



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**

Berlin, 27 February / 9 March 2012

UNIDROIT 2012  
DCME-SP – Doc. 11  
Original: English  
29 February 2012

**SUMMARY REPORT  
FOR 27 FEBRUARY 2012**

**FIRST MEETING OF THE PLENUM**

**Item No. 1 on the provisional Agenda: Opening of the Conference**

1. Mr J.A. Estrella Faria (Secretary-General of UNIDROIT), in the capacity of Secretary-General and Temporary President of the diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (hereinafter referred to as the *draft Protocol*), opened the Conference at the Federal Foreign Office in Berlin at 10.15 a.m.
2. Dr B. Grundmann (State Secretary, Federal Ministry of Justice) emphasised the need for an international regulatory framework to provide essential legal certainty for the international commercial space sector. In particular, she recalled the success of the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Cape Town Convention*) and the Protocol to the Cape Town Convention on Matters specific to Aircraft Equipment (hereinafter referred to as the *Aircraft Protocol*), one of the most successful international legal regimes in the past decade, noting in particular the high number of ratifications and the decrease in acquisition costs.
3. Mr F.J. Kremp (Deputy Director-General responsible for Legal and Consular issues including Migration, Federal Foreign Office) noted the economic and social importance of the draft Protocol as providing another non-obligatory option for the financing of space assets. He noted that adoption of the draft Protocol would help further to open up space markets, which had previously mostly been the prerogative of Governments.
4. Dr S. Halldorn (Director-General, Technology Policy, Federal Ministry of Economics and Technology) noted that the commercial space sector needed new and innovative mechanisms for financing space assets to stimulate competition, which would lead, in turn, to more innovation and creativity in this sector. He recalled in particular the potential benefits that could be passed on to small- and medium-sized enterprises, which constituted an indispensable basis for the development of the space industry, through an instrument like the draft Protocol.
5. Mr Estrella Faria, having expressed his gratitude to the Government of the Federal Republic of Germany for hosting the diplomatic Conference, drew attention to the similarity of the provisions of the draft Protocol to those of the Aircraft Protocol and the Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock (hereinafter referred to as the

*Luxembourg Protocol*). He stressed that the objective of the adoption of the draft Protocol was to provide a uniform and predictable legal regimen that would facilitate asset-based financing for space assets. He noted that, in the light of the great success of the Aircraft Protocol and its positive effects on the relevant market, it was to be expected that the draft Protocol would also contribute to the growth of the international commercial space and financial communities. Mr Estrella Faria declared the Conference formally open. He informed the Conference that Mr M.J. Stanford (Deputy Secretary-General of UNIDROIT) would serve as Executive Secretary of the Conference, Ms M.M. Schneider (Senior Officer of UNIDROIT) as Deputy Secretary and Mr D.A. Porras (Associate Officer of UNIDROIT) as Assistant Secretary.

**Item No. 2 on the provisional Agenda: adoption of the Agenda by the Conference**

6. The provisional Agenda (DCME-SP-Doc.1) was adopted as the Agenda of the Conference.

**Item No. 3 on the Agenda: adoption of the Rules of Procedure by the Conference**

7. The provisional Rules of Procedure of the Conference (DCME-SP-Doc.2) were adopted by as the Rules of Procedure of the Conference.

**Item No. 4 on the Agenda: election by the Conference of the President and the Vice-Presidents of the Conference**

8. One delegation nominated Mr J.H.H. Kronke (Germany) to serve as President of the Conference. This proposal was duly seconded and the Conference elected Mr Kronke President. Mr Kronke expressed his gratitude to the Conference and his appreciation to the German Government for hosting the diplomatic Conference.
9. It was agreed that time should be allowed for informal consultations on the Vice-Presidents of the Conference.

**Item No. 6 on the Agenda: election by the Conference of the Chairman of the Commission of the Whole**

10. One delegation nominated Mr S. Marchisio (Italy) to serve as Chairman of the Commission of the Whole, notably in the light of his previous role as Chairman of the Committee of governmental experts for the preparation of the draft Protocol. Another delegation seconded this proposal. It was so agreed.
11. The newly appointed Chairman of the Commission of the Whole addressed the Conference, welcoming all participants and expressing his gratitude to the German Government for hosting the diplomatic Conference.
12. The Plenum adjourned at 11 a.m.

**FIRST MEETING OF THE COMMISSION OF THE WHOLE**

**Item No. 8 on the Agenda: consideration of the draft Protocol.**

13. The Chairman opened the first meeting of the Commission of the Whole at 11.40 a.m. Sir Roy Goode (United Kingdom) was appointed Reporter.
14. It was agreed that the Commission of the Whole should first hold a general exchange of views on the draft Protocol.

15. Several delegations noted that the ultimate purpose of the drafting process was to develop a text that was both legally and technically sound. But, in view of the significant changes that had been made to the draft Protocol over the course of the intergovernmental negotiations, those delegations could no longer support adoption of the draft Protocol. In particular, they referred to the addition of a further supranational layer of legal regulations to space financing increasing, rather than decreasing the cost of such financing. One of these delegations further indicated that asset-based financing was not an approach typically employed for the financing of space projects and that the draft Protocol did not address any existing problems faced by the commercial space sector. Finally, one of these delegations expressed some concern regarding the interaction of the draft Protocol with the United Nations (U.N.) Convention on International Liability for Damage Caused by Space Objects and its incompatibility with current International Telecommunication Union practice in respect of the transfer of ownership.
16. One of the aforementioned delegations was of the view that the draft Protocol should be significantly modified in order to address the concerns of both its Government and its commercial space sector (cf. DCME-SP – Doc. 6 Add. 2).
17. Another such delegation drew attention to the concerns expressed by the commercial space sector, noting in particular that its Government had always supported development of commercial space activities as a matter of national policy. This delegation, however, noted that the concerns of industry must be given due consideration in order to secure the successful completion of the draft Protocol.
18. On the other hand, the vast majority of the delegations taking the floor expressed the view that, while there were still some technical issues to be resolved, the draft Protocol in principle provided a tool that could greatly benefit the development of the commercial space sector through asset-based financing, in particular in the emerging and developing worlds and that it was important for the Conference to complete the work that it had been mandated to accomplish, namely to finalise the draft Protocol at the Conference.
19. In this context, it was, in particular, pointed out that at the conclusion of the fifth session of the Committee of governmental experts there was consensus that it be recommended to the Governing Council of UNIDROIT that the text of the draft Protocol was ripe for transmission to a diplomatic Conference for adoption. The draft Protocol, it was added, was an optional instrument and was not obligatory for those parties not wishing to avail themselves of asset-based financing and that the equivalent instrument in the aviation sector, the Aircraft Protocol, had been a tremendous success and that there was no reason why the same should not be expected of the draft Protocol
20. One delegation expressed the view that other satellite operators around the world that did not oppose the draft Protocol could greatly benefit from such a new mechanism. In addition, adoption of the draft Protocol would attract commercial financing to fields that hitherto had been predominantly supported by States.
21. Another delegation expressed the view that the Conference should look to future market perspectives. Whilst aware of the need duly to consider the aspects of the draft Protocol that had attracted criticism, this delegation was in favour of moving to adoption of the draft Protocol at the Conference.
22. Yet another delegation noted the particular usefulness of the draft Protocol as a means of remedying the absence of an international legal framework suitable for space commerce, especially to promote the efforts of those countries wishing to engage in outer space activities for the first time.
23. The Chairman adjourned the meeting at 1 p.m.

**SECOND MEETING OF THE COMMISSION OF THE WHOLE****Item No. 8 on the Agenda: consideration of the draft Protocol**

24. The Chairman opened the session at 3.15 p.m.
25. The Reporter provided an overview on the key elements of the draft Protocol. He both highlighted the background to the adoption of the Cape Town Convention and the subsequent Protocols, namely the Aircraft Protocol and the Luxembourg Protocol and made some introductory remarks on the definitions provided under the Protocol, in particular focussing on those which might be the subject of discussion, such as the definition of “space asset”.
- Re: Article I(1)*
26. This paragraph was adopted without amendment.
- Re: Article I(2)*
27. The order in which the definitions appeared was questioned by some delegations, that noted that, while the alphabetical order found in the English text was logical, it did not translate into other languages; in particular, it was noted that the French text was not in alphabetical order, as the sub-paragraphs retained the order employed in the English text. However, in the light of the fact that the Convention and the other two Protocols adopted to date had all employed the alphabetical order of the definitions found in the English text, it was agreed that the same approach should be retained in the draft Protocol.
- Re: Article I(2)(a): definition of “debtor’s rights”*
28. It was submitted by one delegation that the definition of the term “debtor’s rights” should be clarified in order to facilitate consistent interpretations under both Civil and Common law. This delegation felt that “debtor’s rights” should cover rights arising by reason “of the possession, disposition or operation of a space asset, including insurance proceeds following the loss of the asset”. The definition should, however, cover only those rights that were capable of being disposed of by the debtor, which would exclude, *inter alia*, licences granted in relation to the asset.
- Re: Article I(2)(b): definition of “guarantee contract”*
29. It was proposed by one delegation that the definition of “guarantee contract” be deleted, in particular because of the different meanings given to the term “garantie” in French, which might result in confusion.
- Re: Article I(2)(c): definition of “guarantor”*
30. There were no comments on this definition. It was left open for further discussion in the context of the consideration of Article I(2)(b).
- Re: Article I(2)(d): definition of “insolvency related event”*
31. This paragraph was adopted without amendment.

*Re: Article I(2)(e): definition of "licence"*

32. One delegation proposed deletion of the words "in conformity with the applicable law" appearing in square brackets. It was so agreed.

*Re: Article I(2)(f): definition of "obligor"*

33. It was suggested by one delegation that the language of this definition required clarification in the French text.

*Re: Article I(2)(g): definition of "primary insolvency jurisdiction"*

34. This paragraph was adopted without amendment.

*Re: Article I(2)(h): definition of "revenue salvage"*

35. It was agreed that discussion of this definition, as a matter of concern to insurers, should be postponed.

*Re: Article I(2)(i): definition of "rights assignment"*

36. This paragraph was adopted without amendment.

*Re: Article I(2)(j): definition of "rights reassignment"*

37. The Reporter drew attention to the question of whether only rights granted by contract should be the subject of this definition, noting in particular that such a reassignment would be carried out automatically under Article XII(4), and suggested that the Drafting Committee expand the definition of "rights reassignment" to reflect that provision too.

*Re: Article I(2)(k): definition of "space"*

38. It was agreed that the word "and" at the end of this provision should be considered as an unintended error and should be deleted. With that amendment, this definition was adopted.

*Re: Article I(2)(l): definition of "space asset"*

39. It was proposed by one delegation, which emphasised the need to narrow down and simplify the definition of "space asset", that this definition be amended so that only an asset "in space or which has been the subject of an irreversible attempted launch" should fall within the sphere of application of the draft Protocol. That delegation also proposed that the draft Protocol should not apply to components.

40. In response to this proposed amendment, some delegations expressed the view that this proposal was worth considering but that time should be allowed for the necessary consultations.

41. Other delegations, however, noted that, in principle, they did not feel that such an amendment was appropriate, notably since, first, the definition of "space asset" should not exclude objects that were under construction on earth, in that it would be necessary for the draft Protocol to apply to pre-launch financing, and, secondly, that components should be retained within the sphere of application of the draft Protocol, in particular because the exclusion of components might limit the usefulness of the draft Protocol for small operators.

42. It was agreed that the proposed amendment should remain open pending consultations.

*Re: Article I(2)(m): definition of "title salvage"*

43. It was agreed that discussion of this definition, as a matter of concern to insurers, should be postponed.

*Re: Article I(3)*

44. One delegation proposed an amendment to Article I(3) with a view to transforming the reference to Article 1(n) of the Convention into a new provision, while, for the purpose of Article 43 of the Convention, it was proposed that Article I(3) should not be modified. For the purpose of Article 1(n), i.e. for internal transactions, however, there should only be one State that could be identified as the State on the territory of which an object or space asset was situated.

45. Some delegations supported this proposal, in particular because such an amendment would provide clarification on jurisdiction over a space asset in the context of Article I(3).

46. Other delegations expressed concern over the relationship under Article I(3)(a) between the term "space asset" as used in the draft Protocol and the term "space object" as used in the U.N. Space Treaties.

47. It was agreed that this proposal should be the subject of further consultation.

48. The Chairman adjourned the meeting at 6 p.m.

## **SECOND MEETING OF THE PLENUM**

### **Item No. 5 on the Agenda: establishment by the Conference of the Credentials Committee, the Commission of the Whole, the Final Clauses Committee, the Drafting Committee and other Committees as necessary**

49. Following consultations, the Conference established the Credentials Committee in the following membership: Burkina Faso, France, Germany, Japan and the Russian Federation.

50. The President adjourned the meeting at 6.05 p.m.