



**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
Fifth session
Rome, 21/25 February 2011**

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**SUMMARY REPORT
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(prepared by the UNIDROIT Secretariat)

Opening of the session

1. Mr J.A. Estrella-Faria, Secretary-General of UNIDROIT, opened the fifth session of the 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 (hereinafter referred to as the *Committee*) at the Headquarters of the Food and Agriculture Organization of the United Nations in Rome, on 21 February 2011 at 9.40 a.m. He drew attention to the intensive work that had been conducted since the previous session of the Committee, notably in the three intersessional meetings held in October 2010. He noted that the session was to be the final session and that the text of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (hereinafter referred to as the *revised preliminary draft Protocol*) to come out of the session would be submitted to the UNIDROIT Governing Council, at its forthcoming 90th session, for consideration as to its readiness for transmission to a diplomatic Conference for adoption.

2. Mr S. Marchisio (Italy), was confirmed as Chairman of the session. He noted that the revised preliminary draft Protocol, as it had emerged from the fourth session of the Committee, held in Rome from 3 to 7 May 2010 (C.G.E./Space Pr./5/W.P. 3) and as annotated by the Secretariat to reflect the conclusions reached at the October 2010 meetings of the Informal Working Groups on default remedies in relation to components and on limitations on remedies on the definition of "space asset" and on public service, was the basic working document of the session.

Agenda Item No. 1 on the draft agenda: Adoption of the Agenda

3. The draft Agenda (C.G.E./Space Pr./5/W.P. 1) was adopted by the Committee.

Agenda Item No. 2 on the draft agenda: Organisation of work

4. Mr M.J. Stanford, Deputy Secretary-General of UNIDROIT, explained the working arrangements for the session.

Agenda Item No. 3 on the draft agenda: consideration of the revised preliminary draft Protocol as it emerged from the fourth session of the UNIDROIT Committee (C.G.E./Space Pr./5/W.P. 3)

5. Ms A. Veneziano (Italy), in her capacity as co-moderator of the intersessional consultations with representatives of the international commercial space and financial communities, reported on the consultations, noting the considerable progress that had been made at the consultations, in particular on the definition of "space asset", default remedies in relation to components and limitations on remedies.

Consideration of outstanding issues regarding the revised preliminary draft Protocol (C.G.E./Space Pr./5/W.P. 2, pp. 3-7)

6. The Secretary-General of UNIDROIT, in his capacity as moderator of the Informal Working Group on default remedies in relation to components, reported on the conclusions reached by the meeting of that Informal Working Group, held in Rome from 19 to 21 October 2010 on the question of definition of "space asset" (C.G.E./Space Pr./5/W.P. 5), noting that a new definition of "space asset" had emerged at that meeting which commanded strong support. He reported that it had been agreed by that Informal Working Group that the proposed new definition of "space asset" be included in a footnote of the text of Article I(2)(l) of the revised preliminary draft Protocol and that it be recommended to the Committee that this proposed new definition be taken as the basis for the Committee's further deliberations on this issue.

(i) Definition of "space asset"

7. The representative of the International Registry for aircraft objects, Mr R Cowan, Managing Director of Aviareto Ltd., presented that Registry with a view to facilitating discussions on the proposed new definition of "space asset", updating the Committee on the status of the Registry, providing an overview of how registrations were made and noted how the developments in software of the International Registry that would be implemented in October 2011 could assist the creation of the future International Registry for space assets through facilitating the making of multiple registrations simultaneously in respect of multiple space assets.

8. The Committee endorsed the proposed new definition of "space asset", in particular because it would exclude those objects that were not yet considered to be bankable by the international commercial space and financial communities while still providing the flexibility necessary for future objects to be covered by the future Protocol. There were, however, a few points which the Committee felt should be clarified before the proposed new definition was adopted.

9. First, in respect of paragraph (i) of the proposed new definition, some delegations suggested that it would be appropriate for the phrase "in respect of which a separate registration may be effected in accordance with regulations from time to time made by the Supervisory Authority" which appeared in paragraphs (ii) and (iii) also to be included in paragraph (i). However, some other delegations did not agree, noting that paragraph (i) was sufficiently clear and did not require further elaboration from the Supervisory Authority. It was agreed that the language in question would be placed in square brackets for further consideration.

10. Secondly, in respect of paragraph (iii), some delegations suggested that the phrase "capable of independent use" which appeared in square brackets should be deleted because the assets described in that paragraph would already be defined by the regulations of the future International Registry for space assets. However, several other delegations felt that this language should be included because it would provide guidance to the future Supervisory Authority as to what types of asset were intended to be covered by the regulations, namely those of high value. It

was decided that the language in question would be deleted but that guidance for the Supervisory Authority could be provided in a draft Resolution to be adopted at the future diplomatic Conference for the adoption of the future draft Protocol.

11. One delegation queried the need for the phrase “from time to time” in paragraph (ii). The same delegation also wondered whether the term “space vehicle” in paragraph (i) should not be deleted, in his language the terms “space craft” and “space vehicle” being interchangeable.

12. It was agreed that the proposed new definition of “space asset” should be submitted to the Drafting Committee for further drafting revisions.

(ii) Default remedies in relation to components

13. Reporting on the conclusions reached at the meeting of the Informal Working Group on default remedies in relation to components on this specific issue, the Secretary-General recalled the two prevailing positions on this issue, namely whether there should be a default rule in the revised preliminary draft Protocol on the conflict of interests that might arise from the exercising of default remedies by a creditor over a space asset that was physically linked to another asset that belonged to a non-defaulting third-party, potentially causing a negative impact to the third party, or whether this issue should be left to inter-creditor agreements.

14. He noted that, in the light of the continuing division of opinion on this issue, it was agreed that the proposal of one Government should be laid before the Committee as the tentative recommendation of the Informal Working Group for a proposed new Article XVIII(3) and (4), albeit within a series of square brackets and not in a footnote to the text of the revised preliminary draft Protocol, to denote the lack of consensus on the issue.

15. Some delegations reiterated their position that the international commercial space and financial communities were highly sophisticated parties who would naturally conclude inter-creditor agreements on such an issue and that the inclusion of such a broad provision would undermine the certainty a creditor would be entitled to expect in respect of the priority of his international interest in a space asset and would, as a result, increase the cost of space financing.

16. Some other delegations, whilst agreeing that most parties would reach inter-creditor agreements, noted, however, that in cases where no agreement could be reached or the agreement reached was found to be void, a default rule would be needed. It was added that one proposed solution to the divergency of opinion advanced at the October 2010 Informal Working Group meeting was to make the proposed default rule subject to any inter-creditor agreement that the parties might have made.

17. One adviser feared lest such a default rule would not be acceptable to financiers.

18. One observer suggested that the problem might be dealt with by a default rule under which one should first look to see whether there was an inter-creditor agreement to regulate the enforcement of international interests and, absent any such agreement, the matter should be dealt with by the applicable law.

(iii) Article I(2)(e): definition of “launch vehicle”

19. It was agreed to delete Article I(2)(e), notably because no other category of “space asset” was defined in the revised preliminary draft Protocol.

(iv) Article IV(5): Application of the Convention to title and salvage interests

20. The co-Chairman of the Drafting Committee reported on the extraordinary meeting of the Drafting Committee, held on 20 February 2011, in order to finalise the work that it had not been able to complete during the Committee's fourth session, namely to complete its work on Article IV(5). In illustrating the report on that meeting of the Drafting Committee (C.G.E./Space Pr./5/W.P. 10), he indicated that, while no change was proposed in the treatment of title salvage, the Drafting Committee had recommended, in particular, that revenue salvage should not be included in the revised preliminary draft Protocol as a registrable interest but that the right of insurers to revenue salvage should be safeguarded in relation to subsequently registering creditors under the Convention and future Protocol. It was also suggested that further clarification could be provided through the future Official Commentary.

21. One delegation suggested that the term "constructive total loss" should be defined for those legal traditions that were not familiar with such a term.

22. The recommendations of the Drafting Committee were endorsed, subject to the need for the Drafting Committee to consider the language employed, and in particular to consider the full implications of the square brackets around the words "without prejudice to Article 9(5) of the Convention.

(v) *Article I(3): location or situation of a space asset*

23. One delegation introduced its Government's proposal to combine Alternatives A and C of Article I(3) (C.G.E./Space Pr./5/W.P. 7), noting in particular that the purpose of this Article was to ensure that interim remedies would be capable of being enforced in as many jurisdictions as possible. This delegation also favoured the State of the licensing Authority also being considered as an appropriate connecting factor.

24. Another delegation introduced its proposal (C.G.E./Space Pr./5/W.P. 7 Add. 1), which also sought to combine elements of the Alternatives found in Article I(3), while not seeking to replace any of those other alternatives. This proposal combined references to United Nations Treaties and Resolutions and the *de facto* criteria found in Alternatives A and B.

25. Some delegations felt that the connecting factors to be proposed in Article I(3) might be distinguished, with a different connecting factor being employed in respect of, on the one hand, Articles 1(n) and 54 of the Convention and, on the other, Article 43 thereof and Article XXIII of the revised preliminary draft Protocol.

26. It was suggested by one observer that reference might also be made to the State of registry under the International Telecommunication Union's Space Master Register.

27. It was agreed that this matter should be referred to the Drafting Committee for its advice and that the Drafting Committee should report back to the Committee on 23 February 2011.

28. The Chairman adjourned the session of the Committee at 5.04 p.m.