



# Cape Town Convention Journal

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## Depositary Update

### Unidroit Secretariat

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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 to 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 2013 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. The UNIDROIT Secretary-General, José Angelo Estrella-Faria, attended the 53rd session of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space (UN/COPUOS) in Vienna and presented a statement on the Space Protocol. On 3 December 2014, the UNIDROIT Secretariat issued a memorandum on the latest developments concerning the Space Protocol, in response to the invitation received as observer to the United Nations Office for Outer Space Affairs (UN-OOSA) to report to the 54th session of the UN/COPUOS. On 9 March 2015, an International Conference on the Promotion of the Cape Town Convention in China organised by the University of Macau, UNIDROIT and the Macau Foundation was held in Macau. With particular regard to the Rail and Space Protocols, the UNIDROIT Secretary-General presented a paper entitled 'A Modern Regime For Financing High Value Mobile Equipment: The Cape Town Convention and its Aircraft And Rail Protocols', whilst the Space Protocol was addressed by former Deputy Secretary General Martin Stanford and Zhao Yun, professor at the University of Hong Kong.

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 September 2015, the status of the Convention and its Protocols were as follows:

- Cape Town Convention: 68 Contracting States and 1 Regional Economic Integration Organisation, entered into force 1 May 2006;
- Aircraft Protocol: 59 Contracting States and 1 Regional Economic Integration Organisation, entered into force 1 May 2006;
- Rail Protocol: not yet in force (4 Signatory States, 1 Contracting State and 1 Regional Economic Integration Organisation);
- Space Protocol: not yet in force (4 Signatory States).

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.<sup>1</sup> However, being a framework Convention it is designed to operate in conjunction with a Protocol,<sup>2</sup> 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)).<sup>3</sup> 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 Luxembourg Protocol. The Preparatory Commission approved, at its Seventh session held on 11

<sup>1</sup> The following nine (9) States are Contracting States to the Convention, but not to the Aircraft Protocol: Burkina Faso, Costa Rica, Côte d'Ivoire, Gabon, Moldova, Seychelles, Spain, Syria and Zimbabwe.

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

<sup>3</sup> 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'.

December 2014, the Registry Contract, the Master Services Agreement and their appendices and annexes, and Regulis, a SITA company, as Registrar. 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). The Ratification Task Force set up by the Rail Preparatory Commission met in Brussels on 25 March 2015, with the main view of setting priorities for approaching governments and involving stakeholders in prospective ratifying states. The opportunity to raise awareness among Ministry representatives of the EU Member States during the Luxembourg EU Presidency in the second half of 2015 was suggested, as a follow up to the approval of the Rail Protocol by the European Commission.

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 Preparatory Commission held three sessions between 2013 and 2014 at UNIDROIT's Headquarters in Rome at the end of which the text of the Regulations was finalised. At the outcome of the third session, a consultation procedure on an agreed draft text was suggested in order to receive further insights from the practical operators in the market. A Questionnaire was sent on 3 December 2014, together with the draft Regulations, to relevant industry stakeholders (manufacturers, operators, financial institutions, international organisations and associations) to answer by February 2015. Taking the comments that were provided into account, a paper on the space industry responses to the questionnaire and their implications for the registry system will be prepared by Sir Roy Goode and circulated to the Preparatory Commission, with the aim of reaching an agreement in principle on the text of the regulations to serve as a basis to continue the dialogue with industry experts.

The issue of the appointment of a Supervisory Authority was discussed at two institutional meetings within ITU in 2014 (the Council in May-June 2014 and the Plenipotentiary Conference in October-November 2014). The Plenipotentiary Conference decided that the ITU Secretariat should continue to express its interest in becoming the Supervisory Authority and answer all questions raised by Member States and that the ITU Council should continue to monitor all developments in this area for future deliberations.

## 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.<sup>4</sup>

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

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 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 September 2015)**

<b>Contracting State</b>	<b>Convention</b>	<b>Aircraft Protocol</b>	<b>Rail Protocol</b>	<b>Space Protocol</b>
Afghanistan	✓	✓		
Albania	✓	✓		
Angola	✓	✓		
Australia	✓	✓		
Bahrain	✓	✓		
Bangladesh	✓	✓		
Belarus	✓	✓		
Bhutan	✓	✓		
Brazil	✓	✓		
Burkina Faso	✓			
Cameroon	✓	✓		
Canada	✓	✓		
Cape Verde	✓	✓		
China	✓	✓		
Colombia	✓	✓		
Congo	✓	✓		
Costa Rica	✓			
Côte d'Ivoire	✓			
Cuba	✓	✓		
Egypt	✓	✓		
Ethiopia	✓	✓		
Fiji	✓	✓		
Gabon	✓			
India	✓	✓		
Indonesia	✓	✓		
Ireland	✓	✓		
Jordan	✓	✓		
Kazakhstan	✓	✓		
Kenya	✓	✓		
Kuwait	✓	✓		

*(Continued)*

Annex 1 Continued.

	Convention	Aircraft Protocol	Rail Protocol	Space Protocol
Latvia	✓	✓		
Luxembourg	✓	✓	✓	
Madagascar	✓	✓		
Malawi	✓	✓		
Malaysia	✓	✓		
Malta	✓	✓		
Mexico	✓	✓		
Moldova	✓			
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 Kingdom	✓	✓		
United Republic of Tanzania	✓	✓		
United States of America	✓	✓		
Viet Nam	✓	✓		
Zimbabwe	✓			
<b>Regional Economic Integration Organisations</b>				
European Union	✓	✓	✓	
<b>TOTAL</b>	69	60	2	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 September 2015)**

Contracting State	39(1)	39 (1)	39 (4)	40	50	52	53	54 (1)	54(2) – No Court Required	54(2) – Court Required	55	60(1)
	(a)	(b)	(4)					(1)				
Afghanistan	✓	✓		✓		✓	✓		✓			
Albania	✓	✓							✓			
Angola	✓			✓					✓			
Australia	✓						✓		✓		✓	
Bahrain	✓	✓		✓					✓			
Bangladesh	✓	✓		✓		✓	✓		✓			
Belarus									✓			
Bhutan	✓								✓			
Brazil	✓	✓	✓				✓			✓		
Burkina Faso												
Cameroon	✓			✓		✓	✓		✓			
Canada <sup>5</sup>	✓	✓	✓			✓	✓		✓			✓
Cape Verde	✓			✓			✓		✓			
China	✓	✓	✓	✓	✓		✓	✓		✓	✓	
Colombia	✓									✓		
Congo	✓	✓		✓		✓	✓		✓			
Costa Rica							✓					
Côte d'Ivoire												
Cuba										✓		
Egypt	✓									✓		
Ethiopia	✓			✓					✓			
Fiji									✓			
Gabon												
India	✓	✓		✓		✓	✓		✓			
Indonesia	✓	✓		✓			✓		✓			
Ireland	✓	✓							✓			
Jordan	✓								✓			
Kazakhstan	✓	✓	✓	✓			✓		✓			
Kenya	✓	✓		✓			✓		✓			
Kuwait										✓		
Latvia									✓			
Luxembourg							✓		✓			

(Continued)

Annex 2-A Continued.

	39(1) (a)	39 (1) (b)	39 (4)	40	50	52	53	54 (1)	54(2) – No Court Required	54(2) – Court Required	55	60(1)
Madagascar	✓	✓		✓			✓		✓			
Malawi	✓	✓		✓			✓		✓			
Malaysia	✓	✓		✓			✓		✓			
Malta	✓		✓	✓			✓		✓			
Mexico	✓	✓			✓		✓			✓		✓
Moldova												
Mongolia	✓	✓					✓		✓			
Mozambique	✓			✓					✓			
Myanmar	✓			✓		✓	✓		✓			
Netherlands <sup>6</sup>	✓	✓					✓	✓	✓			
New Zealand <sup>7</sup>	✓						✓	✓	✓			✓
Nigeria	✓			✓			✓		✓			
Norway	✓	✓		✓					✓			✓
Oman	✓	✓		✓		✓	✓		✓			
Pakistan	✓	✓	✓	✓		✓	✓		✓			
Panama	✓	✓	✓		✓		✓		✓			
Russian Federation	✓	✓					✓		✓			
Rwanda	✓			✓		✓	✓		✓			
San Marino	✓	✓	✓	✓			✓		✓			
Saudi Arabia									✓			
Senegal	✓	✓		✓		✓	✓		✓			
Seychelles												
Singapore	✓	✓	✓				✓		✓			
South Africa	✓	✓		✓					✓			
Spain <sup>8</sup>							✓				✓	
Syria												
Tajikistan									✓			
Togo	✓	✓		✓			✓		✓			
Turkey	✓	✓		✓	✓				✓			
Ukraine					✓		✓		✓			
United Arab Emirates	✓	✓		✓		✓	✓				✓	
United Kingdom <sup>9</sup>	✓	✓	✓				✓	✓	✓			
United Republic of Tanzania									✓			
United States of America	✓	✓							✓			
Viet Nam	✓	✓		✓			✓		✓			
Zimbabwe												
<b>Regional Economic Integration Organisation</b>												
European Union <sup>10</sup>									✓			✓
<b>TOTAL</b>	49	34	10	31	5	16	38	1	52	9	5	2



<sup>5</sup>The 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.

<sup>6</sup>At the time of its accession to the Convention, the Kingdom of the Netherlands also made declarations applying the Convention 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).

<sup>7</sup>New 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'.

Spain 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.

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.

2. 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.
3. 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.
4. 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.'

<sup>9</sup>The United Kingdom of Great Britain and Northern Ireland declared, in accordance with Article 52 of the Convention, that the United Kingdom's Ratification shall be extended to the territories of the Island of Guernsey, the Cayman Islands and Gibraltar for whose international relations the Government of the United Kingdom of Great Britain and Northern Ireland is responsible.

<sup>10</sup>The 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.

**Annex 2-B Table showing the declarations made under the Aircraft Protocol by each Contracting State and Regional Economic Integration Organisation thereto (as at 1 September 2015)**

	XIX (1)	XXIX	XXX(1): VIII *	XXX (1): XII	XXX (1): XIII	XXX (2)	XXX (3) Alt A	XXX (3) Alt B	XXX (5)
<b>Contracting State</b>									
Afghanistan		✓	✓	✓	✓	✓	✓		
Albania	✓		✓	✓	✓				
Angola			✓	✓	✓	✓	✓		
Australia			✓	✓	✓		✓		
Bahrain									
Bangladesh		✓	✓	✓	✓	✓	✓		
Belarus									
Bhutan									
Brazil	✓		✓	✓	✓	✓	✓		
Cameroon									
Canada <sup>11</sup>		✓	✓	✓	✓	✓	✓		
Cape Verde			✓	✓	✓	✓	✓		
China	✓	✓	✓	✓	✓	✓	✓		
Colombia			✓	✓		✓	✓		
Congo									
Cuba									
Egypt									
Ethiopia			✓	✓	✓	✓	✓		
Fiji			✓		✓	✓	✓		
India			✓	✓	✓	✓	✓		
Indonesia			✓	✓	✓	✓	✓		
Ireland			✓	✓	✓	✓	✓		
Jordan			✓	✓	✓	✓	✓		
Kazakhstan			✓	✓	✓	✓	✓		
Kenya			✓	✓		✓	✓		
Kuwait									
Latvia									
Luxembourg			✓	✓	✓	✓	✓		
Madagascar			✓	✓	✓	✓	✓		
Malawi			✓	✓	✓	✓	✓		
Malaysia			✓	✓	✓	✓	✓		
Malta					✓				
Mexico	✓		✓					✓	
Mongolia			✓	✓	✓	✓	✓		
Mozambique			✓	✓	✓	✓	✓		
Myanmar		✓	✓	✓	✓	✓	✓		
Netherlands		✓	✓	✓	✓	✓	✓		
New Zealand <sup>12</sup>		✓	✓	✓	✓		✓		✓
Nigeria			✓	✓	✓	✓	✓		
Norway			✓	✓	✓	✓	✓		✓
Oman		✓	✓	✓	✓	✓	✓		
Pakistan		✓	✓	✓	✓	✓	✓		

(Continued)

Annex 2-B Continued.

	XIX (1)	XXIX	XXX(1): VIII *	XXX (1): XII	XXX (1): XIII	XXX (2)	XXX (3) Alt A	XXX (3) Alt B	XXX (5)
Panama			✓	✓	✓	✓	✓		
Russian Federation			✓		✓		✓		
Rwanda		✓	✓	✓	✓	✓	✓		
San Marino			✓	✓	✓	✓	✓		
Saudi Arabia									
Senegal		✓	✓	✓	✓	✓	✓		
Singapore			✓	✓	✓		✓		
South Africa			✓	✓	✓	✓	✓		
Tajikistan			✓		✓	✓	✓		
Togo			✓	✓	✓	✓	✓		
Turkey			✓	✓	✓	✓	✓		
Ukraine	✓		✓		✓		✓		
United Arab Emirates	✓	✓	✓	✓	✓	✓	✓		
United Kingdom <sup>13</sup>		✓	✓	✓	✓	✓	✓		
United Republic of Tanzania			✓	✓	✓	✓	✓		
United States of America	✓		✓	✓	✓				
Viet Nam	✓		✓	✓	✓	✓	✓		
<b>Regional Economic Integration Organisation</b>									
European Union <sup>14</sup>									✓
<b>TOTAL</b>	8	13	48	42	46	39	43	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.

<sup>11</sup>The 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.

<sup>12</sup>New 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'.

<sup>13</sup>The United Kingdom of Great Britain and Northern Ireland declared, pursuant to Article XXIX of the Aircraft Protocol, that the ratification of the Protocol shall be extended to the territories of the Island of Guernsey, the Cayman Islands and Gibraltar for whose international relations the United Kingdom is responsible.

<sup>14</sup>The 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**

<b>Article</b>	<b>Short Description</b>
<b>Convention</b>	
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
<b>Aircraft Protocol</b>	
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 September 2015)**

**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 Protocol<sup>15</sup>**

ANNEX 1: QUALIFYING DECLARATIONS

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):

- d) 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”);
- e) 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;

<sup>15</sup> The text does not address the “disqualifying” declarations under Paragraph 3 of Annex 1 to the Aircraft Sector Understanding.

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 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<sup>16</sup> 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)				
	54(2) Leave of Court not required	X <sup>19</sup> Timetable for Advance Relief	VIII <sup>17</sup> Choice of Law	XI <sup>18</sup> Remedies on Insolvency - Alternative A	XIII De-registration and export
Afghanistan	✓	✓	✓	✓	✓
Albania	✓		✓		✓
Australia	✓		✓	✓	✓
Angola	✓	✓	✓	✓	✓
Bahrain	✓				
Bangladesh	✓	✓	✓	✓	✓
Belarus	✓				
Bhutan	✓				
Brazil		✓	✓	✓	✓
Cameroon	✓				
Canada <sup>20</sup>	✓	✓	✓	✓	✓
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	✓	✓	✓	✓	✓
Malaysia	✓	✓	✓	✓	✓
Malta	✓	N/A	✓	N/A	✓
Mexico			✓	✓	
Mongolia	✓	✓	✓	✓	✓
Mozambique	✓	✓	✓	✓	✓
Myanmar	✓	✓	✓	✓	✓
Netherlands <sup>21</sup>	✓	N/A	✓	N/A	✓
New Zealand	✓		✓	✓	✓
Nigeria	✓	✓	✓	✓	✓
Norway	✓		✓	✓	✓

(Continued)

Part 2 Continued.

	Timely Remedies (At least one of the declarations should be made)				
	54(2) Leave of Court not required	X <sup>19</sup> Timetable for Advance Relief	VIII <sup>17</sup> Choice of Law	XI <sup>18</sup> Remedies on Insolvency - Alternative A	XIII De-registration and export
Oman	✓	✓	✓	✓	✓
Pakistan	✓	✓	✓	✓	✓
Panama	✓	✓	✓	✓	✓
Russian Federation	✓			✓	
Rwanda	✓	✓	✓	✓	✓
San Marino	✓	✓	✓	✓	✓
Saudi Arabia	✓				
Senegal	✓	✓	✓	✓	✓
Singapore	✓		✓	✓	✓
South Africa	✓	✓	✓	✓	✓
Tajikistan	✓	✓	✓	✓	✓
Togo	✓	✓	✓	✓	✓
Turkey	✓	✓	✓	✓	✓
Ukraine	✓		✓	✓	✓
United Arab Emirates		✓	✓	✓	✓
United Kingdom <sup>22</sup>	✓	N/A	✓	✓	✓
United Republic of Tanzania	✓	✓	✓	✓	✓
United States of America	✓		✓	✓	✓
Viet Nam	✓	✓	✓	✓	✓
<b>TOTAL<sup>23</sup></b>	51	36	49	45 <sup>24</sup>	46

<sup>16</sup>The 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.

<sup>17</sup> Paragraph 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.

<sup>18</sup> Paragraph 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.



<sup>19</sup> Paragraph 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 Depositary, 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.

<sup>20</sup> 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.

<sup>21</sup> 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).

<sup>22</sup> At the time of its ratification of the Convention and the Aircraft Protocol, the Kingdom of Great Britain and the Northern Ireland made declarations applying the Convention and Aircraft Protocol to the following territories: the Island of Guernsey, the Cayman Islands and Gibraltar for whose international relations the Government of the United Kingdom of Great Britain and Northern Ireland is responsible

<sup>23</sup> Nine of the Contracting States to the Cape Town Convention are not also Contracting States to the Aircraft Protocol. Of the 59 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.

<sup>24</sup> Paragraph 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.