



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

UNIDROIT 2012
DCME-SP – Doc. 44
Original: English
9 March 2012

**SUMMARY REPORT
FOR 7 MARCH 2012**

SIXTEENTH MEETING OF THE COMMISSION OF THE WHOLE

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

The Deputy Chairman of the Commission opened the meeting at 9.30 a.m.

Re: report by the Drafting Committee

Mr M. Deschamps (Canada), Chairman of the Drafting Committee, introduced the report by the Drafting Committee to the Commission of the Whole, highlighting to the Commission the changes made to the draft Protocol.

The Deputy Chairman proposed that the Commission look only at those provisions to which the Drafting Committee had made amendments.

Re: preamble

The preamble was adopted without amendment.

Re: Article I: Defined terms

One delegation proposed substituting the phrase “under of one of the following” by “under any of the following” in Article I(3). The proposal was supported by other delegations and was approved.

One delegation put forward the suggestion to modify the language of Article I(3) further by simply referring to a space asset as being located on the territory of the Contracting State which had registered that asset with the United Nations. Yet another delegation proposed modifying the wording of this provision so as to refer to a space asset being on the territory of the Contracting State that had furnished the relevant information to the Secretary-General of the United Nations under any of the outer space treaties or resolutions, and deleting sub-paragraphs (a)-(c) of this paragraph. No consensus could be reached on either of these proposals and it was, therefore, agreed to retain the wording of this paragraph as proposed by the Drafting Committee.

This Article was adopted with the amendment referred to above.

Re: Article II: Application of the convention as regards space assets, debtor's rights and aircraft objects

This Article was adopted without amendment.

Re: Article III: Preservation of rights and interests in a space asset

One delegation drew attention to the fact that the process of docking always took place in space and that the brackets in this Article should be deleted, retaining the words "in space". It was so agreed.

This Article was adopted as thus amended.

Re: Article IV: Application of the Convention to sales; salvage

One delegation proposed deletion of the words "[i]n this paragraph" at the beginning of the second sentence of paragraph 3 of this Article in order to make it clear that the definition of the term "salvage" provided in this definition was not meant to be limited to this paragraph. This proposal found support and was adopted.

Another delegation proposed making the second sentence a separately defined term under Article I(2). In this regard, the Reporter explained that, in line with the practice of UNIDROIT, only those terms that were used more than once in the draft Protocol were included in the definitions appearing in Article I(2). Otherwise, terms were defined in the provision in which they were introduced.

It was agreed to invite the Drafting Committee to give due consideration to the comments made on this Article.

Re: Article V: Formalities, effects and registration and contracts of sale

One delegation recalled the inconsistency that had arisen between the French and the English versions with respect to the word "indefinitely" found in the English text of paragraph 3. It was pointed out that the words "sans limitation de durée" were preferable to the term "indéfiniment" for this purpose.

It was agreed to refer this point to the Drafting Committee.

Re: Article VII: Identification of space assets

This Article was adopted without amendment.

Re: Article VIII: Choice of law

This Article was adopted without amendment.

Re: Article XII: Recording of rights assignment or acquisition by subrogation as part of registration of international interest

This Article was adopted without amendment.

Re: Article XIII: Priority of recorded rights assignment

This Article was adopted without amendment.

Re: Article XV: Rights reassignment

This Article was adopted, subject to the deletion of the word “any” in paragraph 1.

Re: Article XVI: Derogation

This Article was adopted without amendment.

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

One delegation recommended adding a note in the future Official Commentary, to the effect that the general principles of tort law of a Contracting State would not be affected by this provision and that the exercise of default remedies that would have an adverse effect on a physically linked asset could always be dealt with by such laws.

Some delegations were concerned that the language of paragraph 3 and Article E of the Final Provisions created some ambiguity regarding the transitional period and pre-existing interests. It was agreed that these concerns should be referred to the Drafting Committee.

Re: Article XIX: Placement of data and materials

This Article was adopted without amendment.

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

This Article was adopted without amendment.

Re: Article XXI: Remedies on insolvency

This Article was adopted without amendment.

Re: Article XXII: Insolvency assistance

This Article was adopted without amendment.

Re: Article XXIII: Modification of priority provisions

This Article was adopted without amendment.

Re: Article XXVI: Preservation of powers of Contracting States

This Article was adopted without amendment.

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

One delegation noted the omission of the word “public” in line five of paragraph 8 before the term “services provider” . It was agreed to remedy this omission.

This Article was adopted as thus amended.

Re: Article XXVIII: The Supervisory Authority

One delegation proposed inserting a reference in this provision to the draft Resolution referred to in paragraph 1.

This Article was adopted.

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

This Article was adopted without amendment.

Re: Article XXXbis: Designated entry points

This Article was adopted without amendment.

Re: Article XXXI: Additional modifications to Registry provisions

This Article was adopted without amendment.

Re: Article XXXII: Waiver of sovereign immunity

This Article was adopted without amendment.

Re: Article XXXIV: Relationship with the United Nations Outer Space Treaties and instruments of the International Telecommunication Union

One delegation proposed replacing the capital letters used in the reference to the United Nations "Outer Space Treaties" by small letters. It was so agreed.

Another delegation proposed replacing the words "does not" with "shall not". It was so agreed.

It was agreed to refer these two points to the Drafting Committee.

Subject to implementation of the drafting refinements that it had decided upon, the Commission approved the Report of the Drafting Committee and gave the Drafting Committee authority to implement the changes agreed upon in the text of the draft Protocol to be forwarded by the Commission of the Whole to the Conference.

The Deputy Chairman adjourned the meeting at 1.20 p.m.

FIFTH MEETING OF THE PLENUM

The President opened the meeting at 4.40 p.m.

Item No. 10 on the Agenda: examination by the Conference of the Report of the Final Clauses Committee

Ms N. Chadha (India), Chairperson of the Final Clauses Committee, presented the Report of the Final Clauses Committee to the Plenum (DCME-SP – Doc. 35), highlighting the changes made with respect to the draft Final Provisions submitted by the Secretariat (DCME-SP – Doc. 5) and noting the addition of a draft Witness Clause.

In respect of Article C, the Chairperson indicated that the majority view of the Final Clauses Committee was that the entry into force of the Protocol should be triggered by the deposit of the tenth instrument of ratification. However, there was one delegation and one observer which felt that the entry into force should be triggered by the deposit of the twentieth such instrument.

Re: Article A: Signature, ratification, acceptance, approval or accession

This Article was adopted without amendment.

Re: Article B: Regional Economic Integration Organisations

This Article was adopted without amendment.

Re: Article C: Entry into force

Some delegations proposed that the entry into force of the draft Protocol should be triggered by the deposit of the twentieth instrument of ratification. These delegations noted that strong reservations had been voiced in respect of the draft Protocol, in particular from parts of the space industry sector. It was felt that the entry into force of the Protocol should be based upon a “critical mass” of Contracting States that would provide sufficient traffic for the operation of the future International Registry. The time that would be required to build up such broad support among stakeholders would allow the commercial space sector to make the necessary arrangements in order to take account of the effects of the future Protocol, notably because the creation of the future International Registry for space assets would have an impact on transactions irrespective of membership of UNIDROIT, the Convention or the future Protocol.

Some delegations considered a significantly lower number of instruments for ratification, round about five, to be a more appropriate number of ratifications for the entry into force of the future Protocol. It was recalled that the Aircraft Protocol had only required eight instruments of ratification for entry into force and the Luxembourg Protocol only four. It was noted that a number ranging from five to ten instruments of ratification was common practice for the entry into force of a private law instrument.

With a view to arriving at a compromise, the overwhelming majority of delegations expressed the view that ten instruments of ratification would be the most appropriate solution. It was felt that this number took adequate account of the different ratification processes of States.

It was so agreed.

As thus amended, the Article was adopted.

Re: Article D: Territorial units

This Article was adopted without amendment.

Re: Article E: Transitional provisions

One delegation proposed replacing the word “object” in paragraph 2 with the word “space asset”. It was so agreed.

The same delegation also noted that it would be necessary to choose between the alternatives provided for under paragraph 3; it proposed choosing the words “this Protocol” and deleting the words “the preceding paragraph”. It was so agreed.

As thus amended, the Article was adopted.

Re: Article F: Declarations relating to certain provisions

This Article was adopted without amendment.

Re: Article G: Declarations under the Convention

In order to bring this Article into line with Article E, prescribing the non-applicability of Article 60 of the Convention to space assets, one delegation suggested removing the reference to that Article. It was so agreed.

As thus amended, the Article was adopted.

Re: Article H: Reservations and declarations

This Article was adopted without amendment.

Re: Article I: Subsequent declarations

One delegation noted that the reference to Article 60 of the Convention should again be deleted from paragraph 1. It was, therefore, agreed to delete the phrase “, other than the declaration made in accordance with Article G under Article 60 of the Convention,”.

As thus amended, the Article was adopted.

Re: Article J: Withdrawal of declarations

Several delegations noted that paragraph 1 also contained a reference to Article 60 of the Convention, which should be deleted and it was agreed to delete the phrase “, other than a declaration made in accordance with Article G under Article 60 of the Convention,”.

As thus amended, the Article was adopted.

Re: Article K: Denunciations

This Article was adopted without amendment.

Re: Article L: Review Conferences, amendments and related matters

This Article was adopted without amendment.

Re: Article M: Depositary and its functions

This Article was adopted without amendment.

Re: Draft witness clause

This clause was adopted without amendment.

The Report of the Final Clauses Committee was thus approved by the Conference.

Item No. 9 on the Agenda: examination by the Conference of the Report of the Commission of the Whole

The Reporter presented to the Conference, on behalf of the Chairman of the Drafting Committee, the changes made to the text of the draft Protocol requested by the Commission of the Whole.

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

One delegation noted that the first sentence of paragraph 3 contained a reference to an international interest as well as to a sale but that the second sentence contained a reference only to a sale. That delegation was of the view that a corresponding reference should also be made to an international interest in the second sentence of that paragraph. In this context, that delegation noted that Article 60 of the Convention did not apply to the draft Protocol.

It was agreed that the second sentence of paragraph 3 should indicate that, for the purposes of that paragraph, a sale or an interest comparable to an international interest created or arising before the effective date of the Convention, as defined in Article E of the draft Final Provisions, which was registered within three years from the effective date of the Convention, was deemed to be a sale or an international interest registered at the time of the constitution of the sale or the interest comparable to an international interest, as applicable.

Re: Article XXXIV: Relationship with the United Nations Outer Space Treaties and instruments of the International Telecommunication Union

This Article was adopted without amendment.

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

One delegation suggested that in sub-paragraph 6(c) the words “the substitution of the debtor as operator” were not appropriate, because there were many cases in which the debtor would not be the operator but rather a party contracted by the debtor to operate the asset. This delegation proposed replacing the words “of the debtor” either with the words “of the operator” or with the words “of the debtor or another person acting on behalf or under contract with the debtor”.

Other delegations did not support this proposal, as it was felt that such an amendment would change the substance of the Article.

The delegation proposing this revision proposed, as an alternative, that the Official Commentary clarify that there might be situations in which a person other than the debtor would act as the operator of a space asset and that this Article should be applicable to these situations.

It was so agreed.

Following the Conference’s completion of its review of the entire text of the draft Protocol, the President declared the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets, as amended, adopted by consensus.

The President then proceeded to invite delegations which wished to make their closing statements, to do so.

The delegation of Canada expressed its view that the stakeholders who the draft Protocol was meant to benefit had expressed their opposition to the instrument and that the Canadian delegation was of the opinion that the Protocol would increase the costs of financing rather than lowering these costs, as intended. That delegation further noted that its position had not changed over the course of the diplomatic Conference and that Canada would sign the Final Act but did not intend to sign the Protocol or become Party thereto.

The delegation of the United States of America, while conceding that many improvements had been made to the Protocol during the Conference, nevertheless reiterated its serious concerns regarding the Protocol and suggested that, until an appropriate level of support could be expected from the commercial space sector, the Protocol should remain under consideration.

The delegation of the United Kingdom stated that it did not support the adoption of the Protocol, noting that that delegation felt that there was no need for such an instrument, that there was still a great deal of opposition thereto and that the new regimen would affect even States that did not implement the Protocol.

The delegation of Luxembourg stated that it was not yet convinced that the Protocol could achieve the desired benefits, in particular with regard to developing countries. As a member of the European Union, this delegation felt that it would need to study the Protocol further and, therefore, did not consider itself in a position to sign the Protocol at the end of the Conference.

On the contrary, the delegation of Germany took the view that the thorough and constructive deliberations of the Conference had produced a Protocol that would work in practice and yield the expected benefits. This delegation felt that the valid concerns raised by industry, such as the issue of salvage, had been addressed in a satisfactory manner and that there was no doubt that any further delay in the adoption of the Protocol could not be expected to result in further improvements but would rather bring the negotiations to a complete halt. Whilst it was understood that States were free not to sign the Protocol, States willing to do so should not be denied the opportunity.

The delegation of Saudi Arabia agreed with the statement made by the previous delegation, emphasising that those States opposed to the Protocol did not need to sign it and that those States which, on the contrary, believed in the value of the new instrument should not be deprived of its expected benefits.

The delegation of the People's Republic of China expressed its satisfaction with the improvements in the Protocol achieved during the Conference and expressed its satisfaction at the successful conclusion and adoption of the Protocol. This delegation also stated that its domestic commercial space sector supported the Protocol and declared its support of the Protocol as adopted.

The President postponed the examination of the draft Resolutions and the draft Final Act to 8 March 2012.

The President adjourned the meeting at 7.05 p.m.