



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A
DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS

First session (Rome, 15 - 19 December 2003)

DRAFT REPORT

PLENARY SESSION
15 December 2003

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OPENING

1. In opening the First Session of the UNIDROIT Committee of Governmental Experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on

Matters specific to Space Assets, Mr H. Kronke, Secretary-General of UNIDROIT, extended a warm welcome to all participants. He thanked the Food and Agriculture Organization of the United Nations (FAO) for the hospitality extended to UNIDROIT .

2. Ms C. Gardner, Assistant Director-General, General Affairs and Information Department of the FAO, welcomed all participants and UNIDROIT on behalf of Mr J. Diouf, Director-General of the FAO.

AGENDA ITEM NO. 1: ELECTION OF THE CHAIRMAN

3. Mr S. Marchisio, Professor of Law at the University of Rome, Italy, and Director of the Institute of International Legal Studies, was elected Chairman of the Committee of Governmental Experts at the proposal of the Mexican delegation seconded by the delegations of Australia, China and Nigeria

AGENDA ITEM NO. 2: ADOPTION OF THE AGENDA

4. The draft agenda was adopted as proposed.

AGENDA ITEM NO. 3: ORGANISATION OF WORK

5. Mr M.J. Stanford, Principal Research Officer of UNIDROIT and Secretary to the Committee, referred to documents UNIDROIT C.G.E./Space Pr./1/O/B-1 and B-2 which respectively contained the draft Order of Business for Monday, 15 December and for the Session as a whole. He indicated that the registration provisions would be left to an informal task force to be set up at the end of the Committee of Governmental Experts. The Drafting Committee would be established on Tuesday, 16 December.

AGENDA ITEM NO. 4: INTRODUCTION TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT (C.G.E. SPACE PR./1/W.P.2)

6. Introducing the Convention on International Interests in Mobile Equipment, Mr Kronke reviewed its main provisions and briefly commented on their importance for the financing of high-value mobile equipment.

7. Mr P. Nesgos, Co-ordinator of the Space Working Group (SWG), indicated that he and the other representatives of the SWG would be commenting on the provisions as they were examined. He stressed that the expectations of the space sector for the adoption of a clear, efficient, uniform, predictable and speedy regimen for the recognition and enforcement of interests in space assets should be kept in mind.

AGENDA ITEM NO. 5: CONSIDERATION OF THE PRELIMINARY DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS (C.G.E. SPACE PR./1/W.P.3)

General Statements

8. The delegation of the United States emphasised the potential of the future Space Protocol to enhance the development of outer-space activities in the commercial world. The benefits would extend not only to the manufacturers launching space equipment, but to all States acquiring space services. It did not intend to affect the rights and obligations of States under existing space law treaties.

9. The French delegation emphasised that the future Protocol aimed at finding a balance between the need to find private financing and the necessity to respect the particular characteristics of the space assets and activities as governed by existing space law treaties.

10. The German delegation stressed the need to solve the special problems that arose due to the fact that the assets were located in space. Questions that needed to be considered included whether default remedies were useful also in space. It was necessary to ensure that the right of use of the assets was also covered, and that that right did not collide with other rights.

Preamble

11. Some delegations considered that the formulation of the third paragraph of the Preamble, which related to the relationship between the preliminary draft Protocol and established principles of space law, was weak. Other delegations hesitated to change a formulation that had already been adopted in the Aircraft Protocol and stressed the need not to deviate from the instruments that had already been adopted unless there was a specific need to do so. Three different approaches were considered. The first was to maintain the uniformity of the different Protocols, the second to replace the word “mindful” at the beginning of the paragraph with the word “respectful” and to add a provision in Article XXI saying that the provisions of the Protocol shall not affect the rights and obligations deriving from the space treaties, the third to adopt a new provision in the operative articles saying that in case of conflict between the Protocol and the space treaties the latter shall prevail.

12. No consensus having been reached, it was decided that the question should be re-examined when Article XXI was considered.

Article 1

13. The Space Working Group submitted a proposal for the redrafting of the definition of “associated rights” in Article I(2)(a) (see UNIDROIT C.G.E./Space Pr./1/W.P. 8). The proposal split the definition into a definition of “contractual rights” and a definition of “related rights”.

14. One delegation raised the question of the order of the definitions, suggesting that the most important might be placed first. It also pointed out that there were mistakes in translation in the French version of footnotes 7 and 9.

15. One delegation did not feel confident with the meaning of “contractual”, which it felt should relate to the contract between the debtor and the creditor. It stressed the difficulty in taking a stand on the proposal without knowing how and where the proposed terms would be used. Other delegations shared this concern.

16. Another delegation suggested that some States would prefer the reference in the English text to the “laws concerned” to read “laws or regulations” as it was debatable whether the term “laws” would include also “regulations”.

17. As regards the definition of “space assets”, the question was raised whether only assets that were already in space were covered, or whether assets that had been manufactured but still had to be launched or were still under construction, and component parts of the assets were also covered.

18. One delegation raised the question of whether it made any difference if the assets that had been returned from space had been returned intentionally or not, and whether or not they had been so under the control of the owner. It also raised the question of whether reusable launch vehicles were covered and if they should be considered aircraft or space vehicles.

19. Another delegation observed that in this connection the question of the abandoning of the asset and the position of the insurance contracts, the salvage rights, had to be considered.

20. One delegation pointed out that there was a discrepancy between the formulation of Article I(2)(f)(iv) in English (“expendable”) and French (“récupérable”).

21. Another delegation pointed out that the English text of the Convention referred to a “uniquely identifiable object” (see Article 2(2)) whereas the English text of Article I(2)(f)(i) – (iii) referred to “separately identifiable”.

22. One delegation referred to a previous draft and wondered why Article I(2)(f)(v) had been deleted.

23. The question of the possible inclusion of component parts was commented on by several delegations. It was observed that in Cape Town this matter had also been discussed. It had been decided to leave the question aside, so as to make it possible to have security interests under national law covering these items, and to add a collision clause in Article 29(7) of the Convention and in Article XIV of the Aircraft Protocol. If this decision were deviated from, the question would have to be carefully considered.

24. The importance of the financing of pre-launch assets was stressed by some delegations.