



**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
Rome, 3/7 May 2010**

UNIDROIT 2010
C.G.E./Space Pr./4/W.P. 6
Original : English
3 May 2010

**SUMMARY REPORT
FOR
3 MAY 2010**

(prepared by the UNIDROIT Secretariat)

Opening of the session

1. Mr J.A. Estrella-Faria, Secretary-General of UNIDROIT, opened the fourth session of the 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 (hereinafter referred to as the *Committee*), held at the Headquarters of the Food and Agriculture Organization of the United Nations in Rome, at 9.53 a.m. on 3 May 2010, and welcomed the delegates.
2. Mr S. Marchisio (Italy), Chairman, drew attention to the documentation for the current session, notably the report of the previous session of the Committee (C.G.E./Space Pr./3/report rev.) and the 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 J.M. Deschamps (Canada), as Co-chairmen of the Drafting Committee - to reflect the conclusions reached by the Committee at its third session, held in Rome from 7 to 11 December 2009, and to incorporate drafting improvements - and as reviewed by the Drafting Committee) (C.G.E./Space Pr./4/W.P. 3 rev.) (hereinafter referred to as the *revised preliminary draft Protocol*).

Agenda Item No. 1 on the revised draft agenda: Adoption of the Agenda

3. The revised draft Agenda (C.G.E./Space Pr./4/W.P. 1 rev.) was adopted by the Committee.
4. The Chairman invited delegates to make general comments.
5. Recognising the efforts by delegates of States, international Organisations and industry in developing the revised preliminary draft Protocol, one delegation observed that, given the concerns expressed by some members of the international commercial space, financial and insurance communities, it was concerned that the remaining unresolved issues facing the revised preliminary draft Protocol risked rendering the latter ineffective and, potentially, counterproductive. In this context, that delegation indicated that until industry problems had been resolved and an economic assessment had been made, further steps for transmitting this text to a diplomatic Conference should not be taken.

6. One delegation pointed out that the comments submitted by a satellite operator, whilst being a member of that delegation, did not reflect that delegation's views.

7. A number of delegations, whilst acknowledging that there were some outstanding issues which needed to be resolved, expressed the view that, following their own consultations with representatives of their own domestic commercial space sectors, the views that had previously been expressed by some members of the commercial space sector to the UNIDROIT Secretariat were not representative of the whole of that industry and that the revised preliminary draft Protocol had the potential to benefit those seeking financing for space assets, and in particular smaller operators and in raising private investment for applications beyond telecommunication satellites. These delegations were in favour of continuing the work of the Committee in preparing and finalising the revised preliminary draft Protocol.

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

8. Mr M.J. Stanford, Deputy Secretary-General of UNIDROIT, introduced this item on the Agenda. In particular, he proposed that the membership of the Drafting Committee agreed upon at the previous session be confirmed, namely: Canada, the People's Republic of China, France, Nigeria, the Russian Federation, Senegal, the United Kingdom and the United States of America.

9. In the light of the absence of the First and Second Deputy Chairmen of the Committee, the Government of Japan nominated Mr V. Kopal (Czech Republic) as Third Deputy Chairman to cover the eventuality of the Chairman's absence; this nomination was seconded by the Governments of the United Kingdom and the People's Republic of China and was carried. In the absence of Mr Marchisio, Mr Kopal was in the chair for the last part of the proceedings of the day.

Agenda Item No. 3 on the revised draft agenda: consideration of the 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 at its third session, held in Rome from 7 to 11 December 2009, and to incorporate drafting improvements - and as reviewed by the Drafting Committee (C.G.E./Space Pr./4/W.P. 3 rev.) (hereinafter referred to as the *revised preliminary draft Protocol*), *inter alia* in the light of the comments submitted by Governments, Organisations and representatives of the international commercial space, financial and insurance communities (C.G.E./Space Pr./4/W.P. 4):

10. The Chairman drew the attention of the Committee to the specific issues which had been identified at the previous session of the Committee as requiring further consideration.¹

A. The definition of "controlled" in relation to goods, technology, data or services to which Article XXVII(2) of the revised preliminary draft Protocol applies:

11. Sir Roy Goode, in his capacity of co-Chairman of the Drafting Committee, introduced the new definition of "controlled" found in the text of Article I(2)(a) of the revised preliminary draft Protocol. No comments were made and the new language was adopted.

B. The finding of more suitable language for the words "capable of being independently owned, used or controlled" in Article I(2)(l) of the revised preliminary draft Protocol:

12. Sir Roy Goode introduced the definition of space asset found in the text of Article I(2)(l) of the revised preliminary draft Protocol, noting in particular that the phrase "capable of being independently owned, used or controlled" was intended to prevent the registration of international interests in those

¹ C.G.E./Space Pr./4/ W.P. 2 rev., § 6.

components of a space asset which, once assembled or launched, lost their unique identity and became a part of the overall space asset. He further drew attention to the new phrase “without losing its distinct identity, such as a satellite, space station, satellite bus, transponder, module, space vehicle, launch vehicle or space capsule” which was intended further to clarify this point.

13. In addition to general support being expressed in favour of the current wording of Article I(2)(l), several issues and concerns were raised by delegations during the course of the discussion:

- there was concern that the definition should not unduly limit the application of the future Protocol to assets which financiers might find valuable as collateral for secured financing purposes in future;

- the effectiveness of the phrase “capable of being independently owned, used or controlled” in limiting the scope of the definition of “space asset”, the obtaining of financing during the pre-launch phase and in the exercising of default remedies;

- which type of assets in the pre-launch phase was intended to be covered by this definition; and

- the relationship between the definition of space asset and the criteria for the identification of a space asset for the purposes of registration in the future international registration system.

14. Several delegations noted the importance of an asset being distinctly identifiable, including during the course of manufacture and after being launched.

15. One observer stated that contracts for the manufacture or launch of a space asset provided for payment at an early stage in the life of a space asset and that the effectiveness of the envisaged Protocol would be greatly reduced if creditors could not register an interest in an asset that was still in its pre-launch phase.

16. It was agreed that the term “capable of being independently owned, used or controlled” should be maintained for the time being and that the delegation of the United Kingdom and the delegation of the United States of America would develop options which would be presented to the Committee on the definition of “space asset” later in the session when this issue was further discussed.

C. The taking of a decision regarding the words “including any such asset in course of manufacture or assembly” at present included in Article I(2)(l) of the revised preliminary draft Protocol inside square brackets:

17. Delegations raised a number of points; some stressed the importance of including those assets in the course of manufacture or assembly in order to permit the securing of financing during the period of time when manufacture and launch contracts were paid for, whilst another noted the concerns expressed by some representatives of the international commercial space, financial and insurance communities regarding the addition of another international legal regimen over assets in the course of manufacture or assembly, when such assets were already covered by domestic security regimes.

18. It was agreed that the phrase “including any such asset in course of manufacture or assembly” should be left in square brackets and referred to the Drafting Committee following consultation with the delegation of the United Kingdom and the delegation of the United States of America.

D. The taking of a decision regarding the instruments to be referred to in respect of the location of a space asset:

19. One delegation expressed concern over the use of the term “from which it is controlled” in Article I(3) and suggested replacing the term with a reference to the location of a mission operation

control centre. There was some support for this proposal but concern was expressed that this approach might create additional jurisdictional complications.

20. The same delegation expressed concern over the reference to the United Nations Convention on Registration of 1975 in Article I(3) and, instead, suggested a reference to the national registries of objects launched into outer space referred to in Article VIII of the United Nations Outer Space Treaty of 1967. This proposal received general support. However, one delegation favoured a reference to the location of an asset's mission operation control centre and the deletion of any reference to other legal instruments.

21. It was agreed that this provision would be left open for additional consideration during the session.

E. Consideration of the issue of choice of law in respect of rights assignments and rights reassignments

22. The proposed additional language in Article VIII(2) was adopted.

H. The question of the modification of the provisions of the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*) regarding default remedies, in particular, first, regarding whether the requirement of commercial reasonableness set forth in Article XVIII(2) of the revised preliminary draft Protocol and the qualification of "reasonable prior notice" laid down in Article XVIII(3) thereof should be subject to a declaration by a Contracting State or be free-standing provisions of the revised preliminary draft Protocol and, secondly, in the light of the ongoing consultations among members of the Informal Working Group on default remedies in relation to components

23. There were no comments made on these issues which were referred to the informal working group which had been established at the prior session of the Committee, namely: France, Germany, Italy, Japan, the United Kingdom and the United States of America and, on behalf of the international commercial space, financial and insurance communities, Ms C. Dubreuil (EADS Astrium), Mr O. Heinrich (BHO Legal), Ms M. Leimbach (Crédit Agricole) and Mr B. Schmidt-Tedd (German Space Agency). It was agreed that the Informal Working Group would meet following the discussions of the first day of the session and that this meeting would be open to all interested delegates.

F. Consideration of the priority between an assignee of debtor's rights under a rights assignment and an assignee under an assignment of rights deriving from the space asset but unconnected to an international interest:

24. One delegation made a proposal designed to deal with the concern that interests that might be taken in debtor's rights that were not connected to an international interest in a space asset would, therefore, not be able to be recorded in the future international registration system for space assets. It was agreed that those parties favouring the inclusion of such a provision regarding this issue should formulate a provision which would be put before the Committee the following morning.

G. Consideration of the policy implications of the duty of co-operation incumbent on the assignor to co-operate with the assignee for the transfer of its licence:

25. Some delegations suggested that it would be appropriate to make a reference to the applicable national law governing the transfer of a licence in this provision.

26. One delegation suggested that, because a creditor would most likely not operate an asset over which it was exercising its default remedies but, rather, would assign a third party to operate the asset for it, this provision should allow for the transfer of a licence to a body designated by the creditor rather than the creditor itself.

27. The Chairman adjourned the session of the Committee at 5.06 p.m.