



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL 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**

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**DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS
IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS**

as established by the 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 at the conclusion of its fifth session, held in Rome from 21 to 25 February 2011, and authorised for transmission to a diplomatic Conference, for adoption, by the UNIDROIT Governing Council at its 90th session, held in Rome from 9 to 11 May 2011:

COMMENTS

(submitted by Governments, Organisations and representatives of the international commercial space, financial and insurance communities)

INTRODUCTION

Subsequently to the comments on the text of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (DCME-SP – Doc. 3) (hereinafter referred to as the *draft Protocol*) contained in DCME-SP – Doc. 6 and 6 Add. 1, the UNIDROIT Secretariat received additional comments from the Government of France. This paper reproduces these additional comments hereunder.

COMMENTS AND PROPOSALS SUBMITTED BY GOVERNMENTS

France

Re: fourth clause of preamble

This clause currently reads as follows:

“MINDFUL of the established principles of space law, including those contained in the international space treaties of the United Nations and the instruments of the International Telecommunication Union,”.

We would propose replacing this clause by the following text:

“RECALLING, for the carrying out of the transfers contemplated by this Protocol, the preeminence of State Party rights and obligations under the international treaties of the United Nations by which they are bound, in particular Articles VI to VIII of the Treaty on Principles Governing the Activities of State in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, signed at London, Moscow and Washington, D.C. on 27 January 1967, the Convention on International Liability for Damage Caused by Space Objects, signed at London, Moscow and Washington, D.C. on 29 March 1972 and the Convention on Registration of Objects Launched into Outer Space, signed at New York on 14 January 1975, as also the instruments of the International Telecommunication Union relating to orbital positions of satellites and their associated frequencies,”.

Re: Article I(2)(a)

We would propose amending this sub-paragraph to read as follows:

“‘Debtor’s rights’ means rights to payment due or to become due to a debtor by reason of the possession, disposition or operation of a space asset, including insurance proceeds following the loss of the asset, or any other right that he may dispose of in relation to the space asset;”.

Re: Article I(2)(b)

We would propose that this sub-paragraph be deleted.

Re: Article I(2)(f)

We would propose amending this sub-paragraph to read as follows:

“‘Obligor’ means a person from whom payment or other performance is due or to become due in favor of the debtor under the security agreement;”.

Re: Article I(2)(h)

We would propose amending this sub-paragraph to read as follows:

“[‘revenue salvage’ means an interest in debtor’s rights conferred on the insurer of the related space asset by contract or operation of law upon payment of proceeds following a constructive total loss of the space asset;]”.

Re: Article I(2)(l)

We would propose amending this sub-paragraph to read as follows:

“‘space asset’ means any man-made uniquely identifiable asset in space or which has been the subject of an irreversible attempted launch;”.

Re: Article I(2)(m)

We would propose amending this sub-paragraph to read as follows:

“‘title salvage’ means title to a space asset conferred on the insurer of a space asset by contract or operation of law upon payment of proceeds following a constructive total loss of the space asset;”.

Re: Article II(1)

We would propose amending this paragraph to read as follows:

“The Convention shall apply regarding space assets, rights assignments and rights reassignments in accordance with the terms of this Protocol.”

Re: Article II(3)

We would propose amending this paragraph to read as follows:

“Nothing in this Protocol affects the application of the Protocol to the Convention on Matters specific to Aircraft Equipment to an object designed predominantly for use in air space.”

Re: Article III

We would propose that this Article, which currently reads:

“The return of a space asset from space does not affect an international interest in that asset”,
be deleted.

Re: Article IV(2)

We would propose that this paragraph be deleted.

Re: Article IV(4)

We would propose amending this paragraph to read as follows:

“For the purposes of this Protocol, the transfer of a space asset by way of title salvage is treated as if it were a sale, subject to compliance with the governmental authorisations granted under the international treaties mentioned in the preamble”.

Re: Article IV(5)

We would propose amending this paragraph to read as follows:

“Nothing in the Convention or this Protocol affects any right of an insurer under the applicable law or contract to salvage”.

Re: Article V(2)

We would propose amending this paragraph to read as follows:

“A contract of sale transfers the interest of the seller in the space asset to the buyer according to its terms and subject to the operating authorisations granted by the Governments concerned in respect of the said space asset”.

Re: Article VII(1) (Identification of space assets)

We would propose adding a new sub-paragraph (e) to this paragraph to read as follows:

“the licences and other governmental authorisations, current or to be granted, in respect of the space asset that are capable of compelling a transfer under this Protocol”

or, making it clear in a final sentence that:

“this description does not cover the governmental authorisations, current or to be granted, in respect of the space asset that are capable of compelling a transfer under this Protocol”.

It would also be a good idea to specify the Authority that determines the admissible criteria of space assets and the types of space asset. This could be the registry authority. “The Supervisory Authority” mentioned in Article XXVIII is responsible for establishing the admissible classes of criteria and type of space assets.

Re: Article IX

We would propose amending the chapeau of this paragraph to read as follows:

“A transfer of debtor’s rights is constituted where, after the granting of the governmental authorisations required, it is in writing and enables”.

Re: Article X(1)

We would propose amending this paragraph to read as follows:

“A rights assignment made in conformity with Article IX transfers to the creditor the debtor’s rights the subject of the rights assignment to the extent permitted by the law applicable to the assignment and the operating authorisations granted by the appropriate States in respect of the relevant space asset”.

Re: Article X(2)

We would propose amending this paragraph to read as follows:

“Subject to paragraph 3, the law applicable to the assignment shall determine the defences and rights of set-off available to the obligor against the creditor”.

Re: Article XIII(1)

We would propose amending this paragraph to read as follows:

“Subject to paragraph 2, a recorded rights assignment has priority over any other transfer of debtor’s rights except a rights assignment previously recorded and any right to salvage contemplated by Article IV(5)”.

Re: Article XVII(1)

We would propose amending this paragraph to read as follows:

“Article 8(3) of the Convention shall not apply to space assets. In the case of space assets, the default remedies given by the Convention shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable”.

Re: Article XVII(3)

We would propose deleting this paragraph.

Re: Article XIX

We would propose amending this Article to read as follows:

“The parties may specifically agree for the placement of command codes and related data and materials with another person, to the extent that the party holding them has power to dispose of them, in particular having regard to public policy legislation governing the transfer of technology, in

order to afford the creditor the opportunity to take possession of, establish control over or operate the space asset”.

Re: Article XX(4):

We would propose amending this paragraph to read as follows:

“Without prejudice to the governmental authorisations required, ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free, up to the amount of the sums due to the creditor, from any other interest over which the creditor’s international interest has priority under the provisions of Article 29 of the Convention”.

Re: Article XXVII(3):

We would propose amending this paragraph to read as follows:

“A creditor holding an international interest in a space asset that is the subject of a public service notice may not, in the event of default, exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol that would make the space asset unavailable for the provision of the relevant public service prior to the expiration of a period of six months from the date of registration by the creditor of a notice in the International Registry and notification of the registration to the debtor and the public services provider”.

Re: Article XXVII(4):

We would propose amending this paragraph to read as follows:

“The creditor shall notify the debtor and the public services provider of, in addition to the registration, the date of expiry of the six-month period”.

Re: Article XXVIII(1):

We would propose amending this paragraph to read as follows:

“The Supervisory Authority shall be designated at the Diplomatic Conference to Adopt a Space Assets Protocol to the Cape Town Convention, provided that such Supervisory Authority is able and willing to act in such capacity. Failing this, the Supervisory Authority shall be designated at a subsequent session of the General Assembly of UNIDROIT after it has been established that it is able and willing to act in such capacity”.