



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

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**SUMMARY REPORT
FOR 5 MARCH 2012**

TWELFTH 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 10 a.m.

Re: Article XXV: Debtor provisions

2. One delegation withdrew its proposal for an amended text for this Article, indicating that it would, however, be dealing with its concerns on this issue through a draft Resolution.
3. This Article was adopted without amendment.

Re: Article II(3): Application of the Convention as regards space assets, debtor's rights and aircraft objects

4. The observer of the Aviation Working Group (A.W.G.) made a statement with regard to the interaction between the Aircraft Protocol and the future Space Protocol. In order fully to avoid overlap between the draft Protocol and the Aircraft Protocol, it was recommended that assets covered by the Aircraft Protocol be excluded from the future Space Protocol. However, it was recognised that such an approach would raise policy concerns. The observer of the A.W.G., therefore, proposed language for a provision (DCME-SP - Doc. 28) that would minimise the overlap between the two Protocols to the maximum extent possible while respecting the core policies of both instruments. The observer proposed an amendment to paragraph 3 which he proposed would exclude the application of the draft Protocol to a space asset that, first, fell under the definition of "aircraft objects" under the Aircraft Protocol and, secondly, was not designed to "transit" through air space to space (as defined under Article I(2)([k]) of the draft Protocol) where it was to be primarily used. Furthermore, he stressed that the most practical way of dealing with any residual ambiguity left by this approach would be to provide general guidance of what was intended, legally possible and appropriate within the Official Commentaries on the two Protocols.
5. It was agreed to postpone further discussion on this issue pending further consultations.

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

6. One delegation proposed enabling a Contracting State to register a public service notice within the context of paragraph 1 of this Article as well. This proposal was supported by some delegations.
7. That same delegation put forward a proposal to modify paragraph 3 of the jointly proposed Article XXVII (DCME-SP - Doc. 18) in such a way that would not affect the ability of a creditor, if so authorised by the relevant authorities, temporarily to operate or ensure the continued operation of a space asset, given that the debtor would be incapable of doing so, during the period referred to in this paragraph. Furthermore, this delegation noted that the “relevant authorities” were not intended to be the courts in that jurisdiction but rather the licensing Authorities. It was agreed to give effect to this proposal by means of a reference to the proposed Article XXVI that was under discussion by an informal working group of the Commission. Another delegation suggested that this point be further clarified in the future Official Commentary.
8. Some delegations expressed concern that the reduced time-frame referred to in paragraph 3, namely from six months to three months, might be too short for States to be able to ensure the continuity of a public service which might otherwise be interrupted by the rightful exercise of a default remedy by a creditor. Another delegation stressed, however, that the three-month period was a compromise which the commercial space and financing communities had agreed was acceptable, in that this was seen by industry to be the absolute maximum extent of acceptable risk they were willing to undertake in respect of additional delays in the exercise of their default remedies. This delegation emphasised that to add any additional time under this paragraph would undermine the potential value of the draft Protocol by discouraging investment in future Contracting States.
9. One delegation proposed making the length of time referred to in this Article subject to an option by way of a declaration, as was done for Article XXI. In this case, States would be allowed to choose between either the three-month or six-month time-period to apply under paragraph 3 of this Article. Some delegations supported this proposal, whilst others suggested that it might be more useful to let Contracting States opt out of such a provision. However, one delegation noted that this might lead to an abuse of flags of convenience, or forum shopping, should the draft Protocol permit the application of this Article as optional.
10. It was stressed that, in order to provide certainty, creditors would necessarily need to know if a public service exemption were to apply to a particular space asset before the financing could be extended. In this context, it was felt that leaving this matter to the choice of individual States would only create more confusion for creditors.
11. The Secretary-General put forward a proposal under which this Article would provide for the application of a three month time-period, while providing elsewhere, in the future Article concerning declarations, for the possibility of a State choosing to apply the six-month time-period by declaration.
12. The Chairman adjourned the meeting at 12.55 p.m.

THIRTEENTH MEETING OF THE COMMISSION OF THE WHOLE

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

13. The Chairman opened the session at 3.45 p.m.

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

14. Several delegations expressed their support for a solution similar to the one proposed by the Secretary-General.
15. It was proposed that a general rule should be inserted in Article XXVII(3) which would provide for a standard waiting period of three months, with the possibility of a Contracting State extending this time-period by declaration upon ratification to a time-period of no more than six months. This declaration would be included in the Final Clauses.
16. Many delegations expressed their agreement with this common understanding. However, it was asked that time be allowed to consider this proposal, given the importance of the issue. It was agreed that the deliberations on this issue be concluded no later than the morning of 6 March 2012.

Re: Article II(3): Application of the Convention as regards space assets, debtor's rights and aircraft objects

17. One delegation wondered whether or not the reference to the "regulations" at the end of the proposed sub-paragraph (3)(b) was redundant. However, it was noted that this reference existed to add clarity for the reader. The Reporter also reminded the Commission that many Articles in the Convention and draft Protocol were independent of the requirements for registration, such as default remedies, and that caution should be exercised in making reference to the regulations in this context. It was suggested that this language could be improved on by the Drafting Committee.
18. Another delegation wondered about the appropriateness of the word "transit" and wondered whether there might not be more suitable language to employ here.
19. It was agreed to postpone further discussion on this issue pending further consultations.
20. The Chairman adjourned the meeting at 5.40 p.m.