



**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**

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**SUMMARY REPORT
FOR
7 May 2010**

(prepared by the UNIDROIT Secretariat)

Opening of the session

1. The Chairman opened the session at 9.56 a.m.

Agenda Item No. 3 on the revised draft agenda: consideration of the revised version of the preliminary draft Protocol: review of revised preliminary draft Protocol in general: *continued*

Article XXVIII

2. The Deputy Secretary-General reported the responses the Secretary-General had received from those Organisations that the Secretary-General had been asked by the Committee at its previous session to sound as to their interest in acting as Supervisory Authority of the future International Registry for space assets and, if so, the internal steps that such an Organisation would need to complete in order to be in a position to respond, at least in principle, to any invitation that might be addressed to it by the future diplomatic Conference so to act; these responses were detailed in a working paper laid before the Committee. ¹ This information was welcomed by several delegations.

3. The observer representing one of the Organisations in question indicated his Organisation's appreciation at being considered as a potential candidate, noting that the work of the Committee was being monitored closely by the Secretariat of his Organisation. He also reported that discussions were underway within his Organisation, an organ of which acted as Supervisory Authority of the International Registry established pursuant to another Protocol to the Cape Town Convention, on the question as to whether it would be appropriate for the body acting as Registrar of that Registry to be able to engage in activities other than the operation of that Registry.

¹ C.G.E./Space Pr./4/W.P. 5.

Agenda Item No. 3 on the revised draft agenda: consideration of the revised version of the preliminary draft Protocol: review of the work of the Informal Working Group on limitations on remedies

4. The Secretary-General introduced the discussion proposal that had emerged from the work accomplished at the session by the Informal Working Group on limitations on remedies.² He noted, in particular, that the Informal Working Group had invited the Committee to consider replacing the existing Article XXVII *bis* by the new discussion proposal.

5. Several delegations viewed the new discussion proposal as a positive step toward the goal of finding an acceptable solution on public service and indicated that they would be happy to make it the subject of further consideration by their Governments and consultations with their commercial space sectors. Some of these delegations supported the idea of replacing the existing Article XXVII *bis* by the new discussion proposal, arguing that to retain that Article as an option under the revised preliminary draft Protocol might lead to many of the concerns regarding public service that had been voiced in comments submitted in the period leading up to the session being repeated. Moreover, some delegations suggested that, even if the existing Article XXVII *bis* were retained, the focus of future negotiations should be the new discussion proposal.

6. However, several other delegations argued for the existing Article XXVII *bis* being retained in the revised preliminary draft Protocol alongside the new discussion proposal, as options for further consideration. Some of these delegations, moreover, took the view that its retention alongside the new discussion proposal need not preclude its amendment.

7. It was agreed that the existing Article XXVII *bis* should be retained alongside the new discussion proposal, as alternatives for consideration at the following session of the Committee.

8. One delegation proposed that the Committee should consider a national security limitation on remedies, in view of the fact that a Government's role in national security and international relations would not be covered by a public service limitation. This proposal was favoured by several delegations. However, several other delegations indicated that they were not in favour of addressing national security within the future Protocol, because of potential complications that would necessarily delay the work of the Committee. It was suggested by one delegation that this issue might be addressed in the preamble.

Agenda Item No. 3 on the revised draft agenda: consideration of the revised version of the preliminary draft Protocol: review of the work of the Drafting Committee: *continued*

9. The co-Chairman of the Drafting Committee introduced the amendments to the revised preliminary draft Protocol that had been made by that Committee to reflect the conclusions reached by the Committee during consideration of the Drafting Committee's interim report.

10. A propos of Article 1(3), one delegation noted that the reference to Article 2(2)(n) of the Cape Town Convention should be a reference to Article 1(2)(n) and that the phrase ", or territorial unit of a Contracting State," should be deleted in each of the three Alternatives, as being redundant in the light of Article XXXVIII of the revised preliminary draft Protocol. It was so agreed.

Agenda Item No. 3 on the revised draft agenda: consideration of the revised version of the preliminary draft Protocol: review of the work of the Informal Working Group on default remedies in relation to components

11. The Secretary-General introduced the work that had been accomplished during the session by the Informal Working Group on default remedies in relation to components. He reported that significant

² C.G.E./Space Pr./4/W.P. 13.

progress had been made, though no solution had yet been reached, and indicated his belief that this progress was such as to serve as a firm basis for the finding of an acceptable solution in future. In particular, he pointed out that the Informal Working Group had agreed that, while the future Protocol had to provide legal certainty, it was not desirable for it to become locked into a particular system for the determination of those assets that should qualify for registration in the future International Registry for space assets; in this connection, he noted that the Informal Working Group saw the regulations to be made or approved by the Supervisory Authority pursuant to the future Protocol as being able to play a role in providing the desirable measure of flexibility regarding the establishment of identification criteria for the purposes of the registration of international interests in assets that might become valuable to creditors in future. He indicated, in addition, that the Informal Working Group had agreed that for individual components to be registrable in the future Registry, it would be necessary that the sum total of such components should correspond to the entirety of the space asset as a whole and not allow for an inflation of international interests in such assets without value, so as to avoid gaps in the information available in the future Registry to creditors.

12. Several delegations that had served on the Informal Working Group noted their satisfaction at the progress made and indicated that they shared the views expressed by the Secretary-General.

Agenda Item No. 7 on the revised draft agenda: any other business

13. One delegation proposed two amendments to the revised preliminary draft Protocol designed to reflect the fact that two provisions found in the Cape Town Convention, namely Articles 50 and 54(1), were not of obvious relevance to space assets and had, therefore, the potential to create difficulties if their application to space assets were not specifically excluded. The delegation in question, therefore, tabled a proposal for a new Article XXXVII *bis* and a new Article XXXVIII *bis*, designed specifically to indicate that Articles 50 and 54(1) of the Cape Town Convention did not apply to space assets.

14. Several delegations indicated that they would need time to consider the implications of such a proposal. It was, accordingly, agreed to postpone discussion of this proposal for the time being.

Agenda Item No. 5 on the revised draft agenda: future work

15. The Chairman recognised that, in view of the work outstanding on several issues – in particular limitations on remedies, default remedies in relation to components and the definition of space assets – a fifth session of the Committee would be necessary before the revised preliminary draft Protocol could be considered ready for transmission to a diplomatic Conference of adoption.

16. The Secretary-General confirmed this assessment, adding that, in the light of the situation obtaining with regard to resources, it would not be possible for the Secretariat to convene such a fifth session before January 2011. However, he noted that this did not mean that work on the revised preliminary draft Protocol should be put on hold and, accordingly, recommended the holding of intersessional consultations, and in particular that the Informal Working Groups should meet in October 2010.

17. This proposal was endorsed by a number of delegations, which also recorded their appreciation of the work that had been accomplished and suggested that the intersessional work advocated by the Secretary-General include consultations with representatives of the commercial space sector, in particular with a view to building on the progress achieved by the Committee at the session and ensuring timely completion of the planned Space Protocol.

Agenda Item No. 6 on the revised draft agenda: review of the report

18. The Report for the first four days of the session was reviewed with a number of amendments. It was agreed that the report for 7 May 2010, once prepared by the Secretariat, be approved by the Chairman, on behalf of the Committee.

Closure of the session

19. The Chairman closed the session at 4.30 p.m.