



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

**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**
Third session
Rome, 7/11 December 2009

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**PRELIMINARY DRAFT PROTOCOL
TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
ON MATTERS SPECIFIC TO SPACE ASSETS**

(as revised by the Committee of governmental experts at its first session
(Rome, 15/19 December 2003))

and

**ALTERNATIVE TEXT OF THE PRELIMINARY DRAFT PROTOCOL,
IMPLEMENTING POLICY ISSUES
REFERRED TO AND EXAMINED BY THE STEERING COMMITTEE**

(prepared, at the request of the Steering Committee,
for presentation to the Committee of governmental experts,
by Professor Sir Roy Goode (United Kingdom) and Mr Michel Deschamps (Canada):

COMMENTS

on the alternative text

submitted by the Government of Canada

Canada welcomes the opportunity to share its views on the new alternative draft Space Protocol in the context of the third session of the Committee of Governmental Experts. While the new draft Space Protocol addresses key policy issues, from Canada's perspective, there are many fundamental issues which remain outstanding. In an effort to identify these issues, Canada has prepared this meeting document for the delegations' consideration. In our view, these issues should be discussed and satisfactorily addressed.

Canadian governments as well as the Canadian industry were consulted on the initial draft of the Space Protocol as well as on the new draft of the Space Protocol. Fundamental government and industry concerns have been expressed regarding both the initial draft Space Protocol and the new draft Space Protocol. The main concerns can be summarised as follows:

There is a disconnect between the provisions of the draft Space Protocol and the provisions of other international instruments.

Under the International Telecommunications Union (ITU) rules, access to a particular orbital position cannot be transferred from one State to another. Countries may obtain access to the orbital resources but they have to follow the same specific rules. If a State were to stop using an orbital position because a debtor gave possession or control and operation of an asset to a foreign creditor, the position would become available to another State under ITU rules but not necessarily to the benefit of the creditor's State.

Likewise, a State would have to honour its obligations under the Liability and Registration conventions. A State is absolutely liable for any damage caused by a space object launched from its territory into space pursuant to the 1972 Liability Convention. There is no mechanism for transferring that liability to another State under the Liability Convention and the new draft Space Protocol does not address this issue. Therefore, transfer of a State's space object to a foreign creditor could leave it vulnerable to unlimited liability without the benefit of national regulatory control over the object.

The 1975 Registration Convention requires the launching State to register its space object in a national registry and with the United Nations. The State on whose registry a space object appears is deemed to have jurisdiction and control over it and there seems to be no mechanism for transferring an object from one registry to another. Therefore, the result is that jurisdiction and control of a State's space object could not be transferred. Another State purporting to licence such an operator would be doing so without the benefit of jurisdiction or control over the space object.

Although the United Nations registry has accepted changes in the registration of certain objects in the past, these changes were made in very unique circumstances and it is not clear that seizure of a space object by a foreign creditor would suffice for the United Nations Office of Outer Space Affairs to amend the registry to change the State of registration. The new draft Space Protocol does not address this issue.

There is a disconnect between the draft Space Protocol and Canadian policy regarding satellites. It is our understanding that other States may have similar issues.

There is a disconnect between the scheme proposed in the draft Space Protocol and the basic principles of Canadian law as they relate to the authorization of satellites.

- While the draft Space Protocol creates an obligation for debtors/operators to give possession of or control and operation over a space asset to creditors in the event of default, most satellites operated by Canadian entities are subject to Canadian ownership and control requirements. A non-Canadian creditor would not meet these requirements.

- Consistent with general principles of international law, a State's domestic law only applies to satellites that are under the State's control. Therefore, if a non-Canadian creditor were to take possession of or control and operation over a space asset, Canada would lose its authority over the satellite, which would be unacceptable.

There is also a disconnect between the scheme proposed in the draft Space Protocol and the basic principles of Canadian law pertaining to the licensing of remote sensing space systems. Under Canadian law, a remote sensing space systems licence, as well as the control of the day to day operation of a satellite cannot be transferred without government authorization. The impact of such a transfer would have to be considered and any number of considerations could render a transfer to a non-Canadian creditor impossible.

It is unclear whether the draft Space Protocol would allow the restriction of creditor's remedies based on strategic government interests.

Certain space assets are considered to be of strategic importance to Governments for reasons of security, national interest or international relations, even though they may be owned and operated by private entities. In that context, it would be important for the Protocol to allow for the restriction of a transfer of possession or control of such assets based on considerations such as national security, national interest or international relations.

Canadian satellite operators do not support the supra-national legal regime proposed by the draft Space Protocol.

Generally, Canadian operators are of the view that there is no demonstrable demand for a new legal regime coming from the sectors interested in satellite financing, particularly satellite operators and financial institutions. In their experience, there is very little asset-based financing in the satellite sector, and consequently very few instances where it is necessary to execute on assets and even fewer situations where conflicting national legal regimes have caused concern. Moreover, Canadian operators are not aware of any instance where creditors declined to provide financing for a satellite project for lack of sufficient international protection of their security interests. Once a satellite is launched, the essential element for a lender is the value of the cash flow from the asset and less so the value of the satellite hardware itself.