the commitment of the Government of New Zealand to the development of self-government for Tokelau through an act of self-determination under the Charter of the United Nations, this accession shall not extend to Tokelau unless and until a Declaration to this effect is lodged by the Government of New Zealand with the Depositary on the basis of appropriate consultation with that territory”.

⁸Spain made the following declaration: “In the event that this Convention on International Interests in Mobile Equipment were to be applied to Gibraltar, Spain wishes to make the following declaration:

1. Gibraltar is a non-autonomous territory for the international relations of which the United Kingdom is responsible and which is subject to a decolonisation process in accordance with the relevant decisions and resolutions of the General Assembly of the United Nations.
2. The authorities of Gibraltar are of a local nature and exercise exclusively internal competences which have their origin and their foundation in the distribution and attribution of competences performed by the United Kingdom, in compliance with its internal legislation, in its capacity as sovereign State on which the mentioned non-autonomous territory depends.
3. As a result, should the Gibraltar authorities participate in the application of this Convention it will be understood as effected exclusively within the scope of the internal competences of Gibraltar, and it cannot be considered to produce any change whatsoever in relation with what was established in the two preceding paragraphs.
4. The procedure established by the regime relating to Gibraltar authorities in the context of certain international treaties agreed upon by Spain and the United Kingdom on 19 December 2007 is applicable to this agreement.
5. The application to Gibraltar of the present Convention cannot be interpreted as recognition of any rights or situations involving matters not included in Article 10 of the Treaty of Utrecht of 13 July 1713, signed by the crowns of Spain and Great Britain.”

⁹The European Union also made a declaration under Article 48(2) of the Convention – declarations under that Article may only be made by Regional Economic Integration Organisations.

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Annex 2-B Table Showing the Declarations made under the Aircraft Protocol by Contracting State and Regional Economic Integration Organisation Thereto (as at 1 October 2014)

CONTRACTING STATE	XIX (1)	XXIX	XXX (1): VIII	XXX (1): XII	XXX (1): XIII	XXX (2)	XXX (3) ALT A	XXX (3) ALT B	XXX (5)
Afghanistan		✓	✓	✓	✓	✓	✓		
Albania	✓		✓	✓	✓				
Angola			✓	✓	✓	✓	✓		
Bahrain									
Bangladesh		✓	✓	✓	✓	✓	✓		
Belarus									
Bhutan									
Brazil	✓		✓	✓	✓	✓	✓		
Cameroon									
Canada ¹⁰		✓	✓	✓	✓	✓	✓		
Cape Verde			✓	✓	✓	✓	✓		
China	✓	✓	✓	✓	✓	✓	✓		
Colombia			✓	✓		✓	✓		
Congo									
Cuba									
Ethiopia			✓	✓	✓	✓	✓		
Fiji			✓		✓	✓	✓		
India			✓	✓	✓	✓	✓		
Indonesia			✓	✓	✓	✓	✓		
Ireland			✓	✓	✓	✓	✓		
Jordan			✓	✓	✓	✓	✓		
Kazakhstan			✓	✓	✓	✓	✓		
Kenya			✓	✓		✓	✓		
Kuwait									
Latvia									
Luxembourg			✓	✓	✓	✓	✓		
Madagascar			✓	✓	✓	✓	✓		
Malawi			✓	✓	✓	✓	✓		
Malaysia			✓	✓	✓	✓	✓		
Malta					✓				
Mexico	✓		✓					✓	
Mongolia			✓	✓	✓	✓	✓		
Mozambique			✓	✓	✓	✓	✓		
Myanmar		✓	✓	✓	✓	✓	✓		
Netherlands		✓	✓	✓	✓	✓	✓		
New Zealand ¹¹		✓	✓	✓	✓		✓		✓
Nigeria			✓	✓	✓	✓	✓		✓
Norway			✓	✓	✓		✓		✓
Oman		✓	✓	✓	✓	✓	✓		
Pakistan		✓	✓	✓	✓	✓	✓		
Panama			✓	✓	✓	✓	✓		
Russian Federation			✓	✓	✓		✓		
Rwanda		✓	✓	✓	✓	✓	✓		

(Continued)

Annex 2-B Continued.

CONTRACTING STATE	XIX (1)	XXIX	XXX (1): VIII	XXX (1): XII	XXX (1): XIII	XXX (2)	XXX (3) ALT A	XXX (3) ALT B	XXX (5)
San Marino			✓	✓	✓	✓	✓		
Saudi Arabia									
Senegal		✓	✓	✓	✓	✓	✓		
Singapore			✓	✓	✓		✓		
South Africa			✓	✓	✓	✓	✓		
Tajikistan			✓		✓	✓	✓		
Togo			✓	✓	✓	✓	✓		
Turkey			✓	✓	✓	✓	✓		
Ukraine	✓		✓	✓	✓		✓		
United Arab Emirates	✓	✓	✓	✓	✓	✓	✓		
United Republic of Tanzania			✓	✓	✓	✓	✓		
United States of America	✓		✓	✓	✓				
Viet Nam	✓		✓	✓	✓	✓	✓		
REGIONAL ECONOMIC INTEGRATION ORGANISATION	XIX (1)	XXIX	XXX (1): VIII	XXX (1): XII	XXX (1): XIII	XXX (2)	XXX (3) ALT A	XXX (3) ALT B	XXX (5)
European Union ¹²									✓
TOTAL	8	12	46	41	44	38	41	1	3

* European Union Member States that have ratified or acceded to the Convention and Aircraft Protocol after 26 November 2009 (the date of the UNIDROIT seminar “The European Union and the Cape Town Convention”) have not made the declaration under this article: this is consistent with the summary of conclusions of the seminar.

¹⁰The Government of Canada declared, in accordance with Article XXIX of the Aircraft Protocol, that the Protocol shall extend to the following provinces and territories: Alberta, British Columbia, Manitoba, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan and Yukon.

¹¹New Zealand declared, under Article XXIX of the Aircraft Protocol, that, “consistent with the constitutional status of Tokelau and taking into account the commitment of the Government of New Zealand to the development of self-government for Tokelau through an act of self-determination under the Charter of the United Nations, this accession shall not extend to Tokelau unless and until a Declaration to this effect is lodged by the Government of New Zealand with the Depositary on the basis of appropriate consultation with that territory”.

¹²The European Union also made a declaration under Article XXVII(2) of the Aircraft Protocol - declarations under that Article may only be made by Regional Economic Integration Organisations.

Annex 2-C Glossary of Declarations Capable of Being Made under the Convention and Aircraft Protocol

ARTICLE	SHORT DESCRIPTION
Convention	
39(1)(a)	Non-consensual rights or interests that have priority without registration
39(1)(b)	Preservation of right of a provider of public services to arrest or detain an aircraft object
39(4)	Priority of Art 39(1)(a) interests over an international interest registered prior to ratification/accession
40	Registrable non-consensual rights or interests
48(2)	Matters governed by the Convention for which competence has been transferred to the Organisation by its Member States (such declaration may only be made by Regional Economic Integration Organisations)
50	Application of the Convention to internal transactions
52	Application of the Convention to one or more territorial units
53	Declaration of relevant court
54(1)	Power to lease a charged object while in the declaring State's territory
54(2)	Whether remedies may be exercised only with leave of the court
55	Relief pending final determination
60(1)	Application of Convention priority rules to pre-existing rights or interests
AIRCRAFT PROTOCOL	
XIX(1)	Designated entry points
XXVII(2)	Matters governed by the Protocol for which competence has been transferred to the Organisation by its Member States (such declaration may only be made by Regional Economic Integration Organisations)
XXIX	Application of the Aircraft Protocol to one or more territorial units
XXX(1) (VIII)	Choice of law
XXX(1) (XII)	Insolvency assistance
XXX(1) (XIII)	De-registration and export request authorisation
XXX(2)	Modification of provisions regarding relief pending final determination and the time within which such relief is to be granted
XXX(3)	Remedies on insolvency (and selection of Alternative A or Alternative B)
XXX(5)	Modification of jurisdiction provisions

ANNEX 3 OECD Aircraft Sector Understanding Qualifying Declarations - Convention (as at 1 October 2014)

PART 1 – TEXT OF ANNEX 1 OF THE OECD AIRCRAFT SECTOR UNDERSTANDING

PART 2 - TABLE OF QUALIFYING DECLARATIONS

PART 1 TEXT OF ANNEX 1 OF THE OECD AIRCRAFT SECTOR UNDERSTANDING, DESCRIBING THE “QUALIFYING” DECLARATIONS UNDER THE CAPE TOWN CONVENTION AND AIRCRAFT PROTOCOL¹³

1. For the purpose of Section 2 of Appendix II, the term “qualifying declarations”, and all other references thereto in this Sector Understanding, means that a Contracting party to the Cape Town Convention (Contracting Party):
 - a) Has made the declarations in Article 2 of this Annex, and
 - b) Has not made the declarations in Article 3 of this Annex.
2. The declarations for the purpose of Article 1 a) of this Annex are:
 - a) Insolvency: State Party declares that it will apply the entirety of Alternative A under Article XI of the Aircraft Protocol to all types of insolvency proceeding and that the waiting period for the purposes of Article XI (3) of that Alternative shall be no more than 60 calendar days.
 - b) Deregistration: State Party declares that it will apply Article XIII of the Aircraft Protocol.
 - c) Choice of Law: State Party declares that it will apply Article VIII of the Aircraft Protocol.

And at least one of the following (though both are encouraged):

- 1) Method for Exercising Remedies: State Party declares under Convention Article 54 (2) that any remedies available to the creditor under any provision of the Convention which are not expressed under the relevant provisions thereof to require application to a court may be exercised without leave of the court (the insertion “without court action and” to be recommended (but not required) before the words “leave of the court”);
- 2) Timely Remedies: State Party declares that it will apply Article X of the Aircraft Protocol in its entirety (though clause 5 thereof, which is to be encouraged, is not required) and that the number of working days to be used for the purposes of the time-limit laid down in Article X (2) of the Aircraft Protocol shall be in respect of:
 - 1) The remedies specified in Articles 13 (1) (a), (b) and (c) of the Convention (preservation of the aircraft objects and their value; possession, control or custody of the aircraft objects; and immobilisation of the aircraft objects), not more than that equal to ten calendar days, and
 - 2) The remedies specified in Articles 13 (1) (d) and (e) of the Convention (lease or management of the aircraft objects and the income thereof and sale and application of proceeds from the aircraft equipment), not more than that equal to 30 calendar days.
3. The declarations referred to in Article 1 b) of this Annex are the following:
 - a) Relief Pending Final Determination: State Party shall not have made a declaration under Article 55 of the Convention opting out of Article 13 or Article 43 of the Convention; provided, however, that, if State Party made the declarations set out under Article 2 d) of this Annex, the making of a declaration under Article 55 of the Convention shall not prevent application of the Cape Town Convention discount.
 - b) Rome Convention: State Party shall not have made a declaration under Article XXXII of the Aircraft Protocol opting out of Article XXIV of the Aircraft Protocol; and
 - c) Lease Remedy: State Party shall not have made a declaration under Article 54 (1) of the Convention preventing lease as a remedy.
4. Regarding Article XI of the Aircraft Protocol, for Member States of the European Union, the qualifying declaration set out in Article 2 a) of this Annex shall be deemed made by a Member State, for purposes hereof, if the national law of such Member State was amended to reflect the terms of Alternative A

¹³ The text does not address the “disqualifying” declarations under Paragraph 3 of Annex 1 to the Aircraft Sector Understanding (only one Contracting State has made such a declaration).

under Article XI of the Aircraft Protocol (with a maximum 60 calendar days waiting period). As regards the qualifying declarations set out in Articles 2 c) and e) of this Annex, these shall be deemed satisfied, for the purpose of this Sector Understanding, if the laws of the European Union or the relevant Member States are substantially similar to that set out in such Articles of this Annex. In the case of Article 2 c) of this Annex, the laws of the European Union (EC Regulation 593/2008 on the Law Applicable to Contractual Obligations) are agreed to be substantially similar to Article VIII of the Aircraft Protocol.

PART 2 TABLE OF QUALIFYING DECLARATIONS, SHOWING WHICH OF THE CONTRACTING STATES TO BOTH THE CONVENTION AND AIRCRAFT PROTOCOL HAVE MADE THE DECLARATIONS IN RESPECT OF THE SUBJECT MATTER ¹⁴ OF THE “QUALIFYING” DECLARATIONS IN ANNEX 1 OF THE OECD AIRCRAFT SECTOR UNDERSTANDING

CONTRACTING STATE	TIMELY REMEDIES (AT LEAST ONE OF THE DECLARATIONS SHOULD BE MADE)				
	X ¹⁷				
	54(2) LEAVE OF COURT NOT REQUIRED	TIMETABLE FOR ADVANCE RELIEF	VIII ¹⁵ CHOICE OF LAW	XI ¹⁶ REMEDIES ON INSOLVENCY - ALTERNATIVE A	XIII DE-REGISTRATION AND EXPORT
Afghanistan	✓	✓	✓	✓	✓
Albania	✓		✓		✓
Angola	✓	✓	✓	✓	✓
Bahrain	✓				
Bangladesh	✓	✓	✓	✓	✓
Belarus	✓				
Bhutan	✓				
Brazil		✓	✓	✓	✓
Cameroon	✓				
Canada ¹⁸	✓	✓	✓	✓	✓
Cape Verde	✓	✓	✓	✓	✓
China		✓	✓	✓	✓
Colombia		✓	✓	✓	
Congo	✓				
Ethiopia	✓	✓	✓	✓	✓
European Union	N/A	N/A	N/A	N/A	N/A
Fiji	✓	✓	✓	✓	✓
India	✓	✓	✓	✓	✓
Indonesia	✓	✓	✓	✓	✓
Ireland	✓	N/A	✓	N/A	✓
Jordan	✓	✓	✓	✓	✓
Kazakhstan	✓	✓	✓	✓	✓
Kenya	✓	✓	✓	✓	✓
Latvia	✓	N/A	✓	N/A	
Luxembourg	✓	N/A	✓	✓	✓
Madagascar	✓	✓	✓	✓	✓
Malawi	✓	✓	✓	✓	✓

(Continued)

PART 2 Continued.

TIMELY REMEDIES (AT LEAST ONE OF THE DECLARATIONS SHOULD BE MADE)					
CONTRACTING STATE	54(2) LEAVE OF COURT NOT REQUIRED	X¹⁷	VIII¹⁵ CHOICE OF LAW	XI¹⁶ REMEDIES ON INSOLVENCY - ALTERNATIVE A	XIII DE-REGISTRATION AND EXPORT
		TIMETABLE FOR ADVANCE RELIEF			
Malaysia	✓	✓	✓	✓	✓
Malta	✓	N/A	✓	N/A	✓
Mexico			✓	✓	
Mongolia	✓	✓	✓	✓	✓
Mozambique	✓	✓	✓	✓	✓
Myanmar	✓	✓	✓	✓	✓
Netherlands ¹⁹	✓	N/A	✓	N/A	✓
New Zealand	✓		✓	✓	✓
Nigeria	✓	✓	✓	✓	✓
Norway	✓		✓	✓	✓
Oman	✓	✓	✓	✓	✓
Pakistan	✓	✓	✓	✓	✓
Panama	✓	✓	✓	✓	✓
Russian Federation	✓			✓	
Rwanda	✓	✓	✓	✓	✓
San Marino	✓	✓	✓	✓	✓
Saudi Arabia	✓				
Senegal	✓	✓	✓	✓	✓
Singapore	✓		✓	✓	✓
South Africa	✓	✓	✓	✓	✓
Tajikistan	✓	✓	✓	✓	✓
Togo	✓	✓	✓	✓	✓
Turkey	✓	✓	✓	✓	✓
Ukraine	✓		✓	✓	✓
United Arab Emirates		✓	✓	✓	✓
United Republic of Tanzania	✓	✓	✓	✓	✓
United States of America	✓		✓	✓	✓
Viet Nam	✓	✓	✓	✓	✓

(Continued)

PART 2 Continued.

TIMELY REMEDIES (AT LEAST ONE OF THE DECLARATIONS SHOULD BE MADE)					
CONTRACTING STATE	X¹⁷				
	54(2) LEAVE OF COURT NOT REQUIRED	TIMETABLE FOR ADVANCE RELIEF	VIII¹⁵ CHOICE OF LAW	XI¹⁶ REMEDIES ON INSOLVENCY - ALTERNATIVE A	XIII DE- REGISTRATION AND EXPORT
TOTAL²⁰	49	36	47	43²¹	44

¹⁴The table is not intended to indicate whether the particulars declarations made are themselves qualifying declarations. For example, the declarations relating to Articles X and XI, Alt A require specific time periods, set out in calendar days. The table does not indicate which Contracting States have specified such time periods, though the overwhelming majority of those that have made such declarations have done so.

¹⁵Paragraph 4 of Annex 1 of the Aircraft Sector Understanding provides that as regards the qualifying declaration set out in Articles 2 c) of that Annex, this shall be deemed satisfied, for the purpose of this Sector Understanding, if the laws of the European Union or the relevant Member States are substantially similar to that set out in such Articles of this Annex, and that in the case of Article 2 c) of this Annex, the laws of the European Union (EC Regulation 593/2008 on the Law Applicable to Contractual Obligations) are agreed to be substantially similar to Article VIII of the Aircraft Protocol. Accordingly, in addition to Luxembourg and Ireland who made this declaration, Latvia and Malta have been included in this table as having made the declaration for the purposes of the Aircraft Sector Understanding, even though neither Contracting State has lodged a declaration in relation to Article VIII.

¹⁶Paragraph 4 of Annex 1 of the Aircraft Sector Understanding provides that for Member States of the European Union, the qualifying declaration set out in Article 2 a) of the Annex shall be deemed made by a Member State, for purposes of the Aircraft Sector Understanding, if the national law of such Member State was amended to reflect the terms of Alternative A under Article XI of the Aircraft Protocol (with a maximum 60 calendar days waiting period). It is therefore necessary to assess the national law of such Member States to determine if they have made this qualifying declaration for the purposes of the Aircraft Sector Understanding; accordingly, neither the European Union nor such Member States that have not made the declaration in relation to Article XI of the Protocol are counted in calculating totals under this table.

¹⁷Paragraph 4 of Annex 1 of the Aircraft Sector Understanding provides that as regards the qualifying declaration set out in Articles 2 e) of that Annex, this shall be deemed satisfied, for the purpose of the Aircraft Sector Understanding, if the laws of the European Union or the relevant Member States are substantially similar to that set out in that Article of this Annex. Whether or not such a Member State has made a declaration in relation to Article X, it is not possible to assess, based solely on the information provided to the Depository, whether that State has satisfied the conditions of Article 2(e) of the Annex to the Aircraft Sector Understanding. For that reason, all Member States of the European Union are listed in this table as “N/A”, irrespective of whether they may in fact have made a declaration in relation to Article X.

¹⁸At the time of its accession to the Convention and the Aircraft Protocol, Canada also made declarations applying the Convention and the Aircraft Protocol to the following provinces and territories: Alberta, British Columbia, Manitoba, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan and Yukon.

¹⁹At the time of its accession to the Convention and the Aircraft Protocol, the Kingdom of the Netherlands also made declarations applying the Convention and the Aircraft Protocol to the following territorial units (only): Aruba, Curaçao, Sint Maarten and the Caribbean part of the Netherlands (the islands of Bonaire, Saba and Sint Eustatius).

²⁰Six of the Contracting States to the Cape Town Convention are not also Contracting States to the Aircraft Protocol. Of the 56 Contracting States to both the Cape Town Convention and the Aircraft Protocol, the European Union is not included in these totals in light of the terms of the Aircraft Sector Understanding.

²¹Paragraph 4 of Annex 1 of the Aircraft Sector Understanding provides that for Member States of the European Union, the qualifying declaration set out in Article 2 a) of the Annex shall be deemed made by a Member State, for purposes of the Aircraft Sector Understanding, if the national law of such Member State was amended to reflect the terms of Alternative A under Article XI of the Aircraft Protocol (with a maximum 60 calendar days waiting period). It is therefore necessary to assess the national law of such Member States to determine if they have made this qualifying declaration for the purposes of the Aircraft Sector Understanding; accordingly, such Member States that have not made the declaration in relation to Article XI of the Protocol are not counted in calculating totals under this table.