



**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
Second session
Rome, 26/28 October 2004**

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DRAFT REPORT
PLENARY SESSION
26 October 2004

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OPENING

1. Mr. S. MARCHISIO (Italy), elected Chairman of the Committee of governmental experts at its first session, opened the session. He indicated that in consideration of the concerns expressed during the discussions held at the first session, the Secretariat suggested that it might be appropriate to focus on the practical viability of the preliminary draft Protocol rather than on a second reading of the text. The points on which it was suggested that discussion should concentrate were illustrated in the Explanatory Note to the Draft Agenda (C.G.E./Space Pr./2/W.P.2).

AGENDA ITEM NO. 1: ADOPTION OF THE AGENDA

2. The draft Agenda was adopted by the Committee as proposed.

AGENDA ITEM NO. 2: ORGANISATION OF WORK

3. Mr M. STANFORD, Deputy Secretary-General of UNIDROIT *a.i.* and Secretary to the Committee, illustrated the schedule proposed for the working sessions. The Committee adopted the schedule as proposed.

AGENDA ITEM NO. 3: CONSIDERATION OF KEY POLICY ISSUES ARISING UNDER THE PRELIMINARY DRAFT SPACE PROTOCOL (C.G.E. SPACE PR./2/W.P. 4)

4. The representative of the Space Working Group (S.W.G.) illustrated the work done since the first session and contacts made with satellite operators and financiers. In this context a colloquium had been organised in Kuala Lumpur (Malaysia) on 22 and 23 April 2004.

(a) *Definition of space assets (Article I(2)(g))*

5. Article I(2)(g) identified as space assets:

“(i) any identifiable asset that is intended to be launched and placed in space or that is in space;

(ii) any identifiable asset assembled or manufactured in space;

(iii) any identifiable launch vehicle that is expendable or can be reused to transport persons or goods to and from space; and

(iv) any separately identifiable component forming a part of an asset referred to in the preceding sub-paragraphs or attached to or contained within such asset”.

6. Two delegations questioned the use of the phrase “space assets” instead of “space objects”, which would conform with international space law. The UNIDROIT Secretariat noted that the phrase “space assets” had been used in the Cape Town Convention following advice from a number of public international space law experts not to use terminology similar to that of the space treaties.

7. With reference to sub-paragraph (i), several delegations suggested that the word “and” be replaced by “or”.

8. One delegation noted that the phrase “intended to be launched” involved subjective judgment which might lead to uncertainty.

9. With reference to the use of the word “component” in sub-paragraph (iv), some delegations noted that the concept of “component” was too abstract. One delegation questioned whether that concept would cover transactions such as irrevocable right of use agreements.

10. Several delegations agreed that it would be appropriate for the definition to cover the satellite manufacturing phase. Other delegations had concerns about very small component parts being included within the definition. It was observed that the practicalities of the registration process would address these concerns.

11. Several delegations raised the concern that the definition was based on the possibility of co-ownership of a single asset or component, whereas such a relationship was not recognised in all legal systems.

12. A number of delegations noted that commercial practice included arrangements for co-ownership and co-use of transponders and satellites.

13. The special adviser to the UNIDROIT Secretariat noted that it might be necessary for the preliminary draft Protocol to include a rule concerning whether rights in a component would be affected by that component's incorporation into an asset.

14. Some delegations noted that the concept of a component being contained within an asset was not recognised by some legal systems and that this should be taken into consideration.

15. Some delegations noted that in relation to the connection between Article I(1) and Article I(2)(g) the phrase "except where the context otherwise requires" in Article I(1) could be interpreted differently in different jurisdictions and result in inconsistent approaches.

(b) "Debtor's rights" and "related rights" (Article I(2)(a) and (f))

16. The representative of the S.W.G. introduced document C.G.E. Space Pr./2/W.P. 4 and noted that it was generally difficult to repossess or to change the function of space assets, and that this had led to a recognition of the need for the preliminary draft Protocol to deal with debtor's rights and related rights, which were a very important feature in space asset financing transactions. The paper presented proposals to incorporate these concepts into the preliminary draft Protocol.

17. There was general recognition among delegations of the need for the preliminary draft Protocol to address debtor's rights and related rights, although many delegations noted the need for the proposals to be further examined and for the drafting to be further refined.

18. Some delegations noted that in relation to registration and assignment of debtor's rights, the Protocol should require that the consent of third parties be obtained. Other delegations stressed that this was a question that should be left to be determined by the applicable law.

19. One delegation questioned whether the definition of "right's assignment" needed to be limited to contracts which were applied by way of security. The representative of the S.W.G. noted that this issue warranted further consideration; however, the philosophy underlying the proposal was that debtor's rights and related rights should be required to be linked to a space asset and should not be capable of separate registration.

20. A number of different views were expressed on the proposals on related rights. One delegation questioned whether it would be appropriate to permit registration of an international interest in a related right in the absence of consent to that registration by the relevant national, intergovernmental or other international body. It noted that such an approach was reflected in Article XX. Several delegations supported the approach that had been taken in an earlier version of the definition to expressly limit such rights to those which may be transferred or assigned to the extent permissible and assignable under the law concerned. Other delegations, although agreeing that it might be useful to expressly refer to limits on assignment under national law, noted that it was not appropriate for such an operative provision to be included in a definition. Some delegations noted that the issue was adequately addressed by Article II(2) which recognised the supremacy of national law regarding issues of transferability. Other delegations questioned whether Article II(2) provided sufficient recognition of this point. The special adviser to the UNIDROIT Secretariat noted that a premise underlying the Cape Town Convention was that a charge could only be given over a related right to the extent that that right was transferable. However, he suggested that there might be value in considering a separate article clearly stating that specified provisions would apply to related rights only to the extent that those rights were transferable or already subject to the appropriate consent. Several delegations supported this proposal.

21. In concluding the discussion, the Chairman invited the S.W.G. to revise the working paper in close cooperation with interested Governments and taking into account the policy issues raised and drafting suggestions made in the discussions in order to develop a new proposal for submission to the next session of the Committee.

(c) *Identification of space assets and registry considerations (Article VII)*

22. Several delegations noted that the preliminary draft Protocol must include some identification criteria for space assets, or the scope of the preliminary draft Protocol itself would be left unclear. One delegation suggested that the adopted text of the Protocol include any criteria that could be identified at the time of adoption, with the possibility that the Supervisory Authority develop further criteria in consultation with a preparatory committee, noting that this model had been followed in the development of the Aircraft Protocol. The special adviser to the UNIDROIT Secretariat suggested that it might be appropriate to develop general identification criteria and to reserve to the Supervisory Authority the task of developing identification criteria to be used solely for the purpose of registration. Some delegations expressed concern about the Supervisory Authority being given capacity to develop criteria that would affect the Convention's application, although other delegations noted that this might be necessary and that they would have no objection if the Supervisory Authority's task were confined to technical and operational matters. Some delegations suggested that identification criteria could include details of the date and place of manufacture, the date of launch and the orbital position. One delegation supported reverting to the previous version of Article VII which had listed identification criteria.

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