



**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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PLENARY SESSION
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	<i>paragraphs</i>
AGENDA ITEM NO. 3: Consideration of key policy issues arising under the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets, and in particular Articles I(2)(g), IX, X(5) and XVI (cf. C.G.E. Space Pr./2/W.P. 3) and the Space Working Group's proposed new definitions for inclusion in Article I and additional Article IV (cf. C.G.E. Space Pr./2/W.P. 4) cont.d	23 - 42
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AGENDA ITEM NO. 3: CONSIDERATION OF KEY POLICY ISSUES ARISING UNDER THE PRELIMINARY DRAFT SPACE PROTOCOL (C.G.E. SPACE PR./2/W.P. 3 AND 4) CONT.D

(c) *Identification of space assets and Registry considerations (Article VII) (cont.d)*

23. The representative of the S.W.G., at the request of one delegation, provided a further detailed explanation of the mechanics of a typical satellite financing transaction, including financing of the construction and assembly phases. The Chairman requested the S.W.G. to include the explanations provided in the revised W.P. 4.

24. The S.W.G. representative from the *Société internationale de télécommunications aéronautiques* (SITA) provided information about practical issues encountered in the setting up of the International Registry under the Aircraft Protocol, and suggested that the registry established under the preliminary draft Protocol could incorporate information on assets such as their make, date of launch, orbital position manufacturer and type and that it would be important to have the flexibility to enable such information to be amended and updated as appropriate.

25. The representative of the International Telecommunications Union (I.T.U.) explained the operation of its radio regulations and of its registry functions, and, following a request from one delegation, provided information about the World Radiocommunication Conference (W.R.C.) 2000 plan.

26. Several delegations stressed the importance of having an effective registration and asset identification system.

27. One delegation noted that the registry contemplated for the preliminary draft Protocol would be a notice filing registry, which would minimise administrative costs and would distinguish it from the I.T.U. registration system. The representative of the S.W.G. noted that another distinction was that the registry contemplated under the preliminary draft Protocol would be concerned with the registration of security interests. Several delegations noted that the number of space assets and of new space assets launched each year would need to be considered in designing the registry.

(d) Limitations on remedies (Article XVI)

28. The representatives of the S.W.G. introduced the two alternative formulations of Article XVI(3) and noted that the S.W.G. did not support the inclusion of this provision because of its potential negative impact on the availability of credit to States that made declarations, and because there were alternative approaches available to protect against interruption in the provision of public services that utilised space assets.

29. One delegation questioned the efficacy of the proposals because they would rely upon a space asset's presence in a jurisdiction, and also raised concerns about the effect of the provision on the existing access by States to low-cost satellite access for public services.

30. Several States questioned the need for a provision on this issue, noting that protection against the interruption of public services was an existing problem and that solutions currently adopted should be considered. Other delegations noted that the inclusion of a provision could curtail or defeat the economic benefits of the preliminary draft Protocol. The special adviser to the UNIDROIT Secretariat noted that one possible effect of a Contracting State making a declaration under the proposal might be to impede that Contracting State's ability to negotiate viable solutions with creditors.

31. Several other delegations noted that the protection of public services from interruption was a matter of critical national importance and supported the inclusion of the proposed provision. Several delegations also noted that under the proposed provision the making of a declaration would be optional and that Contracting States would therefore be able to assess the potential impact on credit availability of a declaration when deciding whether to make a declaration.

32. The representative of the S.W.G. noted that in the first alternative formulation of Article XVI(3) the phrase "as specified" did not clarify the nature of the specification that would be required.

33. Several delegations saw a need for greater elaboration of the concept of “public services”, while other delegations considered that this was a matter that should be determined by national law.

34. Some delegations noted that there were differences between States in their classification of public services and in the delivery of public services by private sector entities.

35. Other delegations suggested that for the preliminary draft Protocol to achieve an appropriate balance between creditors’ legitimate interests and the interest of States in uninterrupted delivery of public services, it should provide that where a declaration caused a creditor’s access to remedies to be defeated, the relevant Contracting State should be required to assume the contract or to provide compensation at not less than the amount of the debt. Another delegation suggested that in such cases the creditor’s rights should be determined by national laws, including national laws on requisitions.

36. In conclusion, the Chairman noted the importance of this issue to the success of the Protocol, and in particular its importance to financiers and States. Following a suggestion by Mr H. KRONKE, Secretary-General of UNIDROIT, the Chairman requested all delegations and the S.W.G. to provide the UNIDROIT Secretariat with additional information on what services are considered to be public services in their countries indicating how those services are protected at present, with any other comments relating to this issue and with any written proposals. The Chairman further noted that the UNIDROIT Secretariat would prepare a paper for submission to the next session of the Committee.

(e) Application and modification of default remedies (proposed Articles IX(4), IX bis, X(5), and Article XVI(2))

37. With reference to Article IX(4), a number of delegations questioned its effect in relation to the priority rules in situations where there were several registered international interests over both components on a space asset and the space asset itself. One delegation noted that the provision would require further elaboration, while another delegation noted that further elaboration would be difficult and that in practice this issue was addressed through inter-creditor arrangements. The special adviser to the UNIDROIT Secretariat suggested that Article IX(4) could be relocated as it did not relate to default remedies and that its relationship with other provisions in the preliminary draft Protocol should be reconsidered carefully.

38. The representative of the S.W.G. noted that the inclusion of Article IX(4) might not be necessary, as it merely described what would in any event occur in practice.

39. With reference to Article IX *bis*, one delegation noted that it should be made subject to Article XXVI(2) and that it did not take account of the strictness of national export control regulations, which did not usually accommodate the placement in escrow of information such as satellite command codes. There were two different views as to whether this concern was addressed by Article XVI(2).

40. Several delegations expressed concern about the effect of the exclusion of remedies on third parties who were not privy to the agreement referred to in the Article between the creditor and the debtor, with some of these delegations also noting that some of the interim remedies listed in Article 13(2) of the Cape Town Convention, such as the lease of an asset, could have application in relation to space assets.

41. One delegation noted that Article X(5) would be interpreted such that the exclusion of Article 13(2) of the Convention would only affect the parties to the agreement.

42. One delegation noted that the provision should be deleted as it would interfere with the competence of national courts and failed to address situations where the debtor's default had been affected by the creditor's actions.