



**GOVERNING COUNCIL**  
**86<sup>th</sup> session**  
**Rome, 16-18 April 2007**

UNIDROIT 2007  
C.D. (86) 8(c)  
Original: English  
March 2007

**Item No. 8(c) on the agenda: International interests in mobile equipment – preliminary draft Protocol to the Cape Town Convention on Matters specific to Space Assets**

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Steps needed to permit the resumption and timeous completion of the intergovernmental negotiations on the preliminary draft Protocol</i>
<i>Action to be taken</i>	<i>Subject to the outcome of the New York Forum, reconvening of the Committee of governmental experts, with an accelerated timetable for completion of the project</i>
<i>Related document</i>	<i>Summary report on the RBS Forum (London, 24 April 2006)</i>

**DISCUSSION LEADING PARAMETERS AS PROPOSED BY THE SECRETARIAT**

<b>Priority</b>			
	high	medium	low

**I. Strategic Plan**

Yes, because of (1) UNIDROIT's unique position to carry out work on specific areas of secured transactions (cf. Strategic Objective No. 1) and, (2) its potential benefits for developing countries and economies in transition (cf. Strategic Objective No. 7)

**II. Work Programme 2006-2008**

Yes

**III. Current assessment**

- Recent feedback from member States

Varied, from **high** (Czech Republic, France, Germany, Italy, Nigeria, Russian Federation, South Africa and United States of America) to **low** (Canada and United Kingdom)

- Recent feedback from industry and other private stakeholders  
Varied, from **high** (manufacturers and financiers as well as Organisation for Economic Co-operation and Development, which recommended it under the *Space 2030 project*) to **medium-low** (operators)

<b>On time</b>			
	yes	slightly delayed	no

Timeframe determined by CGE/Governing Council/General Assembly

Timeframe to be determined at this session

<b>Problems to be overcome</b>	<ol style="list-style-type: none"> <li>1. Securing of more active industry support for the Space Working Group</li> <li>2. Securing of responses from Governments participating in the Committee of governmental experts on “public service”</li> <li>3. Securing of participation by Governments in the Sub-committee on the international registration system</li> </ol>
<b>Potential benefits and beneficiaries</b>	<p><i>Benefits:</i> through extension of the advantages of asset-based financing to commercial space activities, an anticipated lowering in the cost of such financing and, thereby, the wider availability of space-based services in developing countries and countries in transition to a market economy</p> <p><i>Beneficiaries:</i> satellite manufacturers, financial institutions, smaller satellite operators, developing economies and economies in transition to a market economy</p>
<b>Staffing implications</b>	One officer and one secretary (part-time) (almost certainly shortly to be supported, for one year, by a research assistant to be funded externally)
<b>Budget implications</b>	Funding (inclusive of both premises and interpretation) for one session of the Committee of governmental experts in 2007 ( <i>circa</i> € 17,000) and another session in 2008 ( <i>circa</i> € 17,000) and a diplomatic Conference either at the end of 2008 or early in 2009 (to be hosted and, accordingly, funded by a member State, if possible with support from the private sector)
<b>Recommendations/ Guidance sought/ Decisions to be taken/ Alternatives?</b>	Depending on success of New York Forum, reconvening of the Committee of governmental experts with a firm timetable for completion of the project and the allocation of the necessary resources. Place (temporarily) on hold only if New York Forum unsuccessful or other dramatic change in assessment.

## BACKGROUND

### *(a) Problems holding up prosecution of intergovernmental consultation process*

1. At its 85<sup>th</sup> session, the Governing Council was informed of the problems that threatened to hold up progress on a project that has excited considerable interest among Governments from all over the world, some forty of which participate in the UNIDROIT Committee of governmental experts for the preparation of a draft Protocol to the Cape Town Convention on Matters specific to Space Assets (hereinafter referred to as *the Committee*). These problems essentially consisted in, first, the need to find the active support from representatives of the international commercial space and financial communities necessary to enable the Space Working Group to respond adequately to the large body of assignments given to it by the Committee at its second session, held in October 2004, as indeed over the remainder of the intergovernmental consultation process, secondly, the failure to date by Governments, apart from a relatively small number of exceptions, to provide the responses on the vexed question of “public service” requested of them by the Committee at that session and, thirdly, the almost total failure by Governments to participate in the work, by electronic means, of the Sub-committee of the Committee on the future international registration system for space assets (hereinafter referred to as *the Sub-committee*) established by the Committee at its second session.

2. These problems were exacerbated by the general unavailability of Mr Stanford to deal with these problems in the manner that was required during the last quarter of 2004 and the whole of 2005 whilst he was acting as Acting Deputy Secretary-General. And there can be no doubt that the uncertainty caused by his unavailability to devote himself to these problems greatly contributed to the failure by Governments either to respond on the question of “public service” or to participate in the Sub-committee.

### *(b) Continuing interest in project*

3. The interest generated by this project has, however, in no way abated in the interim. The member Governments most interested in the project have been conspicuous in their pressure for it to continue as expeditiously as possible. For instance, the project continues to feature prominently on the agenda of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space (U.N./COPUOS). Mr Stanford reported to the Legal Subcommittee at its 45<sup>th</sup> session, held in Vienna from 3 to 13 April 2006 and is due to report to it again at its forthcoming 46<sup>th</sup> session, due to be held in Vienna from 26 March to 5 April 2007. Likewise, the project continues to be eagerly followed by the international commercial space and financial communities. Thus it was that the Royal Bank of Scotland hosted a Forum in London on 24 April 2006, designed to discuss the most effective means of enabling these communities to benefit from the Cape Town regimen, and that a broad swathe of representatives of such communities (in particular, ABN Amro, Alcatel Alenia Space France, Alcatel Alenia Space Italia, Arianespace, BNP Paribas, Boeing Capital Corporation, CALYON Groupe Crédit Lyonnais, Commerzbank, EADS, EADS Astrium, Eutelsat Communications, Galileo Joint Undertaking, the German Space Agency, Hispasat, Intelsat, Royal Bank of Scotland, SES Astra, SES Global, Telespazio and Virgin Galactic) actively participated in the Forum. Equally, UNIDROIT has been asked to co-sponsor the forthcoming 14<sup>th</sup> International Space Insurance Conference, to be held in Milan on 22 and 23 March 2007.

### *(c) Proposed solution to problems*

4. As will be seen from the summary report on the RBS Forum, the latter event permitted wide-ranging discussion among both the aforementioned representatives of the international commercial space and financial communities and key Governments participating in the work of the Committee

(China, France, Germany, Italy, Nigeria, the Russian Federation, the United Kingdom and the United States of America) of the key outstanding issues remaining to be resolved and of the most appropriate manner of solving them. It was recognised at the Forum that it would be premature to reconvene the Committee until such time as the international commercial space and financial communities had pledged more solid support for the project, in the first instance through the Space Working Group. The representatives of these communities gathered in London indicated their willingness to provide such support, whether through sponsorship of the Space Working Group, in certain cases, or, more generally, through the provision of comments and attendance of meetings, where necessary, on the understanding, however, that this commitment should be seen as limited in time: in effect, this pledging of support was made conditional on the project being moved forward to completion as expeditiously as possible.

5. Forum participants having taken stock of the key outstanding issues, it was agreed that further intersessional work on these issues was, however, required before the Committee could be reconvened. To this end, Professor Sir Roy Goode, with assistance from two American colleagues, has prepared a paper illustrating the way in which the sphere of application of the Cape Town Convention would need to be extended, through the future Space Assets Protocol, in order to accommodate debtors' rights and related rights in respect of space assets. Secondly, faced by the continuing paucity of responses from Governments on the question of "public service", the Secretariat has circulated a questionnaire among major financial institutions with a view to ascertaining the point of view of these key players on this issue and, in the light of both the limited number of responses received from Governments and the considerable body of responses received from financial institutions, has prepared an interim paper analysing the different options open to the Committee on this crucial issue. Thirdly, again faced by the continuing lack of participation by Governments in the electronic work of the Sub-committee, the Secretariat has circulated a questionnaire, essentially among manufacturers, designed to elicit ideas, in particular on the basis of existing practice, regarding the criteria that might most suitably be employed for the identification of space assets in the International Registry for such assets to be established under the future Protocol (hereinafter referred to as *the future International Registry*), one of the main issues referred to the Sub-committee, and, in the light of the comments provided by Governments in the context of the work of the Sub-committee and responses to this questionnaire, has prepared another interim paper analysing the different options open to the Committee on this issue too. Fourthly, two bodies have come forward to indicate their interest in running the future International Registry, namely the Government of the Isle of Man and Aviareto, the body currently running the International Registry for aircraft objects. Another interim paper is to be prepared by the Secretariat on this issue.

6. The Secretariat has backed up this intersessional work with strenuous efforts designed to procure additional support for the Space Working Group. These efforts have thus far yielded three new sponsors for the Space Working Group, namely Alcatel Alenia Space France, the Galileo Joint Undertaking and the German Space Agency. Negotiations continue with a number of other key players, in particular SES, with a view to securing additional possible sponsorships.

7. Conscious of the importance of having a member Government sufficiently interested in the end-product of its work on this project to be prepared to host a diplomatic Conference for adoption of the resultant draft Protocol, the Secretariat is also pleased to inform the Governing Council that, at its 60<sup>th</sup> session, held in Rome on 1 December 2006, the UNIDROIT General Assembly was informed by the representative of the Russian Federation that his Government was favourably considering the hosting of the diplomatic Conference in the event of the Committee's work concluding successfully.

8. In these circumstances, the Secretariat and the Space Working Group have considered it appropriate to organise another Forum, this time to be held in New York and to be hosted by Milbank, Tweed, Hadley & McCloy, the law firm of Mr Peter D. Nesgos, co-ordinator of the Space Working Group, for the purpose of considering all this intersessional work and the most appropriate action to be taken to bring work on the future Protocol to a successful conclusion as expeditiously as possible. Again, both key Governments involved in the work of the Committee and representatives of the international commercial space and financial communities will be invited to participate in this Forum. The intention is to hold the Forum towards the end of May or early in June 2007 and, should the Secretariat's sound preparation for the Forum provide the necessary basis for a successful result, then to reconvene the Committee in Rome in Autumn 2007 for a five-day third session. The Secretariat believes that, in order to develop a consensus within the Committee capable of providing the necessary basis for a successful diplomatic Conference, it would be advisable to envisage the holding of a further five-day final session in Spring 2008.

#### **ACTION TO BE TAKEN**

9. *The Secretariat would, accordingly, invite the Council, subject to the success of the New York Forum, to approve the reconvening of the Committee, on the basis of an accelerated timetable for completion of the project.*