



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONALE POUR L'UNIFICATION DU DROIT PRIVE

**DIPLOMATIC CONFERENCE FOR THE ADOPTION
OF THE DRAFT PROTOCOL TO THE CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT ON MATTERS SPECIFIC TO
SPACE ASSETS**

Berlin, 27 February / 9 March 2012

UNIDROIT 2012
DCME-SP – Doc. 41
Original: English
7 March 2012

**SUMMARY REPORT
FOR 6 MARCH 2012**

FOURTEENTH MEETING OF THE COMMISSION OF THE WHOLE

Item No. 8 on the Agenda: consideration of the draft Protocol (continued)

The Chairman opened the meeting at 10.30 a.m.

Re: Article XXVII - Limitations on remedies in respect of public service (continued)

The Chairman recalled that the joint proposal before the Commission contained a general rule in paragraph 3, which provided for a waiting period of three months before default remedies could be exercised against a space asset that would interrupt the provision of a public service, whilst adding a rule that would permit for a declaration by Contracting States at the time of ratification to opt for a waiting period of up to six months. It was further recalled that there had been broad agreement on this proposal on the previous day.

Some delegations expressed the opinion that, in view of the importance of ensuring the continuity of public services, a six month time-period was more reasonable and should be retained in the draft Protocol. These delegations proposed having six months as the default time-period in this provision whilst, conversely, allowing States to opt for a three-month time period by way of declaration.

Other delegations re-emphasised the objective of the Protocol, namely to facilitate asset-based financing. Those delegations felt that a six-month time-period would provide less incentive to make use of the draft Protocol. These delegations stressed the importance of keeping the language as previously proposed, namely to have three months as the default time-period with the ability to opt for a six-month time-period by way of declaration.

The Secretary-General suggested the taking of a neutral approach, not expressing any hierarchy between the options for either three months or six months as the time-period. At the same time, in order to preserve flexibility, it was proposed that a Contracting State should, at the time of ratification, acceptance, approval of, or accession to the future Protocol, specify by declaration a waiting period of not less than three months and not exceeding six months to be applied in this provision.

There was broad support for this proposal and it was adopted.

Re: draft Resolutions No. 1 and No. 2

The Executive Secretary introduced draft Resolution No. 1 relating to the setting up of the Preparatory Commission for the establishment of the International Registry for space assets (DCME-SP - Doc. 24) and draft Resolution No. 2 relating to the establishment of the Supervisory Authority of the International Registry for space assets (DCME-SP - Doc. 25).

One delegation proposed the inclusion in draft Resolution No. 1 of a cross-reference to draft Resolution No. 2 which would solidify the relationship between the two.

Some delegations were of the view that the reference to the "competent authorities" in draft Resolution No. 2 should be replaced by "governing body". The observer of the International Telecommunication Union (I.T.U.) found this proposal to be acceptable and it was so agreed.

One delegation proposed the inclusion of a paragraph that would take into account the possibility that the I.T.U. did not agree to become the Supervisory Authority and allow for the appointment of another body to act in that capacity. It was emphasised that the decision to appoint a Supervisory Authority should be taken by States owing to the financial and juridical implications. There was general agreement that candidates for Supervisory Authority were not limited to international Organisations.

One delegation proposed amending the fourth clause of draft Resolution No. 2 to read: "considering the desire of the Conference to invite the I.T.U. to consider becoming Supervisory Authority". This proposal found support among some delegations, although some preferred the current language.

Another delegation proposed adding the words "the Secretary-General of" after the word "representing".

It was agreed that this paragraph would read: "CONSIDERING the interest expressed at the Conference by the observer representing the International Telecommunication Union (I.T.U.) for the I.T.U. to consider becoming Supervisory Authority

The draft Resolutions were adopted in principle but were referred to the Drafting Committee.

Re: draft Resolution No. 3

The Reporter introduced draft Resolution No. 3 for the regulations of the International Registry for space assets (DCME-SP - Doc. 26). He suggested adding the words "so far as practicable" in the draft Resolution.

With this amendment, the draft Resolution was approved.

Re: draft Resolution No. 4

The Reporter introduced draft Resolution No. 4 relating to the provision of reasonable discounts on exposure rates to debtors by financing organisations (DCME-SP-Doc. 19 rev.). The delegation that had put forward this proposal emphasised the need formally to encourage benefits in favour of the debtor, as the draft Protocol contained numerous provisions that favoured the position of creditors but not so many favouring that of debtors. This was seen as being particularly important for developing countries which might receive discounts or rebates through the draft Protocol.

There was consensus that this draft Resolution, while not imposing any mandatory obligations on Contracting States, would encourage assistance for developing States.

One delegation proposed replacing the words “developing nations” with “developing countries”. It was so agreed.

Another delegation proposed substituting the words “negotiating States” with “Contracting States”. It was so agreed.

Re: draft Resolution No. 5

The Reporter introduced Draft Resolution relating to the Official Commentary on the Space Assets Protocol (DCME-SP-Doc.27).

The draft Resolution was approved without amendment.

Re: draft Final Provisions, Article E – Transitional provisions

One delegation proposed the exclusion from the application of the draft Protocol of those space assets that already existed at the time of the entry into force of the future Protocol, those that were under construction or those that were subject to binding contracts for construction prior to the entry into force of the future Protocol.

The majority of delegations expressed concern at the idea of placing such a considerable limitation on the scope of the draft Protocol. It was agreed that Article E should be retained as drafted.

Re: Draft Final Act

The Secretary-General introduced the draft Final Act (DCME-SP – Doc. 23). He pointed out that the purpose of the Final Act was to authenticate the draft Protocol and was distinct from the signing of the future Protocol itself.

The Executive Secretary noted that the draft Final Act was a work in progress and would be updated in the light of the final report of the Credentials Committee.

The Chairman adjourned the meeting at 1.40 p.m.

FIFTEENTH MEETING OF THE COMMISSION OF THE WHOLE

Item No. 8 on the Agenda: consideration of the draft Protocol (continued)

The Chairman opened the meeting at 4.25 p.m.

In the light of the imminent departure of the Chairman, one delegation nominated Mr V. Kopal (Czech Republic) Deputy Chairman of the Commission. This proposal was duly seconded and the Commission nominated Mr Kopal Deputy Chairman of the Commission.

Mr M. Deschamps (Canada) introduced the Report of the Drafting Committee to the Commission of the Whole (DCME-SP - Doc. 32).

The Reporter gave a brief account of the amendments that had been made to the text of the draft Protocol over the course of the diplomatic Conference.

The Secretary-General reported on the results of an informal working group held to discuss concerns relating to Article XXVI. He reported that one such concern discussed by that Informal Working Group was the relationship between the draft Protocol and national laws and regulations under which a State could prevent the transfer of an asset to certain individuals. There was agreement in the Informal Working Group that, rather than amending the draft Protocol, it had been agreed that a note should be included in the future Official Commentary that would indicate that, for the purposes of Article XXVI(3)(b), the protection of national security in some States could include the enforcement of laws and regulations that prohibit making assets or funds available in certain circumstances as those laws and regulations apply to their nationals or in their territory.

One delegation, whilst expressing its support for the language of the note agreed upon by the Informal Working Group, asked that an explanatory remark to this note be included in the future Official Commentary, pointing out that inclusion of this note in the Official Commentary was in no way meant to indicate that the situation under the Aircraft Protocol and Luxembourg Protocol was different but that it was simply an effort by the Conference to be clear and explicit on this particular point.

A delegation, speaking on behalf of all delegations participating in the Commission, expressed its sincere gratitude to the Chairman for his able and balanced leadership of the Commission of the Whole.

The Chairman adjourned the meeting at 5.10 p.m.