



**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
Rome, 26/28 October 2004**

UNIDROIT 2004
C.G.E./Space Pr./2/W.P. 9
Original: French

COMMENTS BY GOVERNMENTS AND INTERNATIONAL ORGANISATIONS

(Comments by the Government of the People's Democratic Republic of Algeria)

Given the important potential of this preliminary draft for the secured financing of space projects, the costs of which are often high, it is in the interest of Algeria to follow the development and finalisation of this text so as to master the way the new system is designed to work and its effects.

This preliminary draft Protocol introduces a series of definitions of new terms such as "debtor's rights" and "related rights" the meaning and effects of which are not clear. These concepts need to be made clearer.

Moreover, the concepts of "space assets" and their "identification" need to be clarified in relation to Article 7 of the Convention on International Interests in Mobile Equipment.

Article 26(1), (2) and (3) relating to limitations on the exercise of default remedies * are in the interests of a State that has made a declaration (a form of reservation) at the time of its accession to the Convention and the additional Protocol.

The principle of a Supervisory Authority having been accepted after consideration during the 42nd session of the Legal Subcommittee of COPUOS, the designation of such a Supervisory Authority remains under consideration and is subject to several interpretations, even if it has been suggested that the role be entrusted to the United Nations.

The International Registry for space assets is entrusted to a Registrar appointed by the Supervisory Authority.

The provisions of Chapter V (Articles XXI and XXI *bis*), dealing with the relationship between this Convention ** and other Conventions, state that its provisions supersede the UNIDROIT Convention on International Financial Leasing as regards the subject-matter of this Protocol.

* *Note by the UNIDROIT Secretariat:* it would seem that this reference to Article 26(1), (2) and (3) is probably rather intended as a reference to Article XVI(1), (2) and (3) of the preliminary draft Protocol, Article 26 of the Convention on International Interests in Mobile Equipment dealing with a quite different matter and comprising only one paragraph.

** *Note by the UNIDROIT Secretariat:* it would seem that this reference to the Convention is intended as a reference to the Convention as applied to space assets.

The same is true for the United Nations Outer Space Treaties, which take precedence over the said Convention, which cannot, in any case, affect the rights and obligations of States Parties to those treaties.

Article XXVI of the preliminary draft Protocol mentions the concept of “declarations”, not to be confused with the concept of “reservations”, that may be made by States in relation to one or more provisions of the preliminary draft Protocol at the time of ratification, acceptance or accession. The distinction between these two concepts, the effects of which are similar, is not sufficiently clear and should be spelled out more clearly.

Article XXVII, dealing with “reservations” and “declarations” ***, is ambiguous in its present drafting, to the extent that, on the one hand, it prohibits the making of “reservations”, in the classic international law sense of the term and, on the other, permits States to make the “declarations” authorised under certain Articles of the preliminary draft Protocol.

It is clear that an international instrument of this importance will have considerable impact on international space financing practice. For that reason the broad support of industry is necessary.

In parallel, the new involvement of States in the commercialisation of space makes it necessary to be sure that proposals for regulation of this area are acceptable to all States.

UNIDROIT has displayed wisdom in laying the cornerstone of the future Protocol at the level of the International Registry in which international interests in space assets are to be registered. The question is all the more complicate and delicate in so far as it has been necessary to take account of the existence of a Register for space objects set up by the 1975 Convention on Registration of Objects Launched into Outer Space.

The designation of a supervisory “Authority” to be responsible for this Registry constitutes another fundamental factor for the credibility of the international registration system.

It is clear, moreover, that the raising of the funds necessary for the financing of space activities has always raised special problems by reason of the large sums involved.

A decade ago, those seeking credit were, for the most part, governmental or intergovernmental agencies or multinationals that financiers tended to trust, able as they were to put up all their assets as collateral for their debts.

The current trend toward the commercialisation of space has completely modified the traditional type of customer seeking credit for space projects. The only asset that this new type of customer will have to offer as collateral will be its satellite.

The satellites involved are very often telecommunication satellites, each of which will be worth more than U.S.\$ 75 million, with launching costs capable of being in excess of this amount. It is to be noted that the specialists anticipate the launching over the next decade of more than 1,000 telecommunication satellites, worth altogether U.S.\$ 5 billion and capable of generating an income of more than U.S.\$ 500 billion.

This shows the enormous importance of an international secured space financing system for all countries, and in particular for developing countries, the space services needs of which are as great as their financial means are limited.

*** *Note by the UNIDROIT Secretariat:* it would seem that the reference to Article XXVII is intended as a reference to Article XXVIII, since Article XXVII deals only with declarations whereas Article XXVIII deals with reservations *and* declarations.

This highlights the great interest that such countries have in obtaining financing that would be facilitated and made less onerous precisely through the availability of an international asset-based financing regimen for space projects. The facilitation and rendering less onerous of such financing is a particularly beneficial consequence for new customers for space services, in particular in developing countries and countries in transition, which, at the present time, have only a limited range of possibilities for the financing of their national space programmes.

The experts, including those of the Space Working Group, have given their attention to many questions, including those dealing with the spheres of application of interests, the registration system, the insolvency of the debtor, the relationship between the preliminary draft Protocol and existing international space law, the relationship between the provisions of the preliminary draft Protocol and the different national legal systems, public policy, the defence and national security of States (considerations which are often incompatible with the commercial and private law considerations which now impinge so enormously on space activities).

The complexity and the different effects of each of these questions are such that the possible solutions will require in-depth analysis and, therefore, time.

In view of the foregoing, it is important for Algeria, as a permanent member of COPUOS, to be able to follow closely UNIDROIT's work on this preliminary draft Protocol on Matters specific to Space Assets.

Such are our comments on this draft instrument aimed at the creation of a "uniform and predictable regimen governing the taking of security over space assets and facilitating asset-based financing of the same".