



**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
Fourth session
Rome, 3/7 May 2010**

UNIDROIT 2010
C.G.E./Space Pr./4/W.P. 8
Original : English
4 May 2010

**SUMMARY REPORT
FOR
4 May 2010**

(prepared by the UNIDROIT Secretariat)

Opening of the session

1. The Chairman opened the session at 9.40 a.m.

Agenda Item No. 3 on the revised draft agenda: consideration of the revised version of the preliminary draft Protocol: *continued*

F. Consideration of the priority between an assignee of debtor's rights under a rights assignment and an assignee under an assignment of rights deriving from the space asset but unconnected to an international interest:

2. In line with the decision taken on this issue on the previous day, the Governments of Japan, Canada and the United Kingdom put before the Committee a proposed text for a new Article XIII(1).¹ It was explained that this provision would ensure the priority of an assignee of debtor's rights attached to an international interest whose interest had been registered in the future international registration system for space assets over the interest of an assignee in the same rights whose interest was not attached to an international interest in the relevant space asset and, therefore, not capable of being registered in the future international registration system, even if the latter had been the first in time to acquire that interest. It was further noted that this provision was intended to provide the certainty and clarity that was considered vital to the integrity of the future International Registry.

3. There was discussion over the drafting of both the proposed Article XIII(1) and the definition of "rights assignment". It was agreed that the proposed Article XIII(1) should be adopted subject to consideration by the Drafting Committee of the question as to whether the policy reflected in the new Article was appropriately reflected in the definition of "rights assignment".

¹ C.G.E./Space Pr./4/W.P. 7.

G. Consideration of the policy implications of the duty of co-operation incumbent on the assignor to co-operate with the assignee for the transfer of its licence:

4. There was discussion regarding a number of proposed changes to the drafting of Article XVI. However, during discussion, the need for this Article was called into question, particularly in the light of regulatory and contractual practices which already existed in the international commercial space field. One delegation suggested that Article XVI should be retained, notably since this provision was narrowly drawn and would ensure that a debtor could not interfere with the issuance of a new licence in favour of a new party whilst, at the same time, not creating undue obligations on a debtor.

5. It was, however, agreed that since the application of Article XVI would raise more problems than it would solve and that the parties who negotiated such transactions were sophisticated and, therefore, could be expected to take care of such matters in their contracts, this Article should be deleted.

H. The question of the modification of the provisions of the Convention regarding default remedies, in particular, first, regarding whether the requirement of commercial reasonableness set forth in Article XVIII(2) of the revised preliminary draft Protocol and the qualification of "reasonable prior notice" laid down in Article XVIII(3) thereof should be subject to a declaration by a Contracting State or be free-standing provisions of the revised preliminary draft Protocol:

6. Several delegations expressed the desire to maintain uniformity wherever possible among the Protocols to the Cape Town Convention and concluded that it was, therefore, desirable to delete paragraph 1 of Article XVIII.

7. It was so agreed.

I. Consideration, in the light of the potential implications for national laws, of Article XXI(5) of the revised preliminary draft Protocol:

8. It was agreed that the square brackets should be removed from Article XXI(5).

J. The language inside square brackets in Article XXVII(2) of the revised preliminary draft Protocol:

9. Some delegations noted that it would be important to remove the brackets from the language in Article XXVII(2) in order to ensure that States would not be able to introduce new restrictions on assets governed by the future Protocol which went beyond the States' own laws and so that creditors would have full knowledge of the applicable regimes which they would have to accommodate.

10. It was, therefore, agreed to remove the square brackets from Article XXVII(2).

K. Article XXVII *bis*:

11. A number of delegations expressed concern over the inclusion of a public service exemption from the exercise of default remedies under the revised preliminary draft Protocol, noting that such a provision risked interfering with the mechanisms which had already been developed by States to protect those services which were considered to be of a public nature. While some of these delegations favoured the replacing of Article XXVII *bis* by the insertion of a clause in the preamble stating that nothing in the future Protocol was intended to run counter to the rules and regulations of a Contracting State, others favoured extending Article XXVII(2) of the revised preliminary draft Protocol in such a way as to provide the protection needed by States to ensure the continuity of public services, with support being expressed

by some in both these groups of delegations for both possible solutions. Another delegation suggested that, rather than dealing with the problem by extending the scope of Article XXVII(2), there should be a separate Article which would indicate that nothing in the envisaged Protocol would affect national regulations, notably those concerning public service. Yet another delegation suggested that, if any of these approaches were adopted, States should be required to publish information regarding their policies on public services.

12. One delegation indicated that a reference to the applicable law as a solution would not be appropriate because, in many cases, the applicable law would not necessarily be the law of the State which would be affected by the interruption of the public service in question.

13. A number of other delegations, while signalling their support for the elaboration of a new principle in the preamble dealing with public service, expressed the importance of retaining a provision within the text of the revised preliminary draft Protocol which would ensure the continuity of public services. One of these delegations, while recognising the drafting difficulties that would be involved in the finding of an appropriate balance between the interests of States in maintaining a public service and of creditors in being able to exercise default remedies, suggested the seeking of a less intrusive mechanism than the one found in the proposed Article XXVII *bis*, such as requiring a creditor seeking to exercise its default remedies over an asset providing a public service first to consult the State that would be affected. Another delegation also expressed support for the proposed Article XXVII *bis* but suggested that paragraph 3 should be amended.

14. Whilst one delegation indicated that the use of the term "vital interest" in the proposed Article XXVII *bis* would create confusion if not defined elsewhere, another delegation indicated that this term was commonly used in international treaties and in judgments of the International Court of Justice and made it possible to avoid having to enumerate all those services which could be considered to be of a public nature.

15. One delegation proposed following the system of alternatives employed in the revised preliminary draft Protocol on the subject of remedies under insolvency, whereby States would, by declaration, have the option of either, on the one hand, referring the question of public service to the applicable national law or, on the other hand, applying a rule such as that set out in Article XXVII *bis*.

16. It was agreed that the issue should be the subject of further consideration by the Informal Working Group on this subject which had been set up at the previous session of the Committee, which consisted in the delegations of the People's Republic of China, the Czech Republic, France, Germany, Greece, India, Spain and the United States of America. It was agreed that this Informal Working Group would meet at the end of the discussions of the Committee on the following day.

L. Completion of the criteria for identification of space assets that have been launched in Article XXX(2) of the revised preliminary draft Protocol and consideration of the need for further clarification as regards which paragraph of Article XXX should apply in the case of a space asset in respect of which a first international interest was registered prior to launch and then a second international interest was registered after launch:

17. Concern was expressed that use of two sets of criteria for identification of space assets for the purposes of registration - one being for the registration of an international interest in an asset prior to launch (Article XXX(1)) and the other for registration of an asset after launch (Article XXX(2)) - might lead to difficulties for those searching the future International Registry, by reason of different criteria being used to search for the same asset, potentially leading to separate registrations being made over the same asset and having the same degree of priority. In this connection, it was suggested that it might be more appropriate to have a single set of identification criteria for registration purposes.

18. One delegation suggested the addition of the names of the parties to the agreement under which an international interest was created to the mandatory criteria for identification of a space asset found in Article XXX(1).

19. It was agreed that additional technical information, in particular concerning the practical feasibility of the employment of particular criteria, should be sought from those observers representing the international commercial space, financial and insurance communities before any further action be taken so as to inform further discussion by the Committee.

O. Consideration of the precise formulation of Article XXXIV of the revised preliminary draft Protocol, and in particular the question as to whether the United Nations Outer Space Treaties should be specifically enumerated:

20. There was general support for the removal of the square brackets surrounding Article XXXIV and it was decided to keep the language of that Article as it was.

21. One delegation expressed concern over what it saw a possible problem of compatibility between the envisaged Protocol and the instruments listed in this Article. It was suggested that this issue could be addressed in the Official Commentary on the future Protocol.

23. It was agreed that the square brackets surrounding Article XXXIV should be removed.

M. Consideration of the question whether provision should be made for the case where a space asset in respect of which an international interest had been registered was never launched:

24. There was a concern expressed over the term "one year" in Article XXXI(3) and whether it would not be more appropriate to extend this time period and/or add to it the term "or the time period agreed by the parties".

25. In the light of Article 25(2) of the Cape Town Convention, it was suggested that this Article might not be needed and it was, accordingly, agreed that it be deleted, subject to the Drafting Committee checking whether Article 25(2) did indeed cover all the situations needing to be covered.

Agenda Item No. 3 on the revised draft agenda: consideration of the revised version of the preliminary draft Protocol: *continued*

Review of revised preliminary draft Protocol in general

Article I(2)(b)

26. It was agreed that the word "all" should be deleted.

Article I(2)(f)

27. It was suggested that the proposed definition of "launch vehicle" was not sufficiently precise and, in the light of the fact that no other category of space asset had been defined in a distinct provision - a task that would, it was suggested, be extremely difficult - that it be deleted.

28. It was agreed, however, that this provision should be placed in square brackets, pending the conclusion of the work of the Informal Working Group on default remedies in relation to components.

Article I(2)(g)

29. One delegation suggested that the second use of the word “licence” be deleted. However, another delegation indicated that the use of the word licence in this context was in conformity with regulatory practice. As a result, it was decided that this definition should be retained, without modification.

30. The Third Deputy Chairman adjourned the session of the Committee at 5.05 p.m.