



**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**

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**SUMMARY REPORT
FOR
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(prepared by the UNIDROIT Secretariat)

Opening of the session

1. The Chairman opened the session at 9.56 a.m.

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

Article I(2)(i)

2. It was agreed that this Article be referred to the Drafting Committee for review and possible clarification.

Article I(2)(j)

3. This sub-paragraph was approved without modification.

Article I(2)[(jj)]

4. It was agreed that this Article be referred to the Drafting Committee for review, in the light of the discussion of salvage insurance in Article IV(4) and (5), as to its necessity and, if retained, as to whether the term "salvage" should be replaced by the term "salvage interest".

Article I(2)(k)

5. One delegation proposed replacing the term "means" by the term "includes" in order to avoid comprehensively defining the term "space". However, there was general agreement that this provision should be retained without change.

Article I(2)(1)

6. It was agreed that it was not appropriate to discuss this sub-paragraph further for the time being, given that key elements of it had already been discussed in the context of the Committee's discussion of outstanding issues and that it would make greater sense to look at it once the work of the Informal Working Group on components had been completed.

Article I(3)

7. It was agreed not to discuss this paragraph further, since it had already been discussed in the context of the Committee's discussion of outstanding issues and was before the Drafting Committee.

Article II

8. This Article was approved without modification.

Article III

9. This Article was approved without modification.

Article IV

10. One delegation noted the concerns which had been expressed to it by certain members of the international commercial space and financial communities regarding the treatment of "salvage insurance" under the revised preliminary draft Protocol, notably because it was felt that such treatment might disturb priority of international interests in a space asset and potentially create complications for inter-creditor agreements. This delegation expressed concern that the current policy contained in the revised preliminary draft Protocol regarding salvage insurance might have negative effects on the availability of financing for space assets at the outset and would, therefore, defeat the goals of the envisaged Protocol.

11. A few delegations expressed doubts as to whether, under Article XXIV, insurers already had adequate means to protect their interests in a space asset. One delegation noted, however, that under the Cape Town Convention, an insurer did not qualify as a creditor and a salvage interest would not qualify as an international interest capable of being registered without the additional language contained in Article IV(4) and (5).

12. An observer representing the international space insurance community illustrated why it thought that additional provisions were needed under the revised preliminary draft Protocol on the issue of salvage insurance.

13. One observer indicated that insurance was extremely important to the international commercial space sector and that efforts should be made to protect the interests of insurers.

14. One delegation expressed concern over the language in Article IV(5), notably in the light of the fact that not all national laws recognised an insurer's right of subrogation. Another delegation indicated that the purpose of Article IV(5) was to provide for an insurer's right of subrogation even in those circumstances where such a right was not recognised by national law. It was agreed that the Drafting Committee should review this provision in order to clarify this point.

15. There was general agreement, subject to one objection, that salvage insurance should, in principle, be retained in the revised preliminary draft Protocol in the light of its unique importance to commercial space finance. It was also agreed that both Article IV(4) and (5) should be reviewed by the Drafting Committee, in consultation with the observer representing the international space insurance

community, in order to find more appropriate language that would address the views and concerns which had been expressed.

Article V

16. This Article was approved without modification.

Article VI

17. This Article was approved without modification.

Article VII

18. This Article was approved without modification.

Article VIII

19. One delegation asked why, under paragraph 1 of this Article, Contracting States would be required to opt out of this provision, in contrast to the Aircraft Protocol and the Luxembourg Protocol wherein Contracting States were required to opt into the corresponding provision. It was agreed that the Secretariat would conduct a survey of declarations made under the corresponding provision under the Aircraft Protocol and report back to the Committee so that it might decide whether this Article should follow the same approach as the one contained in the Aircraft Protocol and the Luxembourg Protocol or whether a different approach might be more appropriate.¹

Article IX

20. This Article was approved without modification.

Article X

21. It was agreed that this Article be referred to the Drafting Committee for review and possible clarification, in particular of the term "grantor", and insertion of the words "which are" after the words "the debtor's rights" in paragraph 1.

Article XI

22. This Article was approved without modification.

Article XII

23. It was agreed that this Article be referred to the Drafting Committee in order to take account of the discussions on salvage insurance, and in particular that the intent of this Article was captured by the language employed, especially regarding the entitlement of the person acquiring by subrogation.

Article XIII(1)

24. It was agreed not to discuss this paragraph further, since it had already been discussed in the context of the Committee's discussion of outstanding issues and was before the Drafting Committee.

¹ The Secretariat would point out that of the 29 States Parties to the Aircraft Protocol 27 have opted into the provisions of Article VIII.

Article XIII(2)

25. This Article was approved without modification.

Article XIV

26. It was agreed that this Article be referred to the Drafting Committee for further clarification, if necessary. It was, in particular, agreed that the Drafting Committee should find a more appropriate term than "grantor", as in Article X, and that the English text should be brought into line with the French text on this subject.

Article XV

27. This Article was approved without modification.

Article XVII

28. This Article was approved without modification.

Article XVIII

29. Paragraphs 1, 2 and 3 had already been approved in the context of the Committee's discussion of outstanding issues. It was agreed that it would not be appropriate to discuss paragraph 4 further, since this was the subject of ongoing consultations within the Informal Working Group on default remedies in relation to components.

Article XIX

30. This Article was approved without modification.

Article XX

31. One delegation expressed concern regarding whether the term "other data and materials" was sufficiently clear and whether the meaning of "data" should not be defined. In particular, this delegation enquired as to whether the concept of data and materials included intellectual property. It was pointed out that intellectual property was not intended to be covered by the sphere of application of the revised preliminary draft Protocol.

32. Another delegation wondered whether this Article could not be made clearer by replacing the term "other" with the term "related". It was so decided

Article XXI

33. Paragraph 5 had already been approved in the context of the Committee's discussion of outstanding issues. The rest of this Article was approved without modification.

Article XXII

34. This Article was approved without modification.

Article XXIII

35. One delegation recalled the agreement that, following the decision to remove the square brackets around the words “in accordance with the law of the Contracting State” at the previous session of the Committee, it would be for the Official Commentary on the future Protocol to clarify the fact that this provision was not intended to compel States to take specific action.

36. One delegation indicated that paragraph 2 required additional clarity and proposed that (iv) be complemented by an example such as “the State of registration”. Another delegation suggested that this be changed to “State[s] of registration”, as sometimes there was more than one State of registration.

37. Another delegation also sought clarity in respect of (ii) under paragraph 2 of this Article and what was meant by the term “controlled”.

38. It was agreed that (iv) contained in Article XXIII(2) be referred to the Drafting Committee, to find possible language to address the concerns expressed in respect of this provision.

Article XXIV

39. This Article was approved without modification.

Article XXV

40. This Article was approved without modification.

Article XXVI

41. This Article was approved without modification.

Article XXVII

42. Paragraph 2 had already been considered in the context of the Committee’s discussion of outstanding issues, the square brackets around the words “in accordance with its laws and regulations” having been deleted.

43. One delegation expressed concern regarding the potential impact of paragraph 2 on domestic law, notably in relation to the imposition of unilateral sanctions pursuant to national laws and policies and it was suggested that additional language might be included to prevent such a conflict. It was agreed, however, that such an approach would not be appropriate within this provision but that the Drafting Committee should consider addressing this issue in the preamble.

44. One delegation noted that the words at the end of paragraph 2 were similar to those found in the former Article XVI and, in the light of the Committee’s decision to delete that Article, that the similar language in this Article should also be deleted. It was noted, however, that these words might have reason to be maintained in this Article independently of the deletion of Article XVI and that this language should be further discussed when the Committee came to deal with the public service limitation.

45. The Chairman adjourned the session at 4.02 p.m.