



**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**

UNIDROIT 2009
C.G.E./Space Pr./3/W.P. 17
Original: English
9 December 2009

SUMMARY REPORT

FOR

8 DECEMBER 2009

(prepared by the UNIDROIT Secretariat)

Opening of the session

Agenda Item No. 3 on the revised draft agenda (*continued*)

A. DEFINITION OF "SPACE" AND "SPACE ASSETS" (Article I(2)(g) of the preliminary draft Protocol / Article I(2)(j) and (k) of the alternative text (policy issues)) (*continued*)

1. The Chairman opened the session at 9.58 a.m.
2. Following further discussion on the definition of "space assets" and a statement by the representative of the International Telecommunication Union (I.T.U.) (C.G.E./Space Pr./3/W.P. 16), the following issues were referred to the Drafting Committee, with the understanding that the alternative text (policy issues) was an expression of drafting options that could assist the discussions of the Committee and had not been formally adopted:
 - to consider whether the definition of "space assets" should incorporate a list of principal categories and residual open-ended criteria, taking into account the list of principal categories contained in the proposed definition of space asset submitted by the Government of Japan (C.G.E./Space Pr./3/W.P. 10) with a view to avoiding terms that might overlap;
 - to consider the implications of deleting the phrase "any such asset in course of manufacture or assembly";
 - to note the relationship between the definition of space asset and the role to be played by the future regulations of the international registration system with a view to avoiding the need for a detailed definition of each category of "space assets";
 - to take into account that the categories listed within the definition of "space assets" would need to be susceptible to default remedies;

- to avoid incorporating within the definition of "space assets" a requirement that the asset in question be registered under any other international registry; and

- to consider modifying, or possibly deleting, the phrase "and all data, manuals and records relating thereto".

3. The delegation of Japan agreed to consult other interested delegations with a view to refining the phrase "serving an independent function" contained in its proposal for a definition of "space assets".

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

4. Taking into account the presence at the current session of the Committee of members of the Drafting Committee appointed by the Committee at its first session, the following delegations were appointed members of the Drafting Committee for the present session:

- Canada;
- the People's Republic of China;
- France;
- Nigeria;
- Senegal;
- The Russian Federation;
- the United Kingdom; and
- the United States of America.

The first meeting of the Drafting Committee was to be held that afternoon at 5.30 p.m.

Agenda Item No. 3 on the revised draft agenda (*continued*)

B. DEFINITION OF "DEBTOR'S RIGHTS" (Article I(2)(a) of the preliminary draft Protocol / Article I(2)(a) of the alternative text (policy issues))

5. During the discussion of debtor's rights, there was general support for the inclusion of the concept of debtor's rights as it was set out in the alternative text (policy issues). However, the following points were raised concerning such an inclusion:

- there was a need for clarification as to the meaning of debtor's rights were intended to cover, notably whether debtor's rights should be considered only to cover civil contractual and tort rights related to the asset or whether they should also extend to administrative rights and claims and, in addition, to what extent non-transferable intellectual property rights were accommodated by the preliminary draft Protocol;

- whether it would be more appropriate to deal with debtor's rights in the preliminary draft Protocol with a reference to those Articles in the Cape Town Convention dealing with associated rights;

- whether it would be appropriate to incorporate in the definition of "debtor's rights" rather than the definition of "space assets" a reference to a right to all data, manuals and records relating thereto;

- to give consideration to the inclusion of those rights assignments not covered by Article I(2)(h) of the alternative text (policy issues), notably those rights assignments made independently of an international interest, that could not, therefore, be recorded under the future international registration system (Cf. C.G.E./Space Pr./3/W.P. 9, pp. 3-4);

- whether a subrogation by the creditor would require that a rights assignment be agreed between the creditor and the debtor (C.G.E./Space Pr./3/W.P. 9, p. 3); and

- whether the extension of the Cape Town Convention to outright sales should be extended also to the outright sale of debtor's rights, whether by reference to the applicable domestic law or a provision based on Article 29(3) of the Cape Town Convention.

C. DEFINITION OF "RELATED RIGHTS" (Article I(2)(f) of the preliminary draft Protocol) / DEFINITION OF "LICENCE" (Article I(2)(f) of the alternative text (policy issues)); and DUTY OF ASSIGNOR AS TO LICENCES (Article XII of the alternative text (policy issues))

6. The proposal found in Article I(2)(f) of the alternative text (policy issues), replacing the term "related rights" with the term "licence", was accepted by the Committee.

7. In respect of the proposal found in Article XII of the alternative text (policy issues), it was suggested that the phrase "take all steps within its power" might be replaced with more objective criteria for defining the duty required of a debtor in default.

8. It was suggested that the duty of the assignor/debtor should be described by reference to rights and duties under the applicable law. Additional technical proposals were made by the Government of Japan (C.G.E./Space Pr./3/W.P. 9, pp. 4-5).

Agenda Item No. 4 on the revised draft agenda: consideration of that part of the Report of the Sub-committee of the Committee to examine certain aspects of the future international registration system for space assets (C.G.E./Space Pr./3/W.P. 7 rev.) concerning the identification of space assets

D. IDENTIFICATION OF SPACE ASSETS (Article VII of the preliminary draft Protocol / Article XVI(3) and (4) of the alternative text (policy issues))

9. The Chairman of the Sub-committee on the future international registration system gave a brief summary of the conclusions reached at the first session of that Sub-committee, held in Rome on 26 and 27 October 2009 (C.G.E./Space Pr./3/W.P. 7 rev.), on the issue of identification criteria.

10. It was agreed that the identification criteria for space assets for the purposes of registration identified by the Sub-committee on the future international registration system were intended to replace §§ 3 and 4 of Article XVI of the alternative text (policy issues).

Agenda Item No. 3 on the revised draft agenda (*continued*)**E. MODIFICATION OF DEFAULT REMEDIES PROVISIONS AS REGARDS SPACE ASSETS (Article IX[(4)] of the preliminary draft Protocol / Article XVIII[(4)] of the alternative text (policy issues))**

11. In the light of the ongoing consultations of the working group on default remedies in relation to components and the implications of any conclusions reached by that working group on this Agenda item, it was considered appropriate to postpone any further discussions on this item until that working group had concluded its consultations.

F. LIMITATIONS ON REMEDIES (Article XVI(3) of the preliminary draft Protocol / Article XXVII(3) of the alternative text (policy issues))

12. Some delegations, while recognising the importance of public services being protected, expressed preference for an approach that avoided a detailed list of options and, rather, referred to the applicable domestic law of the relevant licencing State the question of limitations on the exercise of default remedies in relation to public services.

13. Some delegations spoke of the appropriateness of a more precise defining of the term "public service" being left to the applicable law.

14. Some other delegations, noting that it was critical for Contracting States to be able to define the limitations on the exercise of default remedies and citing in particular the need for transparency and clarity in describing those limitations, as well referring to the approach that had been taken in other instruments in the Cape Town Convention system, supported a clear possibility for States to limit the exercise of remedies in respect of space assets performing a public service.

15. Some delegations referred to a declaration mechanism as a means potentially better to define public service or the consequences of an interruption of a public service due to the exercise of default remedies.

16. There was some discussion of the appropriateness of a State other than the State receiving the public service having a role in determining the extent to which those services could be affected by the exercise of a default remedy.

17. The Chairman adjourned the session of the Committee at 5.05 p.m.