



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
Fourth session
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*Revised version of the preliminary draft Protocol to the Convention on
International Interests in Mobile Equipment on Matters specific to Space Assets*

*(as prepared by Professor Sir Roy Goode (United Kingdom) and Mr M. Deschamps (Canada),
as Co-chairmen of the Drafting Committee - to reflect the conclusions reached by
the Committee of governmental experts during its third session,
held in Rome from 7 to 11 December 2009, and to incorporate drafting improvements -
and as reviewed by the Drafting Committee):*

Comments

*(submitted by Governments, Organisations and representatives of the international
commercial space, financial and insurance communities)*

INTRODUCTION

Subsequently to the comments on the revised preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets as proposed to the Drafting Committee by Sir Roy Goode (United Kingdom) and Mr M. Deschamps (Canada), as Co-chairmen of the Drafting Committee, to reflect the conclusions reached by the Committee of governmental experts at its third session, held in Rome from 7 to 11 December 2009 (C.G.E./Space Pr./4/W.P. 3) (hereinafter referred to as the *revised preliminary draft Protocol*), reproduced in C.G.E./Space Pr./4/W.P. 4 rev., the UNIDROIT Secretariat received additional comments from the Government of Spain. This paper reproduces these additional comments hereunder.

COMMENTS AND PROPOSALS SUBMITTED BY GOVERNMENTS AND GOVERNMENT DELEGATIONS

Spain

In the pursuit of a commercially viable Space Protocol, consistent with international Outer Space law, close attention should be paid to the opinion of industry and financial

institutions. Legal certainty and respect for the legitimate expectations of the parties as well as simplicity in the regulation is crucial. In this connection:

- The current wording of the public service limitation on the exercise of remedies introduces plenty of uncertainties that will probably lead the parties to litigation every time this clause is invoked. Furthermore, this clause is, in our opinion, unenforceable by domestic courts, because they would have to adjudicate as to the rights of third countries.
- The inclusion of assets “intended to be launched into space” in the sphere of application of the revised preliminary draft Protocol may give rise to complex conflicts with domestic law. In this case, the creditor does not need an international instrument, because the ordinary default remedies provided by domestic law are available and more suitable.
- The upgrading of the rights of insurers (purely contractual) established by Article IV (5) of the revised preliminary draft Protocol, creating a right of subrogation to the interest of the creditor whose debt has been discharged, is unsound. This right of subrogation is likely to conflict with the rights of other creditors and even States found liable under the 1972 United Nations Convention on International Liability for Damage Caused by Space Objects.
- The granting of a licence, particularly orbits positions and frequencies, is a prerogative of States under domestic law. The obligation imposed on the holder by Article XVI is irrelevant in this regard and is a source of uncertainty.
- Article 42 of the Convention on International Interests in Mobile Equipment does not fit the peculiarities of the revised preliminary draft Protocol. This clause promotes forum shopping and disregards the rights and expectations of third parties and States, which could have a crucial interest at stake. Instead, the domicile of the debtor, as an exclusive forum, seems to be more convenient because:
 1. the State that provided the licences of the debtor is likely to be the forum State;
 2. the State that has public service concerns must have a contractual agreement with the debtor and is also likely to be the forum State;
 3. third parties with an interest in the transaction would also have a foreseeable forum to litigate.
- In the same way, the law applicable to the security agreement would be the law of the debtor.