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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

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)

PROPOSAL

(*by the delegation of India)*

Some Observations on Space Asset Protocol vs. UN Space Treaties

UN Space Treaties

1. Most countries including the Republic of India believe that UN space treaties are the cornerstones of the international space law. This is amply manifested in the number of ratifications and signatures these treaties have succeeded in securing. According to the UN document A/AC.105/572/Rev.3/Ammend.1, as on January 1, 2002, 98 states have ratified the Outer Space Treaty and another 26 states are signatories. Similarly, the Liability Convention has been ratified by 82 states and signed by another 26 states. The Registration Convention enjoys 43 ratifications and 4 signatures.

2. The recent developments, due to various reasons such as advancement of technology and the welcome entry of private players among many others, have put the interpretation of these treaties under severe stress. These complications and the remedies thereof are the subject matter of serious discussion in the United Nations Committee on Peaceful Uses of Outer Space. The intention of this intervention by the Indian delegation is not to raise those issues here in this session. It is better left to UN-COPUOS.

3. The primary intent of this intervention is to make this committee of the Governmental Experts recall the confidence these Space Treaties enjoy among the states and their prominence in the body of the International Space Law. This being the case, it becomes mandatory on this committee to ensure that nothing is said or done in this protocol, which upsets this situation.

4. Indian delegation opposes the notion that silence about these treaties in the Space Asset Protocol would be the best way to deal with the Space Treaties and would ensure avoidance of conflicts. On the contrary, our delegation believes that this matter is of great importance and should be addressed to appropriately through careful analysis and discussions.

Responsibility of the State to which the Chargee belongs

5. The Chapter II of the proposed draft Space Asset Protocol formulates in great details the rights and interests of the financier in case of any default on the part of the debtor. It appears only appropriate that the obligations of the creditor – or to be more specific – those of the state to which the financier belongs be appropriately pronounced.

6. The article VI of the OST 67 states that "*States Parties to the Treaty shall bear international responsibility for national activities in outer space, including the Moon and other celestial bodies, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty. The activities of non-governmental entities in outer space, including the Moon and other celestial bodies, shall require authorization and continuing supervision by the appropriate State Party to the Treaty.*" This certainly brings in certain obligations to be fulfilled by the state to which the creditor belongs.

7. Moreover, the article VII of the same treaty, namely, OST 67 pronounces that "*Each State Party to the Treaty that launches or procures the launching of an object into outer space, including the Moon and other celestial bodies, and each State Party from whose territory or facility an object is launched, is internationally liable for damage to another State Party to the Treaty or to its natural or juridical persons by such object or its component parts on the Earth, in air space or in outer space, including the Moon and other celestial bodies*." This article shall come into force when according to the Chapter III Article 8 Para 1(a) of the Convention, the possession and control of a space asset, which includes "any separately identifiable asset that is in space or that is *intended to be launched in space*….(my italics)" [Chapter I, article 1, para 2(f)(i)], is transferred to the chargee and to protect his financial interests, he gets the space asset launched from the state to which he belongs, or from the territory of the state to which the debtor belongs, or any other state. Irrespective of the territory from which the space asset is launched, the state, to which the chargee belongs, attains the status of the launching state since the launch is *procured* by the chargee [Liability Convention Article 1(c)(i)].

8. According to the Article 1(a) of the Registration Convention of 1975, "*when a space object is launched into Earth orbit or beyond, the launching State shall register the space object by means of an entry in an appropriate registry which it shall maintain. Each launching State shall inform the Secretary-General of the United Nations of the establishment of such a registry*." This clause puts additional obligations on the state to which the chargee belongs.

9. These obligations need to be stated clearly and precisely in the Space Asset Protocol in order to avoid any possible conflict against the provisions of the Space Protocol.

Consequences

10. Having established (1) the need for bringing in harmony with the Space Treaties and (2) that there exists situations wherein the state to which the chargee belongs shall have to bear certain obligations in accordance with the Liability Convention and Registration Convention, The Indian delegation intends to move on to the consequences of these over the Draft Space Asset Protocol.

11. First of all, in Chapter II at some appropriate place, these obligations on behalf of the State to which Chargee belongs need to be stated.

12. Second, in Chapter VI, article XXII, para 5 of the Space Asset Protocol, which reads "*A state may not become party to this protocol unless it is or becomes also a Party to the convention*" may need to be crafted to deliver the message that being a party to Space Treaties specially the Liability Convention of 1972 and Registration Convention of 1975 is mandatory. One possible starting point for arriving at an appropriate language could be *"A state may not become party to this protocol unless it is or becomes also a Party to the convention, OST of 1967, Liability Convention of 1972 and Registration Convention of 1975."*

13. Third, these also bring in consequences on the Article 3 of the Convention. The present position that convention applies if the debtor is situated in the contracting state irrespective of the fact that creditor belongs to the non-contracting state would require alterations. Through a specific provision, the Space Asset Protocol would require to make the article 3 null and void and replace it with an appropriate phrase insisting that the Convention and the Space Asset Protocol applies only when both the states to which the chargee belongs and to which the chargor belongs are contracting parties.

Primacy of the UN Space Treaties

14. The Indian delegation is of the firm opinion that mere a mention of our "mindfulness" or even "respect" in the preambular section is not adequate. The primacy of the UN Space Treaties deserves to be asserted more forcefully in the operative section. It appears appropriate to my delegation that Chapter V of the Draft Space Asset Protocol is the most appropriate place for this assertion. An additional article, say Article XXIa, may be inserted which may read on the following lines.

Article XXIa – Relationship with the UN Space Treaties

> The convention as applied to the space assets, shall under no circumstances be in conflict with the UN Space Treaties. In case of any conflict with the UN Space Treaties, namely Outer Space Treaty of 1967, Rescue Agreement of 1968, Liability Convention of 1972, Registration Convention of 1975, and the Moon Treaty of 1979, the provisions of the Space Treaties shall prevail.