



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
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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**  
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**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 (cont.d)*

*Proposal submitted by the Informal Working Group on Article XVII(4) (UNIDROIT C.G.E./Space Pr./1/W.P. 15)*

63. The Informal Working Group on Article XVII(4) submitted a proposal for a new Article IX(4) intended to replace Article XVII(4).

64. A number of questions were raised as regarded the terminology used. One delegation wondered what the meaning of “subordination agreement” was, and whether “materials” could include the placement of the ground segment into escrow as well as the technology required for that. It was pointed out that Article 29(5) of the Convention provided for the possibility for holders of interests to conclude subordination agreements. As regarded “materials”, the intention was to let the parties to an escrow agreement decide what materials and documentation should be deposited with the escrow agent.

65. It was suggested that the French term “*dépôt*” used to translate “escrow” be replaced by other language (such as “be placed with a third party”) as the concept of “*dépôt*” had a very specific meaning under French law. It was agreed that the Drafting Committee would consider this matter. It was further decided that the Drafting Committee should consider the possibility of drafting a definition of “escrow”.

66. One delegation raised the question of the positioning of the proposed provision, as Article IX applied only if the Contracting State made a declaration to this effect. The effect might be that if the Contracting State had made no such declaration, the parties would be precluded from having such an agreement. It was indicated that in such cases the parties would not be precluded from having an agreement, but it would be governed by national law instead of by the Protocol.

67. In the end, the Committee approved the proposed provision in principle, but decided to ask the Drafting Committee to find proper wording to answer the concerns expressed.

*Article X*

68. The representative of the European Commission stated that Articles X, XI and XII covered subjects dealt with by European regulations. He indicated that the Articles concerned raised no specific problems for the Commission, in particular given that they were opt-in in nature, thus leaving it to the Communities to make the choice that they thought most appropriate.

69. With reference to para. (1), it was decided to remove the square brackets around the last words of the paragraph.

70. A number of delegations wondered whether para. (5) should be retained as its purpose in the context of the preliminary draft Space Protocol was not clear. It was proposed that para. (5) be deleted.

71. It was recalled that para. (5) was in the Aircraft Protocol and was intended to deal with situations such as that where a creditor wanted to take possession of an aircraft further to default, but the airline argued that it was not in default and objected to the creditor taking possession of the aircraft. In similar circumstances in most legal systems the courts would allow interim relief seizure before judgment. The court might however compel the creditor to post a bond in case the claim was not successful, and the intent in the Aircraft Protocol was to avoid a situation where the court at the

request of the debtor opposed the posting of a bond. It had been felt that if the airline agreed to interim relief without the requirement of a bond being posted, the court should abide by the agreement of the parties.

72. Following the explanations given, the Committee decided to place para. (5) in square brackets, as a number of delegations felt it necessary to consider the provision carefully with a view to returning to the question at the following session after internal consultations.

73. With reference to para. (6), it was pointed out that the provision dealt with questions which were not relevant to space assets and was therefore redundant.

74. One delegation, while agreeing that the provision appeared to be redundant, nevertheless requested that the substance of sub-para. (b) be placed in a footnote to permit the question to be re-examined in the future, should the need for such a provision arise again in the light of new developments.

75. It was decided that the Drafting Committee should examine para. (6) and decide whether or not it should be deleted.

#### ***Article XI***

76. One delegation drew attention to para. (8) of Alternative A which it felt to be superfluous.

77. It was decided that the Drafting Committee should examine para. (8) and decide whether or not it should be deleted, one delegation however requesting that the substance of sub-para. (b) be placed in a footnote to permit the question to be re-examined in the future, should the need for such a provision arise again in the light of new developments

#### ***Article XII***

78. Two delegations noted that the words “in accordance with the law of the Contracting State” in the corresponding provision of the Aircraft Protocol (Article XII(2)) had been omitted, and wondered what the reason for this omission was.

79. There being no specific intention to exclude the application of the provision on the basis of the applicable law, the Drafting Committee was requested to reinsert the words in question.

#### ***Article XIII***

80. In relation to Article XIII, one delegation wondered why paras. (3) and (4) of the corresponding Article of the Aircraft Protocol (Article XIV) had been omitted.

81. The adviser of the S.W.G. indicated that it had been felt that the two paragraphs were not relevant for space assets.

82. Article XIV was approved without modification.

#### ***Article XIV***

83. One delegation stated that it did not find it reasonable to add the debtor’s consent unless the purpose was to avoid confusion if the assignor made more than one assignment of the same interest.

84. It was indicated that the provision followed the Aircraft Protocol.

*Article XV*

85. No observations were made on Article XV.

*Article XVI (cont.d)*

86. It was suggested that the words “in accordance with its laws” in para. 2 be modified to read “in accordance with its laws and regulations” and that they be placed in square brackets. This suggestion was accepted.

*Proposal by the delegations of Argentina, France, Germany and Sweden concerning the public service problem (UNIDROIT C.G.E./Space Pr./I/W.P. 17)*

*Proposal by the delegation of Mexico concerning public services (UNIDROIT C.G.E./Space Pr./I/W.P. 18)*

87. Two proposals were submitted for a new para. (3) to be added to Article XVI.

88. It was observed that the concept of “public service” was very broad and that, considering the different meaning given to the concept in different countries, it was difficult to arrive at a single definition that would be universally acceptable.

89. It was suggested that the words “public service” might be qualified with words such as “mandatory”, “emergency”, “essential”, but it was noted that also the meaning of these words differed from country to country. It was further noted that the definition of what constituted a public service was traditionally determined by national law.

90. It was decided to place both proposals in square brackets in the text, to ask the Drafting Committee for advice on the co-ordination of para. (1) and the proposed new para. (3), and to add a footnote to the latter regarding the overall objective of the Protocol in relation to the limitation of remedies.

91. One delegation raised the question of how the interests of those who had invested in the ground segment and those who had invested in the space segment might be balanced, considering that investors in the ground segment would often transfer their investments to more attractive objects thereby making the ground segment useless. It wondered whether a provision on the balancing on these conflicting interests should not be inserted in the preliminary draft Protocol.

92. It was objected that the question raised was outside the scope of both the Convention and the Protocol, and that inserting a provision dealing with this matter would interfere with well-established national legal regimes.

