The System of Declarations under the Cape Town Instruments

British Institute of International and Comparative Law
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Introduction

• Seek advice – Originality and imagination are commendable, but not in the law (and even less so under the Cape Town Convention)


Four kinds of declarations

• Opt-in declarations
• Opt-out declarations
• Mandatory declarations
• Other declarations

Declarations to be distinguished from reservations, which the Convention does not permit (reservation is unilateral, does not bind others)
The Cape Town Convention

(1) Opt-in declarations

• Declarations which a Contracting State is required to make if a particular provision of the Convention, as applied by a Protocol, is to have effect within that State

• Provisions triggered only if a declaration is made are:
  - Article 39 Non-consensual rights and interests having priority without registration
  - Article 40 Registrable non-consensual rights or interests
  - Article 60 Application of Convention priority rules to pre-existing rights or interests

The Cape Town Convention

(2) Opt-out declarations

• Declarations which a Contracting State is required to make in order to exclude the application of a particular Convention provision, as applied by a Protocol, in that State. Opt-out declarations are required to exclude:
  - Article 8(1)(b) Power to lease a charged object which in the declaring State’s territory (Article 54(1))
  - Articles 8(1), 9(1), 10 Extra-judicial remedies (Articles 54(2))
  - Article 13 Interim relief (Article 55)
  - Article 43 Jurisdiction under Article 13 (Article 55)
  - Article 50(1) Application of the Convention to internal transactions

The Cape Town Convention

(3) Mandatory declarations

• Declarations which a Contracting State or a REIO are required to make in every case:
  - Article 54(2) Whether remedies may be exercised only with leave of the Court
  - Article 48(2) Specification by REIO of matters governed by the Convention in respect of which competence has been transferred to the REIO by 1st Members
(4) Other declarations

- Two declarations within this category:
  - Application of the Convention to one or more territorial units (Article 52(1))
  - Article 53 The relevant «court» for the purposes of Article 1 and Chapter XII

Effect of the declaration system

Contracting State must make a declaration if:

(a) it wishes to adopt an opt-in provision, i.e. under Article 39, 40 or 60;

(b) it wishes to exclude an opt-in or modifying provision, i.e. under Article 8(1), 9(1), 10, 13 or 43;

(c) the declaration is mandatory, i.e. under Articles 48(2) and 54(2);

(d) it wishes to define the relevant court under Article 53.

General

- In all other cases the Contracting State need to take no action.

- All declarations other than those made under Article 60 may be modified or replaced by subsequent declarations under Article 57 or withdrawn under Article 58.

- Aircraft Protocol provides for additional declarations as regards aircraft objects (same applies for other protocols regarding railway rolling stock and space assets). For details, cfr. infra.
The Cape Town Convention

**Constitution - which declarations have been made by Contracting States?**

<table>
<thead>
<tr>
<th>Contracting State</th>
<th>Convention Article</th>
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<tbody>
<tr>
<td>Angola</td>
<td>Arts. 39(1)(a), 40, 54(2)</td>
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The Cape Town Convention

**Declarations under Aircraft Protocol:**

**(1) Opt-in declarations**

Provisions triggered only if a declaration is made are:

- **Art. VIII** Choice of law (Decl. under Art XXX(1))
- **Art. X** Modification of provisions regarding relief pending final determination and time within which relief to be granted (XXX(2))
- **Art. XI** Insolvency provisions: selection of Alternative A or B and indication of waiting period (XXX(3))
- **Art. XII** Insolvency assistance (XXX(1))
- **Art. XIII** De-registration and export request authorisation (XXX(1))
- **Art. XXVII** Specification of matters on which competence is transferred to REIO
- **Art. XIX** Designation of entry point for registration

The Cape Town Convention

**Declarations under Aircraft Protocol:**

**(2) Opt-out declarations**

Provisions applicable unless excluded by a declaration

- **Art. XXIV(2)** Superseding Rome Convention on Precautionary Attachment of 1933
- **Art. XXX(5)** Exclusion of Art. XXI (modification of jurisdiction provisions)

**Other Declarations**

- **Art. XXIX** Application of Protocol to territorial units
**The Cape Town Convention**

**Protocol - which declarations have been made by Contracting States?**

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