



**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
Fifth session
Rome, 21/25 February 2011**

UNIDROIT 2011
C.G.E./Space Pr./5/W.P. 22
Original: English
24 February 2011

**SUMMARY REPORT
FOR
24 FEBRUARY 2011**

(prepared by the UNIDROIT Secretariat)

Opening of the session

1. The Chairman opened the session at 10.20 a.m.

Agenda Item No. 4 on the draft agenda: consideration of the question of the Supervisory Authority of the future international registration system for space assets

2. The Deputy Secretary-General recalled that at the last session of the Committee, the possibility of either the International Telecommunication Union (I.T.U.) or the International Civil Aviation Organization (I.C.A.O.) being designated as the future Supervisory Authority for the International Registry for space assets was discussed. He recalled that in a communication from the I.T.U. Head of Legal Affairs Unit, Mr A. Guillot, I.T.U. had manifested its continuing keen interest in the project and noted that the question of I.T.U. acting in the role of Supervisory Authority for space assets was still very interesting for his Organisation. He added that it would be important for the new Director of the Radio Telecommunication Bureau to be in support of such a proposal but, in the light of the fact that he had only just taken office at the Bureau, time would be needed for him to be advised on the status of this issue before further consideration could be given. This statement was confirmed by the observer from the I.T.U., who added that his Organisation was particularly grateful for the decision taken at the current session permitting the designation of the future Supervisory Authority to take place after, and not necessarily at the future diplomatic Conference.

3. The Deputy Secretary-General also noted that, at the last session of the Committee, the observer from I.C.A.O. had indicated I.C.A.O.'s appreciation at being considered a potential candidate for the role of Supervisory Authority for space assets and that the Committee's work was being closely monitored by his Organisation. He had indicated that discussions were underway within I.C.A.O. regarding this possibility and, in view of the fact that the I.C.A.O. Council was already acting as Supervisory Authority under the Aircraft Protocol, one issue being considered was whether it would also be appropriate for the body acting as Registrar of the International Registry for aircraft objects, Aviareto, to be able to engage in activities other than the operation of that Registry. The Deputy Secretary-General added that, earlier in the week, the Director of the Legal Bureau of I.C.A.O., Mr D. Wibaux, had indicated that he could not, at this stage, add anything to

what he had said at the last session of the Committee and that I.C.A.O. Secretariat was neither for nor against I.C.A.O. being assigned the functions of Supervisory Authority but that, if I.C.A.O. were to be asked to do so, it would be for the I.C.A.O. Council to make such a decision, bearing in mind, in particular, that the functions being exercised by the I.C.A.O. Council in respect of the International Registry for aircraft objects were carried out on a cost-recovery basis. The Deputy Secretary-General suggested, therefore, that if the Committee wished I.C.A.O. to be considered as a potential candidate for the role of Supervisory Authority, it would be for the representatives of States serving on the Committee to conduct the necessary consultations in countries with the experts responsible for all matters concerning the International Registry for aircraft objects.

4. One delegation noted that the cost-recovery framework adopted by I.C.A.O. had not, in practice, involved substantial cost for the normal operation of the Supervisory Authority's functions. He noted that I.C.A.O. as Supervisory Authority was assisted by an Advisory Board of State representatives and a commission of industry and technology experts, which enabled I.C.A.O. to find expedient solutions to evolving issues regarding the International Registry for aircraft objects.

Agenda Item No. 3 on the draft agenda: Consideration of the revised preliminary draft Protocol as it emerged from the fourth session of the UNIDROIT Committee (C.G.E./Space Pr./5/W.P. 3): continued

Review of the report of the Drafting Committee

5. The co-Chairman of the Drafting Committee presented the proposals by the Drafting Committee, illustrating the progress made by the Drafting Committee, over the course of the current session of the Committee, in implementing the decisions taken by the Committee.

Re: Article I(2)(e)

6. One delegation asked that time be allowed so that the new formulation of this provision could be considered carefully.

Re: Article I(2)(h)

7. It was agreed that this provision should read "... following a constructive total loss of the space asset".

Re: Article I(2)(l)

8. It was wondered whether the square brackets around the phrase "in respect of which a registration may be effected in accordance with the regulations" should be removed. One delegation noted, however, that it still had some concerns regarding this provision and, in the meantime, it would prefer to leave the square brackets in place. It was agreed that all square brackets in Article I would be left in place for the time being.

9. One delegation recalled that, during the October 2010 meeting of the Informal Working Group on default remedies in relation to components, a proposal had been made to replace the phrase "intended to be launched into space" with the phrase "designed for use in space" but that this issue had been left open for discussion by the Committee at its current session (C.G.E./Space Pr./5/W.P. 5, § 26). It was decided that the word "intended" should be replaced by the word "designed".

Re: Article I(3)(a)

10. One delegation suggested that this provision should read "a Contracting State which registers the space asset for the purposes of..."

Re: Article II(3)

11. One delegation indicated that, whilst it appreciated the drafting changes to Article II(3) of the revised preliminary draft Protocol, it was not certain that those changes sufficiently addressed the question of a single object that might have dual uses as both an aircraft and a space asset and that consideration should be given to a rule applying the revised preliminary draft Protocol in accordance with the manner in which the asset was used. Another delegation noted that it would be very important that parties to an agreement would be able to understand which Protocol would apply prior to the closing of the agreement and that the proposed amendment would make this very difficult, particularly in relation to an asset which might be used in different ways from time to time.

Re: Article IV(4)

12. One delegation queried whether, in the light of the new definition of "title salvage", this provision might not read "... the acquisition of title salvage is treated as a sale".

Re: Article XXI

13. One delegation indicated that the references to paragraph 7 that appeared in Article XXI, Alternative A paragraphs (2) and (3) should be replaced by references to paragraph 8.

Re: Article XXVII(3)

14. In relation to Article XXVII (3), one delegation suggested that the drafting should be reviewed to address a grammatical issue. The co-Chairman of the Drafting Committee indicated that the issue could be addressed by deleting the ultimate comma in the paragraph.

15. The Secretary-General noted that one of the remedies available to a creditor under Article 8(1)(c) of the Convention was the collection or receipt of income or profits and that the Committee might wish to reflect on the issue whether it was intended that the creditor should be precluded from exercising the Article 8(1)(c) remedy even if the exercise of that remedy would not interrupt the asset's continuing availability for the provision of the relevant public service.

16. One delegation indicated that the issue raised by the Secretary-General warranted further discussion by the Committee. Another delegation stated that Article XXVII (3) should not preclude a creditor from collecting income or profits and that, whilst it agreed with another delegation's observation that it could be argued that an amendment to the paragraph would not be necessary in order to achieve that result, it was important that the preliminary draft Protocol left no room for doubt as to the extent of creditor's rights.

Re: Article XXVII(4)

17. In relation to Article XXVII (4), one delegation indicated that its recollection was that the Committee had agreed to refer to the Drafting Committee the issue of removing the obligation of the Registrar to make notifications, either by deleting the paragraph or by limiting the Registrar's notification obligation to the extent of any notification obligation set out in the regulations. Some delegations agreed that care should be taken in relation to any extension of the Registrar's duties

that might involve additional potential liability and insurance costs. Other delegations noted that it would be important that the creditor, debtor and public service provider were informed of the registration of a notice by the creditor.

17. One delegation suggested that this objective would be achieved if the paragraph were amended to provide that the creditor should have an obligation to notify the debtor and public service provider of the registration of a notice by the creditor, such notification to be provided on the same day as the registration. The Committee supported this proposal.

18. The Chairman adjourned the session at 4.57 p.m.