



**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
Second session
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COMMENTS BY GOVERNMENTS AND INTERNATIONAL ORGANISATIONS

(Comments by the Government of Portugal)

1. The adoption of the Cape Town Convention on International Interests in Mobile Equipment implied further discussion on several Protocols concerning special subjects, being one of them the Protocol on Matters specific to Space Assets, ahead assigned as the Space Protocol (currently still a draft).
2. Portugal participated in the Paris Meeting on 4/5/6 September 2003, in the Headquarters of the European Space Agency. It was jointly organised by the International Institute for the Unification of Private Law (UNIDROIT), by the European Center of Space Law and by the European Space Agency (see report of the Portuguese Delegate of COPUOS, sent to GRICES - the Portuguese Government department - on 10 September 2003).
3. Later to the Paris Meeting, two other international meetings should be mentioned - the first session of governmental experts on the Space Protocol and the 43rd session of the Legal Subcommittee of COPUOS. Aspects related to the Space Protocol were there discussed, and a brief summary of what has occurred should be presented (due to the absence of Portugal in these meetings).
4. In the first session of governmental experts on the Space Protocol (Rome, 15/19 December 2003), restricted to governmental experts, several substantive aspects have been analysed. However, there were neither argued matters related to the international registration of the space assets (institute foreseen in the Space Protocol draft) nor the final provisions. The U.N. was advanced as a possible Supervisory Authority for the activities developed under the Protocol, but still without a definitive decision. This is an aspect of high importance concerning COPUOS, which we will approach in the next point.
5. The Space Protocol, in its Article XVII, foresees the insertion of a "Supervisory Authority" (among others, with registration functions), similar to what occurs with the Aircraft Protocol, attached to the same Cape Town Convention. The designation of such Authority could be either *ad hoc* (in a Special Conference of the Signatory States) or a specific Authority could be inserted in the Space Protocol Article. At the Paris Meeting, such authority was advanced to be the United Nations (one of the solutions presented). The advantage of this solution is clear, especially on the view of a reinforcement of that Organisation as privileged forum of co-operation on outer space activities. Competence doubts imply, however, that we should not advance yet, or in definitive, such a solution.

6. Concerning the 2nd meeting above mentioned (at 3) the 43rd session of the Legal Subcommittee of COPUOS (Vienna, March/April 2003) - point VII of the Final Report should be referred to, especially dedicated to the Space Protocol negotiations and its two detached items' (i) the Supervisory Authority discussion; (ii) to make the Protocol compatible with United Nations Conventions on Outer Space Law.

7. COPUOS Report expresses the different positions assumed by governmental delegations. Some have advanced the United Nations as the Supervisory Authority; others, however, suggested one of its specialised agencies (I.T.U.); and others yet admit the hypothesis that those functions could be assumed by international Organisations like E.S.A. or I.M.S.O.

8. Thus, the Report reflects the inexistence of governmental consensus on this subject.

9. It seems clear that if the G.A. (or the S.G.) of the United Nations deliberates to be inside of the competences of the Organisation (given by United Nations Charter) to assume such functions so this seems to be the correct solution in order to reinforce intervention of that Organisation in Outer Space Law (concerning the observation of 1967 Treaty, especially non-appropriation and peaceful purposes principles).

10. Due to the lack of consensus expressed at COPUOS Annual Meeting, it was nominated a working group to elaborate a Resolution proposal (to present to U.N. S.G.) in order to evaluate the possibility of the Organisation to assume such functions.

11. Thus, and now about Space Protocol negotiations, Portugal should assume the position to relegate the matter for a more advanced phase of the negotiations, in order to make possible the previous pronouncement of U.N.

12. Concerning the 2nd aspect argued at COPUOS Legal Subcommittee - to make the Protocol compatible with United Nations Conventions on Outer Space Law - we suggest the inscription, in the Preamble of the Protocol, of the priority of U.N. Outer Space Law Principles (especially the ones referred in the 1967 Treaty).

13. The two last points above mentioned focus on the two basic aspects to be discussed and proposed at the Rome Meeting.