



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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**SUMMARY REPORT
FOR 29 FEBRUARY 2012**

SIXTH MEETING OF THE COMMISSION OF THE WHOLE

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

1. The Chairman opened the session at 10 a.m.

Re: Article VIII: Choice of law

2. One delegation wondered whether this provision implied that the parties would have the option to make the law “which is to govern their contractual rights and obligations” enforceable under the domestic law of the Contracting State, noting in particular the concern that such a choice of law might lead to a conflict between the law chosen and the law of the Contracting State. It was recalled that the choice of law did not govern the enforcement of the law but merely the substance of the law to be applied.

3. The observer of the European Union (E.U.) noted that Article VIII fell under E.U. competence and the E.U. would be opting out of this provision, because it was not compatible with E.U. Regulation 593/2008 on the law applicable to contractual obligations and E.U. Regulation 864/2007 on the law applicable to non-contractual obligations.

4. This Article was adopted without amendment.

Re: Article XIV: Obligor’s duty to creditor

5. This Article was adopted without amendment.

Re: Article XV: Rights reassignment

6. This Article was adopted without amendment.

Re: Article XVI: Derogation

7. This Article was adopted subject to the ongoing consultations on Article XVII(3).

Re: Article XVII: Modification of default remedies provisions as regards space assets

8. Paragraphs 1 and 2 of this Article were adopted without amendment. Discussion of paragraph 3 was postponed pending the outcome of the ongoing consultations on this provision.

Re: Article XVIII: Default remedies as regards rights assignment and rights reassignment

9. This Article was adopted without amendment.

Re: Article XIX: Placement of data and materials

10. One delegation proposed inserting the words "Subject to Article XXVI" at the beginning of this Article. This proposal was supported by several delegations and was adopted.
11. One delegation suggested that it would be necessary to identify the third party holding the data and materials referred to in this provision in order to provide transparency in respect of the legal relationship between these parties. This proposal found support among some delegations.
12. Other delegations opposed this proposal, principally because it had never been intended that the Cape Town Convention or the draft Protocol would provide for the disclosure of the contents of private contracts that might contain sensitive information.
13. It was recognised that the proposal did not enjoy broad consensus and it was, therefore, rejected.

Re: Article XX: Modification of provisions regarding relief pending final determination

14. The observer of the E.U. noted that Article XX fell under E.U. competence and that the E.U. would be making a declaration to indicate that it would be choosing to apply this Article.
15. One observer drew attention to the term "working days" in this Article and reminded the Commission that during the finalisation of the Luxembourg Protocol that term had been found inappropriate because different States had different interpretations of what "working days" were intended to mean. This problem had been resolved on that occasion by replacing that term with a reference to "calendar days". The observer in question also mentioned that, where there had been references to a specific number of "working days" prior to that change, the number of days was extended to allow for week-ends.
16. This proposal was broadly supported by delegations and adopted.

Re: Article XXI: Remedies on insolvency

17. One delegation noted that the observer from the Aviation Working Group was not present but would be arriving on 5 March 2012 and proposed that discussion of this Article be, therefore, postponed in view of the recommendation that that observer would be making in respect of this Article. This delegation gave a brief summary of the recommendation: under the revised Aircraft Sector Understanding issued by Resolution of the Organisation for Economic Co-operation and Development (O.E.C.D.) in respect of financing under the Cape Town regimen, Alternative A of the corresponding Article in the Aircraft Protocol was recognised as providing calculable discount benefits to debtors seeking financing by reducing

the risk faced by creditors and Alternative B was not. O.E.C.D. provided discounts to those States Parties that chose Alternative A under that Article but not to those that chose Alternative B. The view was expressed that the mechanism provided by Alternative B could neither reduce risk nor lower cost as effectively as Alternative A and that Alternative B should, therefore, be deleted from the draft Protocol.

18. However, several other delegations were not in favour of this recommendation, indicating that Alternative B should be retained for the time being and it was agreed that further discussion of the recommendation should be postponed until 5 March 2012.
19. The observer of the E.U. indicated that this Article fell under its competence and that the E.U. would be opting to apply this Article.
20. This Article was adopted, subject to further discussion of Alternative B.

Re: Article XXII: Insolvency assistance

21. One delegation asked whether the Drafting Committee might not be able to amend the language in this Article in the light of references in Article I(3) that were similar to some of the connecting factors found in paragraph 2 of this Article in order to avoid confusion. It was so agreed.

Re: Article XXIII: Modification of priority provisions

22. This Article was adopted without amendment.
23. The Chairman adjourned the meeting at 12.30 p.m.

SEVENTH MEETING OF THE COMMISSION OF THE WHOLE

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

24. The Chairman opened the session at 3 p.m.

Re: Article XXIV: Modification of assignment provisions

25. This Article was adopted without amendment.

Re: Article XXV: Debtor provisions

26. One delegation informed the Commission that it would be making a proposal for a new Article XXV and requested that discussion of this Article be postponed until 2 March 2012 so that its delegation could carry out consultations and prepare its proposal. It was so agreed.

Re: Article XXVI: Limitations on remedies

27. This Article being the subject of work by an informal working group, it was agreed that further discussion thereof should be postponed until that informal working group had presented the results of its work to the Commission.

Re: Article XXVII: Limitations on remedies in respect of public service

28. This Article being the subject of informal consultations, it was agreed that further discussion thereof should be postponed until the proposal resulting from those consultations could be laid before the Commission.

Re: Article XXX: Identification of space assets for registration purposes

29. Several delegations expressed concern with the use of the term “serial number”, noting that this number would not always be available in respect of a particular space asset and proposed replacing the word “and” with the word “or” in order to provide some flexibility in the identification criteria. Other delegations agreed and proposed that the addition of the words “if available” to the criteria might achieve a similar result.

30. Another delegation proposed that an asset might be uniquely identified by reference to the financing contract connected to that asset.

31. It was agreed to postpone further discussion of this issue pending consultations.

Re: Article XXXI: Additional modifications to Registry provisions

32. One delegation was of the opinion that a provision should be included in the draft Protocol similar to Article XIX of the Aircraft Protocol, which provided for the designation of national entry points to the International Registry for aircraft objects.

33. It was agreed to include such a provision and the matter was referred to the Drafting Committee, which was invited to prepare a proposal that could be referred back to the Commission for the taking of a final decision.

34. The Chairman adjourned the meeting at 4 p.m.