



**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
Fourth session
Rome, 3/7 May 2010**

UNIDROIT 2010
C.G.E./Space Pr./4/W.P. 2 rev.
Original: English
April 2010

*EXPLANATORY NOTE
ON
THE REVISED DRAFT AGENDA FOR THE SESSION*

(prepared by the UNIDROIT Secretariat)

I. Basic text (item No. 3 on the draft agenda)

1. The main business to be accomplished by the Committee of governmental experts (hereinafter referred to as the *Committee*) at its forthcoming session is listed in the revised draft agenda: ¹ the principal item on the revised draft agenda is consideration of the revised version of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets as prepared by Professor Sir Roy Goode (United Kingdom) and Mr M. Deschamps (Canada), as Co-chairmen of the Drafting Committee of the Committee - to reflect the conclusions reached by the Committee at its third session, held in Rome from 7 to 11 December 2009, and to incorporate drafting improvements - and as reviewed by the Drafting Committee (C.G.E./Space Pr./4/W.P. 3 rev.) (hereinafter referred to as the *revised preliminary draft Protocol*), *inter alia* in the light of comments received from the Governments, Organisations and representatives of the international commercial space, financial and insurance communities invited to the fourth session of the Committee (C.G.E./Space Pr./4/W.P. 4).

2. As agreed at the third session of the Committee, ² its work will, henceforth, proceed on the basis of the alternative text of the preliminary draft Protocol incorporating proposals for certain technical amendments (C.G.E./Space Pr./3/W.P. 8 rev.): the revised preliminary draft Protocol has, accordingly, been drawn up on the basis of the alternative text. It should be noted that the highlighting used in respect of certain provisions of the revised preliminary draft Protocol is designed to show how they differ from the corresponding provisions of said alternative text.

3. The Secretariat would propose that, at the forthcoming session, attention first be given to those outstanding issues signalled as requiring attention at the third session of the Committee and that only when that is completed should the Committee embark on a full reading of the revised preliminary draft Protocol.

¹ C.G.E./Space Pr./4/W.P. 1 rev.

² Cf. C.G.E./Space Pr./3/Report rev., § 65.

II. Outstanding issues regarding the text of the revised preliminary draft Protocol to be dealt with at the fourth session (*sub* item No. 3 on the draft agenda)

4. First, it was agreed at the third session of the Committee that the Informal Working Group on default remedies in relation to components should continue to work informally pending the fourth session of the Committee.³ It will, therefore, be for the Informal Working Group to report back to the Committee at its fourth session.

5. It was further agreed at the third session of the Committee that the Secretariat would, within the limits posed by its very limited resources, be reaching out after that session, through practical consultations - in particular regarding the discussion paper that emerged from the work accomplished during that session by the Informal Working Group on limitations on remedies (C.G.E./Space Pr./3/W.P. 23) - to both representatives of industry and the academic world with a view to assessing the economic basis of certain key provisions of the revised preliminary draft Protocol.⁴ It will, accordingly, be for the Secretariat to report back to the Committee at its fourth session on the outcome of these consultations.

6. In addition, a number of specific issues were signalled at the third session of the Committee as requiring further consideration at its following session. These were as follows:

(a) the definition of "controlled" in relation to goods, technology, data or services to which Article XXVII(2) of the revised preliminary draft Protocol applies;⁵

(b) the finding of more suitable language for the words "capable of being independently owned, used or controlled" in Article I(2)(l) of the revised preliminary draft Protocol;⁶

(c) the taking of a decision regarding the words "including any such asset in course of manufacture or assembly" at present included in Article I(2)(l) of the revised preliminary draft Protocol inside square brackets;⁷

(d) the taking of a decision regarding the instruments to be referred to in respect of the location of a space asset;⁸

(e) consideration of the issue of choice of law in respect of rights assignments and rights reassignments;⁹

(f) consideration of the priority between an assignee of debtor's rights under a rights assignment and an assignee under an assignment of rights deriving from the space asset but unconnected to an international interest;¹⁰

(g) consideration of the policy implications of the duty of co-operation incumbent on the assignor to co-operate with the assignee for the transfer of its licence;¹¹

(h) the question of the modification of the provisions of the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*) regarding default remedies, in particular, first, regarding whether the requirement of commercial reasonableness set forth in Article XVIII(2) of the revised preliminary draft Protocol and the qualification of "reasonable prior notice" laid down in Article XVIII(3) thereof should be subject to a declaration by a Contracting State or be free-standing provisions of the revised preliminary draft Protocol and,

³ C.G.E./Space Pr./3/Report rev., § 26.

⁴ C.G.E./Space Pr./3/Report rev., § 75.

⁵ C.G.E./Space Pr./3/Report rev., § 54; cf. Article I(2)(a) of the revised preliminary draft Protocol.

⁶ C.G.E./Space Pr./3/Report rev., §§ 20 and 68.

⁷ C.G.E./Space Pr./3/Report rev., § 19.

⁸ C.G.E./Space Pr./3/Report rev., §§ 55-56; cf. Article I(3) of the revised preliminary draft Protocol.

⁹ C.G.E./Space Pr./3/Report rev., § 58; cf. Article VIII of the revised preliminary draft Protocol.

¹⁰ C.G.E./Space Pr./3/Report rev., § 64; cf. Article XIII of the revised preliminary draft Protocol.

¹¹ C.G.E./Space Pr./3/Report rev., § 64, cf. Article XVI of the revised preliminary draft Protocol.

secondly, in the light of the ongoing consultations among members of the Informal Working Group on default remedies in relation to components;¹²

(i) consideration, in the light of the potential implications for national laws, of Article XXI(5) of the revised preliminary draft Protocol;¹³

(j) the language inside square brackets in Article XXVII(2) of the revised preliminary draft Protocol;¹⁴

(k) taking account in paragraph 5 of the aforementioned discussion paper of the proposal made by one delegation serving on the Informal Working Group on limitations of remedies that the requirement of prior notice be treated as unnecessary in the event of the State having exercised an option pursuant to paragraph 3 of the same discussion paper;¹⁵

(l) completion of the criteria for identification of space assets that have been launched in Article XXX(2) of the revised preliminary draft Protocol and consideration of the need for further clarification as regards which paragraph of Article XXX should apply in the case of a space asset in respect of which a first international interest was registered prior to launch and then a second international interest was registered after launch;¹⁶

(m) consideration of the question whether provision should be made for the case where a space asset in respect of which an international interest had been registered was never launched;¹⁷

(n) the need in the context of Article XXXIV of the revised preliminary draft Protocol to give consideration to the fact that the concept of "jurisdiction and control" as set forth in Article VIII of the 1967 United Nations Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, relating to control and ownership of space objects was quite different from the concept of "jurisdiction" employed by the Convention, which referred to the jurisdiction of national courts;¹⁸ and

(o) consideration of the precise formulation of Article XXXIV of the revised preliminary draft Protocol, and in particular the question as to whether the United Nations Outer Space Treaties should be specifically enumerated.¹⁹

III. Question of the Supervisory Authority of the future international registration system for space assets (item No. 4 on the draft agenda)

7. At the third session of the Committee, there was a general discussion of the potential candidates for the role of Supervisory Authority of the future international registration system. In

¹² C.G.E./Space Pr./3/Report rev., §§ 40-42; cf. Article XVIII(1) and (4) of the revised preliminary draft Protocol.

¹³ C.G.E./Space Pr./3/Report rev., § 43.

¹⁴ C.G.E./Space Pr./3/Report rev., § 61; cf. also footnote 23 to Article XVI(2) of the preliminary draft Protocol to the Convention on Matters specific to Space Assets, as revised by the Committee during its first session, held in Rome from 15 to 19 December 2003 (C.G.E./Space Pr./3/W.P. 4), where it is stated that "[i]f the phrase 'in accordance with its laws and regulations' were deleted from Article XVI(2), further consideration would need to be given to the rights of Contracting States to place restrictions or limitations on the placement of data and materials with another person as contemplated in Article IX *bis*, given that such restrictions or limitations would no longer be applied in accordance with the relevant domestic laws of a Contracting State."

¹⁵ C.G.E./Space Pr./3/Report rev., § 35; cf. Article XXVII *bis* (3) and (5) of the revised preliminary draft Protocol.

¹⁶ C.G.E./Space Pr./3/Report rev., § 69.

¹⁷ C.G.E./Space Pr./3/Report rev., § 64; cf. Article XXXI(3) of the revised preliminary draft Protocol.

¹⁸ Cf. footnote 30 to Article XXI *bis* of the preliminary draft Protocol to the Convention on Matters specific to Space Assets, as revised by the Committee during its first session, held in Rome from 15 to 19 December 2003 (*op. cit.*).

¹⁹ Cf. footnote 31 to Article XXI *bis* of the preliminary draft Protocol to the Convention on Matters specific to Space Assets, as revised by the Committee during its first session, held in Rome from 15 to 19 December 2003 (*op. cit.*).

particular, the Committee discussed the preparations that such candidates would need to make in order to be in a position to respond, at least in principle, to any invitation that the diplomatic Conference for adoption of the future draft Space Protocol might address to them.²⁰

8. The Secretariat was invited, on behalf of the UNIDROIT Governing Council, to approach those Organisations that might be considered as potential candidates for the role of Supervisory Authority with a view to giving them an adequate opportunity to consider their interest in assuming such a role and, if so, finding out the internal authorisations that such an Organisation would need to obtain in order formally to be in a position to respond, at least in principle, to any invitation to assume such functions that might be addressed to it by the future diplomatic Conference.

9. On 3 February 2010 the Secretariat sent such letters to Mr Raymond Benjamin, Secretary-General of the International Civil Aviation Organization, Captain Esteban Pacha-Vicente, Director-General of the International Mobile Satellite Organization (I.M.S.O.), and Mr Hamadoun Touré, Secretary-General of the International Telecommunication Union, namely the Organisations that were discussed in this context both at the third session of the Committee and at the meeting of the Sub-committee of the Committee to examine certain aspects of the future international registration system (hereinafter referred to as the *Sub-committee*) held in Rome on 26 and 27 October 2009. It will be for the Secretariat to bring the full results of this inquiry to the attention of the Committee at its fourth session. It can, however, already report that, in his letter of 22 March 2010, Captain Pacha-Vicente communicated the news that, pursuant to the decision taken by the Advisory Committee of I.M.S.O. at its Twenty-Sixth Session, held in London from 17 to 19 March 2010, that I.M.S.O. would not be in a position to assume the functions of Supervisory Authority.

IV. Other issues to be considered at the fourth session of the Committee (items Nos. 5 and 7 on the draft agenda)

10. While no decision was taken at the third session of the Committee regarding a further meeting of the Sub-committee, it will be open to the Committee at its fourth session to consider whether such a meeting might be desirable, in the light of the future work to be accomplished in respect of the establishment of the international registration system for space assets contemplated under the revised preliminary draft Protocol.²¹

11. It will be for the UNIDROIT Governing Council at its 89th session, to be held in Rome from 10 to 12 May 2010, to decide as to the ripeness of the text to emerge from the fourth session of the Committee to be laid before a diplomatic Conference, for adoption, as a draft Space Protocol. Clearly, the Governing Council will be informed in this decision by the extent to which consensus may be considered to have been reached on the text.

12. In this context, it will also be recalled that, at the 60th session of the UNIDROIT General Assembly, held in Rome on 1 December 2006, a member State expressed its willingness to consider hosting such a diplomatic Conference, provided that the preliminary draft Protocol was concluded successfully. However, on 15 March 2010, the State in question informed UNIDROIT, by Note Verbale, that it would not, after all, be able to host such a Conference. The Secretariat is, though, in negotiations with another member State regarding the possibility of it hosting the planned diplomatic Conference, with the idea still being that the Conference should, in principle, subject to the Governing Council's advice and consent, be held in the first half of 2011 or indeed earlier, if possible.

²⁰ C.G.E./Space Pr./3/Report rev., § 50.

²¹ Cf. C.G.E./Space Pr./3/Report rev., § 51.