



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 XVII

93. Mr Stanford informed the Committee of the developments that had taken place in relation to the future Supervisory Authority. The desirability and feasibility of the United Nations (U.N.) acting as Supervisory Authority had been discussed in particular at the last session of the Legal Subcommittee of the United Nations Office for Outer Space Affairs. There were a number of questions that still had to be answered satisfactorily, such as the mandate of the U.N. under the United Nations Charter. It had been made clear that the UNIDROIT Secretariat should explore also other avenues. The Secretary-General had therefore sent letters to the International Telecommunications Union (I.T.U.), the International Mobile Satellite Organization (I.M.S.O.), the International Telecommunications Satellite Organization (I.T.S.O.), and the European Space Agency (E.S.A.). One Government that during the discussions has suggested that a Government agency or an ad hoc body created by Government might take over the function of Supervisory Authority had also been contacted. The E.S.A. had indicated that the matter had been placed before its Committee. Mr Stanford had further explained the implications to the Advisory Committee of the I.M.S.O. at a meeting. No reply had as yet been received from the I.T.S.O. and the I.T.U. had indicated that they were studying the proposal and would be delighted to discuss the matter further with the Secretary-General. No reply had as yet been received from the Government contacted.

94. The observer from the International Mobile Satellite Organization (I.M.S.O.) indicated that a decision could only be taken by the Assembly of Parties of the Organisation and that the next meeting would take place in October 2004. The Advisory Committee had advised the Organisation to follow developments and continue to participate and report to the Assembly of Parties. Once taken, the decision would be communicated immediately to the Secretary-General.

95. The observer from the United Nations Office for Outer Space Affairs referred to the information provided by Mr Stanford and added that the U.N.O.O.S.A. had been looking in particular at the question of possible conflicts between the preliminary draft Protocol and the U.N. treaties, as well as at the question of whether or not the U.N. could serve as Supervisory Authority. No decision had as yet been taken.

96. One delegation stated that some of the member States of UNIDROIT were considering whether UNIDROIT might not be able to act as Supervisory Authority. Alternatively, a mechanism similar to that of the preliminary draft Rail Protocol might be examined, i.e. that an ad hoc organisation be created by the States Parties with an international organisation serving as secretary.

97. Another delegation stated that in view of its political role and nature the U.N. would not be a suitable Supervisory Authority, and that it would be preferable if a U.N. agency or a non-governmental organisation such as the I.C.C. act as Supervisory Authority.

98. Turning to the text of the Article, one delegation suggested that the words "or alternatively a process agreed to for a future designation" be added after "designated" in view of the experience of the Cape Town diplomatic Conference at which it had not been possible to decide all matters. Furthermore, it suggested that para. (2) of Article XVII of the Aircraft Protocol, which had been omitted in the preliminary draft Space Protocol, be reinstated. It was however observed that the formulation of the preliminary draft Space Protocol was intended to accommodate the thought in para. (2) of the Aircraft Protocol. If para. (2) of the Aircraft Protocol were inserted the formulation would have to be modified.

99. With reference to para. (2), another delegation suggested that "entity" in line three should read "organisation or entity"

100. It was decided that the Drafting Committee should consider the proposed addition to para. (1), whether Article XVII(2) of the Aircraft Protocol should be added as a new para. (2), as well as the proposed addition “organisation or entity” to the present para. (2).

Article XX

101. One delegation stated that it should be made clear that “waiver” referred to a waiver by a State or State agency party to a particular transaction, and that therefore the words “by a party to an agreement or contract of sale” be added in the first line after the word “immunity”. Furthermore, in the third line “space assets” should be modified to read “to a space asset”.

102. Another delegation objected that the proposed modification to the first line was too restrictive, as there were countries in which waivers might be made for classes of transactions.

103. It was decided that the concern relating to the first line be reflected in a footnote to the present text, that the proposed modification to the third line be accepted and that the Drafting Committee examine the wording to be adopted.

Article XXI

104. The relationship between the preliminary draft Space Protocol and U.N. Space treaties was examined in a document submitted by the delegation of India. The document contained proposed additional language for Article XXII(5) of the preliminary draft Space Protocol, as well as the addition of a new Article dealing with the relationship with the U.N. Space Treaties.

105. Another delegation suggested that a less specific formulation might be preferable, such as “The Convention as applied to space assets does not supersede State Party rights and obligations under the existing United Nations Outer Space Treaties or instruments of the International Telecommunications Union”. Some delegations favoured this formulation, although it was suggested that the word “supersede” be replaced by “affect”.

106. A number of delegations stressed that the question of the relationship with the U.N. Treaties had been extensively discussed and that the result had been that there were no conflicts between the instruments, considering also that the Space Treaties dealt with public international law issues whereas the preliminary draft Space Protocol dealt with private law.

107. Other delegations objected that it was not possible to exclude that even if there were no conflicts at present, conflicts might develop in the future. Furthermore, considering the increasing inter-relationship between international public law and private law it was not possible to separate the two entirely.

108. In the end, the Chairman suggested that the delegations that had submitted proposed wording meet to prepare a joint proposal to submit to the Drafting Committee.

109. One delegation pointed out that Article II stated how the Convention and the Protocol should be referred to, but that reference was often made to either one or the other. It suggested that the Drafting Committee look into the matter.

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110. Two documents with proposed new wording and provisions were submitted by the Space Working Group for consideration by the Committee at a future session.

