



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
=====

UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A
DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS

First session (Rome, 15 - 19 December 2003)

DRAFT REPORT

PLENARY SESSION
17 December 2003

paragraphs

AGENDA ITEM NO. 3: Organisation of work (cont.d)	44
AGENDA ITEM NO. 5: Consideration of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (cont.d)	45-62
Article IX	45-54
Article XVI	55-62

AGENDA ITEM NO. 3: ORGANISATION OF WORK (CONT.D)

44. The Committee was informed that informal consultations were underway concerning the needs of the future international registration system for space assets and that an informal meeting would take place to provide important up-to-date information concerning the Registry for aircraft objects to which all those members of the Preparatory Commission present were invited.

AGENDA ITEM NO. 5: CONSIDERATION OF THE PRELIMINARY DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS (CONT.D)

Article IX

45. In introducing Article IX, the adviser of the S.W.G. stated that the approach taken in Chapter II was no different from that taken in the Convention and the other Protocols. The unique features of space assets, the difficulty in physically repossessing them, had to be borne in mind. Space assets were high-value assets that provided critical and highly desirable public services. Many of these assets were furthermore very important with respect to the security of States.

46. One delegation proposed that the present Article XVII(4) be moved to Article IX. It suggested that the provision begin “The parties to an agreement or contract of sale or related guarantee contract may specifically agree for the placement into escrow with the International Registry or any other escrow agent [...]”. It suggested that the fact that the provision left the matter of the placement of the access and command codes into escrow with the International Registry or any other escrow agent to the Supervisory Authority was undesirable, as it was a matter for States to decide.

47. It was observed that the escrow mechanism provided additional benefits to facilitate satellite financing. The intention was that this process should be left to the parties to agree.

48. One delegation suggested that it would be necessary to define what was intended by an escrow agreement.

49. Another delegation wondered whether it was suitable for the International Registry to act as escrow agent. It also pointed out that if there was no doubt that an international interest as defined in the Convention could take the form of a possessory security interest, there was no need to have a specific provision on escrow agents. The only remaining issue would relate to regulatory matters and it would be sufficient to deal with this in the Article dealing with regulatory matters.

50. It was decided that an informal working group chaired by the Russian delegation would meet to consider the question of the placing of the current Article XVII(4) in Article IX or elsewhere. The delegations of Canada, France, Germany, South Africa, the United Kingdom, and the United States of America were nominated members of the informal working group. The S.W.G. was invited to participate as an adviser.

51. One delegation raised the problem of possible conflicts between security interests in the satellite as a whole and in transponders: was it possible for the purpose of securing the transponder loan to have security if the whole satellite was already a secured object and what would happen if the owner of the satellite became insolvent?

52. The adviser of the S.W.G. stated that it was possible to have security in the transponder if the whole satellite was already a secured object. As regards the question of the satellite owner’s insolvency, he stated that it would be a matter addressed by an inter-creditor agreement, failing which the first registrant would have priority.

53. One delegation proposed that provisions relating to categories of economic assurances be added either to Article IX or as separate new Articles. These categories were assurances relating to the protection of income, to transparent public service obligations and pricing and other limitations, the assignability of payment rights and currency repatriation and processes for the pre-qualification of back-up operators and other transferees. Other possible assurances concerned Government buy-outs and the assumption of risk. The delegation suggested that after a first exchange of views in the course of the Committee session a text would be prepared for discussion at a future session of the Committee.

54. While expressing great interest in the ideas proposed, several delegations stated that they would await a written proposal before taking a stand.

Article XVI

55. The Committee decided to examine Article XVI before proceeding with Articles X – XV.

56. In relation to Article XVI one delegation suggested that it was important to consider limitations in the context of public services. In this connection the observations submitted by the delegation of India were of great interest (see UNIDROIT C.G.E./Space Pr./1/W.P. 12).

57. One delegation proposed that the words “or services” be inserted in the second-last line of para. (2) after the word “data”. It was decided that the Drafting Committee would consider this proposal.

58. The need to ensure that public services were not interrupted in cases where the private sector owned or financed public service satellites was stressed by several delegations. One delegation however drew attention to the need to permit the setting up of new public services and the possibility of doing so by obtaining funding under the Protocol.

59. Another delegation observed that there was no question of industry forcing States to accept the Protocol even in cases of public services. It recalled that the possibility of excluding public services had been discussed in the context of the preliminary draft Rail Protocol and it suggested that Article 25 of that text, which had been very carefully drafted, could serve as a model for the preliminary draft Space Protocol.

60. One delegation suggested deleting the words “in accordance with its laws” in para. (2), in order to cover also States that did not have relevant legislation. It recalled that Article 25 of the preliminary draft Rail Protocol had no such requirement. This proposal was opposed by the S.W.G. on the grounds that it would leave total discretion to States to restrict or attach conditions to the exercise of remedies.

61. It was decided that the Drafting Committee should examine the question further.

62. In relation to the concept of “associated rights” used in para. (2), the representative of the S.W.G. referred to the proposal it had submitted for a new Article I(2)(a) and a new Article I(2)(g) (see UNIDROIT C.G.E./Space Pr./1/W.P. 11). He indicated that two modifications to the proposal should be made: in line four of the proposed Article I(2)(g) “orbital positions” should be replaced by “orbits” and the square brackets in the last two lines of that same paragraph should be deleted, retaining the words in the square brackets.

