



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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**REPORT OF THE FINAL CLAUSES COMMITTEE TO THE PLENUM**

(presented by the Chairperson of the Final Clauses Committee)

The Final Clauses Committee as established by the Plenum on 28 February 2012, in the composition of Canada, the Czech Republic, France, Germany, India, South Africa and the United States of America (with the European Union attending its meetings as an observer), held three meetings, on 1, 5 and 7 March 2012. Ms N. Chadha (India) was elected Chairperson of the Committee, on a proposal moved by France and seconded by the Czech Republic. The Russian Federation participated in the second and third meetings of the Committee as an observer and the United Kingdom participated in the second meeting of the Committee as an observer.

The Final Clauses Committee took as the basis of its work the draft Final Provisions capable of embodiment in the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets, prepared by the UNIDROIT Secretariat (DCME-SP – Doc. 5) (the draft Final Provisions). The text of the draft Final Provisions and draft witness clause for insertion in the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (the draft Protocol) as reviewed by the Final Clauses Committee is reproduced hereunder.

These draft Final Provisions as reviewed by the Final Clauses Committee were also reviewed by the Drafting Committee. The changes introduced to DCME-SP – Doc. 5 are highlighted (deletions being struck through and additions underlined).

CHAPTER VI - FINAL PROVISIONS

*Article A – Signature, ratification, acceptance, approval or accession*

1. – This Protocol shall be open for signature in Berlin on 9 March 2012 by States participating in 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 held in Berlin from 27 February to 9 March 2012. After 9 March 2012 this Protocol shall be open to all States for signature at [Rome](#) until it enters into force in accordance with Article C.

2. – This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.

3. – Any State which does not sign this Protocol may accede to it at any time.
4. – Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.<sup>1</sup>
5. – A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

#### Note

1. The insertion of “Rome” in the penultimate line of Article A(1) is based on the recommendation of the Final Clauses Committee in Article M(1) that the International Institute for the Unification of Private Law (UNIDROIT) be designated Depositary.

#### *Article B – Regional Economic Integration Organisations*

1. – A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. – The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary in writing of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. – Any reference to a “Contracting State”, “Contracting States”, “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

#### *Article C – Entry into force*

1. – This Protocol enters into force between the States which have deposited instruments referred to in sub-paragraph (a) on the later of:

(a) the first day of the month following the expiration of three months after the date of the deposit of the [tenth]<sup>2</sup> instrument of ratification, acceptance, approval or accession; and

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<sup>1</sup> It is recommended that, in line with the practice established in the wake of the Cape Town diplomatic Conference for the Cape Town Convention and the Aircraft Protocol, a model instrument of ratification, acceptance, approval or accession of the future Protocol be drawn up by the Secretariat after the diplomatic Conference and circulated amongst all negotiating States.

<sup>2</sup> One member of the Committee and one observer dissented from the majority view of the Committee on this subject, proposing instead that the entry into force of the future Protocol be triggered rather by the deposit of the 20th instrument.

(b) the date of the deposit by [the Supervisory Authority] with the Depository of a certificate confirming that the International Registry is fully operational.

2. – For other States this Protocol enters into force on the first day of the month following the later of:

(a) the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession; and

(b) the date referred to in sub-paragraph (b) of the preceding paragraph.

#### *Article D – Territorial units*

1.– If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of signature, ratification, acceptance, approval or accession, make an initial declaration that this Protocol is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. – Any such declaration shall state expressly the territorial units to which this Protocol applies.

3. – If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.

4. – Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. – In relation to a Contracting State with two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, any reference to the law in force in a Contracting State or to the law of a Contracting State shall be construed as referring to the law in force in the relevant territorial unit.

6. – If a Contracting State has a federal system where the federal legislative power has competence over matters governed by this Protocol, that Contracting State shall have the same rights and obligations over those matters as those Contracting States which do not have a federal system.

#### Note

1. It was agreed by the Final Clauses Committee that the Official Commentary on the proposed future Protocol should explain the background to paragraph 6.

#### *Article E – Transitional provisions*

1. In relation to space assets Article 60 of the Convention shall not apply in relation to space assets~~be modified~~ read as follows:

2. Subject to Article XVII(3) of this Protocol, the Convention does not apply to a right or interest of any kind in or over an object created or arising before the effective date of the Convention, which retains the priority it enjoyed under the applicable law before the effective date of the Convention.

~~32.~~ For the purposes of this Protocol/the preceding paragraph~~Article 1(v) and of determining priority under this Convention:~~

- (a) "effective date of the ~~is~~ Convention" means in relation to a debtor the time when the ~~is~~ Convention enters into force or the time when the State in which the debtor is situated at the time the right or interest is created or arises becomes a Contracting State, whichever is the later; and
- (b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if it has no place of business, its habitual residence."

~~(a) in paragraph 2(a), after "situated" insert "at the time the right or interest is created or arises";~~

~~(b) replace paragraph 3 with the following:~~

~~"3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when Articles 29, 35 and 36 of the Convention as modified or supplemented by the Protocol will become applicable, to the extent and in the manner specified in the declaration, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in that State. Any priority of the right or interest under the law of that State, so far as applicable, shall continue if the right or interest is registered in the International Registry before the expiration of the period specified in the declaration, whether or not any other right or interest has previously been registered."~~

#### Note

1. Article E was also considered by the Commission of the Whole, the Final Clauses Committee at its second meeting considering that it raise an issue of substance not previously considered by either the Final Clauses Committee or the Commission of the Whole.

2. The text of Article E is one extensively redrafted by the Drafting Committee to reflect the deliberations of the Commission of the Whole, notably in relation to Article XVII(3) of the draft Protocol.

#### *Article F – Declarations relating to certain provisions*

1. – A Contracting State shall, at the time of ratification, acceptance, approval of, or accession to this Protocol, make a declaration pursuant to Article XXVII(3)*bis* of this Protocol.

2. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare:

- (a) that it will not apply Article VIII;
- (b) that it will apply ~~either or both of~~ Articles XXII ~~and XXVI~~.

23. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article XX wholly or in part. If it so declares with respect to Article XX(2), it shall specify the time-period required thereby.

43.– A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XXI and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XXI.

54. – The courts of Contracting States shall apply Article XXI in conformity with the declaration made by the Contracting State that is the primary insolvency jurisdiction.

#### Note

1. A new Article F(1) was introduced by the Final Clauses Committee at its third meeting to reflect the decision taken by the Commission of the Whole to introduce a new Article XXVII(3) *bis*.

2. Article F(2)(b) was amended by the Final Clauses Committee at its third meeting in view of the fact that Article XXVI no longer made provision for the making of a declaration.

#### *Article G – Declarations under the Convention*

Declarations made under the Convention, including those made under Articles 39, 40, 53, 54, 55, 57, 58 and 60 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

#### *Article H – Reservations and declarations*

1. – No reservations may be made to this Protocol but declarations authorised by Articles D, F, G and I may be made in accordance with these provisions.

2. – Any declaration, subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

#### *Article I – Subsequent declarations*

1. – A State Party may make a subsequent declaration, other than the declaration made in accordance with Article G under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. – Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declaration had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

*Article J – Withdrawal of declarations*

1. – Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article G under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. – Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal of declaration.

*Article K – Denunciations*

1. – Any State Party may denounce this Protocol by notification in writing to the Depositary.

2. – Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

*Article L – Review Conferences, amendments and related matters*

1. – The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regimen established in the Convention as amended by this Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. – At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

(a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the assets covered by its terms;

(b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3. – Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States Parties which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by [ten] States Parties in accordance with the provisions of Article C relating to its entry into force.

#### *Article M – Depositary and its functions*

1. – Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. – The Depositary shall:

- (a) inform all Contracting States of:
  - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
  - (ii) the date of entry into force of this Protocol;
  - (iii) each declaration made in accordance with this Protocol, together with the date thereof;
  - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
  - (v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Protocol to all Contracting States;
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
- (d) perform such other functions customary for depositaries.

#### Note

1. The Final Clauses Committee recommended that the International Institute for the Unification of Private Law (UNIDROIT), which had already been designated Depositary of the Cape Town Convention and the Aircraft and Rail Protocols thereto, be designated Depositary of the proposed future Protocol too.

Draft witness clause

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Berlin, this ninth day of March, two thousand and twelve, in a single original in the English and French languages, both texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the consistency of the texts with one another.

Note

1. This draft witness clause, which did not appear in DCME-SP – Doc. 5, follows the language of the witness clause of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock.