



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**

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**SUMMARY REPORT
FOR 28 FEBRUARY 2012**

THIRD MEETING OF THE COMMISSION OF THE WHOLE

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

1. The Chairman opened the meeting at 9.45 a.m.
2. The Chairman invited the delegations that had not expressed their general views on the previous day to make any general statements they might wish to address to the Commission of the Whole.
3. One delegation, whilst appreciative of the idea of harmonising laws to support the space industry, considered that it was also important duly to consider the views put forward by industry, in particular with respect to Article XXVII, regarding limitation on remedies in respect of public services. It was stressed that consistency with the I.T.U. regulations and U.N. practice was of paramount importance.
4. Another delegation drew attention to the *raison d'être* of the draft Protocol, namely the objective of reducing the cost of financing of space projects through a uniform set of rules that responded to the needs of the commercial space sector. It was suggested that consideration might be given to the possibility of the inclusion of additional measures which might help to achieve a more balanced approach. It was felt that such balance could be struck by expanding the benefits that were provided to debtors. This delegation was of the view that the draft Protocol lacked specific provisions that would directly benefit debtors or protect their rights in such a way that would result in secure exposure discounts. This delegation also drew attention to the concerns that had been expressed regarding the broad definition of "space asset" and the absence of a definition of public service. Nevertheless, this delegation believed that these concerns could be overcome through a mutually acceptable compromise which would allow for the adoption of the draft Protocol.
5. Still another delegation highlighted the need for the adoption of the draft Protocol as a practical reference for policy decision-making, in particular for the entry into and participation in space activities. It was felt that the draft Protocol was a simple user-friendly instrument that could overcome barriers to a State's active participation in the commercial space market, a point that was confirmed by another delegation.

6. These delegations also expressed their appreciation of the invaluable contributions made by satellite operators to the work on the draft Protocol.
7. One delegation recalled that there was a need for the examination of certain issues regarding State responsibility under Article 6 of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies (Outer Space Treaty), a matter of particular concern for Contracting States to that treaty. In addition, it was felt to be imperative that the draft Protocol take into account existing regulations and practices regarding space debris mitigation and export control of sensitive technology. Furthermore, it was proposed that more precise wording was needed with regard to the transfer of licences, notably in respect of the requisite State consent. This delegation proposed that Articles IV(4), V(2), IX, X(1), 19 and XX(4) be made the subject of particular examination in this regard. This proposal was supported and it was proposed that an informal working group be established to examine these Articles.
8. The informal working group was comprised of, but not limited to, the delegations of Canada, the People's Republic of China, France, Germany, India, Luxembourg, the Russian Federation, Saudi Arabia and South Africa. It was agreed that the Secretary-General should co-ordinate the first meeting of the working group.
9. The Chairman of the Commission of the Whole resumed the discussion of specific provisions.

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

10. One delegation suggested that the definition of "space asset" should be accompanied by a reference to "any other future inventions".
11. One delegation proposed deleting the square brackets around the words "in respect of which a registration may be effected in accordance with the regulations" in sub-sub-paragraph (i), notably because it was felt that the draft Protocol should only apply to those space assets that were capable of being registered and searched, two aspects seen as fundamental for the establishment of priority in respect of an international interest. This proposal was supported by several delegations.
12. However, some other delegations proposed deleting the words in square brackets themselves, notably because they did not feel it was appropriate for the sphere of application to be capable of being expanded by an external body but, rather, that the sphere of application should be established during the Conference on the basis of the definition of "space asset".
13. It was agreed that the words in square brackets should be deleted but that the concern expressed by those in favour of only deleting the square brackets would be dealt with elsewhere in the draft Protocol, for example in the provisions concerning the future registration system or entry into force or by means of a Resolution to be adopted by the Conference.

Re: Article I(3)

14. One delegation submitted a proposal to amend Article I(3) (DCME-SP – W.P. 1 rev.), the effect of which would be to delete the reference to Article 1(n) of the Convention and add a new sub-paragraph to Article I(3) that would specifically deal with internal transactions.
15. The Chairman adjourned the meeting at 12.30 p.m.

FOURTH MEETING OF THE COMMISSION OF THE WHOLE**Item No. 8 on the Agenda: consideration of the draft Protocol (continued)**

16. The Chairman opened the meeting at 3 p.m.

Re: Article II(1)

17. This paragraph was adopted without amendment.

Re: Article II(2)

18. This paragraph was adopted without amendment.

Re: Article II(3)

19. Several delegations raised concerns with regard to the drafting of this paragraph, noting that, notwithstanding these concerns, these delegations were fully in support of the objective of that provision, namely to avoid duplication of the application of the Aircraft Protocol and the draft Protocol. In particular, it was noted that the language of Article II(3) should be formulated in such a manner as to indicate what was covered by the draft Protocol rather than indicating what should not be covered and that, in this connection, the second sentence of Article II(3) could be deleted.

20. Another delegation observed that the formulation of Article II(3) used different concepts to describe aircraft objects from that used in other international instruments, such as the Convention on International Civil Aviation, opened to signature in Chicago on 7 December 1944. That delegation considered it advisable to utilise the formulations 'aircraft' and 'spacecraft' for the purpose of Article II(3) as well.

21. Another delegation stated that it would be impracticable to determine whether an object was "predominantly used in air space or in outer space and proposed avoiding use of the word "predominantly".

22. One technical adviser was concerned that the sphere of application of the Aircraft Protocol should not be affected by Article II(3).

23. One delegation suggested that consideration of this paragraph should be postponed until 5 March 2012, when the presence of the observer of the Aviation Working Group might shed additional light on the implications of this provision. It was so agreed.

Re: Article III

24. This article was adopted without amendment.

Re: Article IV

25. One delegation proposed moving the text of paragraph 3 to the end of paragraph 1, as had been done in the Aircraft Protocol. It was agreed that the Drafting Committee would take this proposal into consideration.

26. Referring to paragraph 2 of this Article, one delegation expressed the view that this Article was not the appropriate place for this paragraph, noting that the title of the Article referred to the application of the Convention to sales and salvage interests but said nothing about

rights assignments. It was agreed to forward this matter to the Drafting Committee for consideration.

27. It was agreed that discussion of paragraphs 4 and 5 should be postponed, as it was both a matter of concern to insurers and the subject of consultations and the work of an informal working group.

Re: Article V

28. It was agreed to postpone discussion on paragraph (2) pending the work of an informal working group.

29. One delegation expressed concern with the wording of Article V(3), noting in particular that the word “indefinitely” might lead to a case where a registration based on a contract that was found to be invalid would remain on the future International Registry indefinitely. In this context, it was pointed out that, under Article 25(4) of the Cape Town Convention, a party in whose favour the registration was made had an obligation to discharge that registration from the Registry following a written request from the debtor.

30. It was agreed that this matter should be referred to the Drafting Committee.

Re: Article VI

31. This article was adopted without amendment.
32. The Chairman adjourned the session at 4.15 p.m.

THIRD MEETING OF THE PLENUM

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

33. The President of the Conference opened the meeting at 4.50 p.m.
34. Following consultations, the Conference elected the five Vice-Presidents of the Conference as follows: Mr H.S. Burman (United States of America), H.E. Mr M. Gourdault-Montagne (France), Deputy Minister I.E. Manylov (Russian Federation), H.E. Rev. M. Stofile (South Africa) and Mr W. Tang (People’s Republic of China).

Item No. 5: 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

35. Following consultations, the Conference established the Drafting Committee in the following composition: Canada, the People’s Republic of China, France, Germany, Japan, Nigeria, Pakistan, Russian Federation and the United States of America.
36. Following consultations, the Conference established the Final Clauses Committee in the following composition: Canada, Czech Republic, France, Germany, India, South Africa and the United States of America, with the observer from the European Union being invited to attend the meeting as an observer.

FIFTH MEETING OF THE COMMISSION OF THE WHOLE**Item No. 8 on the draft Protocol: consideration of the Protocol (continued)**

37. The Chairman opened the meeting at 5.05 p.m.

Re: Article VII

38. This Article was adopted without amendment.

Re: Article VIII

39. It was agreed to postpone discussion of this Article, as a matter that concerned the competences of the European Union.

Re: Article IX

40. It was noted that this Article was the subject of consultations in the informal working group.

Re: Article X

41. It was noted that this Article was the subject of consultations in the informal working group.

Re: Article XI

42. This paragraph was adopted without amendment.

Re: Article XII

43. One delegation proposed adding the words "under paragraph 1" at the end of paragraph 3. It was so agreed.

Re: Article XIII

44. One delegation pointed out that the word "sur" should be added after the words "enregistrée prime" in the French version of the draft Protocol.

45. Another delegation expressed concern that pre-existing interests in space assets might be prejudiced once the draft Protocol came into force. The Reporter, however, pointed out that, under Article 60 of the Cape Town Convention, pre-existing interests in assets were excluded from the sphere of application of the Convention.

46. Yet another delegation wondered whether paragraph 2 was in line with Article 19(4) of the Cape Town Convention. It was agreed that this matter should be referred to the Drafting Committee.

47. The Chairman adjourned the meeting at 5.30 p.m.