



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

**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
Third session
Rome, 7/11 December 2009**

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**PRELIMINARY DRAFT PROTOCOL
TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
ON MATTERS SPECIFIC TO SPACE ASSETS**

(as revised by the Committee of governmental experts at its first session
(Rome, 15/19 December 2003))

and

**ALTERNATIVE TEXT OF THE PRELIMINARY DRAFT PROTOCOL,
IMPLEMENTING POLICY ISSUES
REFERRED TO AND EXAMINED BY THE STEERING COMMITTEE**

(prepared, at the request of the Steering Committee,
for presentation to the Committee of governmental experts,
by Professor Sir Roy Goode (United Kingdom) and Mr Michel Deschamps (Canada)):

POSITION PAPER

(submitted by the National Space Agency of Ukraine)

The National Space Agency of Ukraine, within the scope of its competence, considered the preliminary draft Protocol and the alternative text of the preliminary draft Protocol on Matters specific to Space Assets and interpreted the practical essence of this diplomatic legal initiative as following:

The legal regime to be established pursuant to the implementation of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (*hereinafter referred to as Protocol*) is purported to provide the scope of legally enshrined mechanisms for guaranteeing the fulfilment of obligations with regard to space assets and, therefore, bring the following benefits:

1. Favour the willingness of the private sector to invest in transactions relating to space activities through a decrease in the financial risk that at the moment is one of the most crucial elements relevant to this type of business;

2. Decrease the risks undertaken by States that provide governmental guarantees on credit return (e.g. the building of satellites);
3. The creditor in the case of the debtor's default in the performance of its obligations will be secured by a real legal instrument enabling it to fulfill its rights and interests and recover damages;
4. Provide new solutions for the financing of uniquely identifiable components, and not only of e.g. the satellite itself;
5. Will bring to the emerging users of space application services, in particular to those located in developing countries or countries with a transition economy, a new legally secured opportunity to enter the space market or to advance capacity-building in the field concerned.

Considering that the principle of equal and non-discriminative access to the exploration and uses of outer space irrespective of States' economic development requires the creation of better opportunities for the acquisition of interests in space mobile equipment, and the addressing of the practical challenges that hinder the more active undertaking of commercial space activities in the interests of all countries

Recalling more specifically core space law documents that laid the legal foundations for the carrying out of space activities at the outset of the space era, as well as the proactive role of law

Taking note with appreciation of the work accomplished by the Subcommittees of experts and the U.N. COPUOS, as well as the multilateral consultations conducted with French and German experts – representatives of C.N.E.S. and D.L.R. respectively

Inspired by the progress made in the development of the building of consensus around the provisional conclusions reached by the regularly convened Committees and working groups

Desiring to contribute in the light of the progress made regarding the relevant issue to the work of the third session of the UNIDROIT Committee of governmental experts for the preparation of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets to be held in Rome from 7 to 11 December 2009

Reaffirming the significant potential that the preliminary draft Protocol on Matters specific to Space Assets has regarding the enhancement of the availability of commercial financing for such activities, thereby bringing benefits to countries at all levels of economic, scientific and technological development

Mindful of the need to set up a legal framework through which States could support a system of asset-based financing responding to the evolution of space activities and the development of an economic framework in that area, involving private and public interests

Mindful of the gap in the financing of space projects that emerged as the availability of governmental and venture capital funding declined and of the fact that that gap might be filled by the extension of the benefits of asset-based financing to space activity through the preliminary draft Protocol

Reaffirming the importance of meeting the requirements of the financial markets to overcome the existing commercial risks associated with the financing of space projects

Bearing in mind the interaction and the importance of the compatibility of the preliminary draft

Protocol on Matters specific to Space Assets with the Cape Town Convention on International Interests in Mobile Equipment

Believing that this legal instrument is designed to create a new legal regimen for the taking of security in high-value mobile equipment

Noting the considerable potential benefits that might be derived from implementation of the legal regimen envisaged by this instrument and that, therefore, deserve the appropriate attention of all States

Believing that the establishment of such rules and procedures will contribute to finding solutions to key legal, policy and economic implications of a co-investment space-assets based mechanism

Believing further that an international mandatory system for space assets registration would, in particular, assist in their identification, supervision and control, and would contribute to the development of the international law governing the exploration and use of outer space

Bearing in mind that the development of an international legal regimen on the taking of security in, and the financing of space property represents an arduous task involving numerous complicated and interlinked legal issues

Convinced that any new international legal instrument regarding outer space activities, regardless of whether it purported to deal with public or private law issues, should be consistent with the existing U.N. space law framework

The National Space Agency of Ukraine has concluded as follows:

1. PRIMACY OF INTERNATIONAL PUBLIC SPACE LAW FRAMEWORK

The preliminary draft Protocol should neither undermine nor compromise the existing principles of international space law and, in the event of a conflict, the latter principles should prevail. Further consideration should be given to the substantive and procedural relationship between the rights and obligations of States under existing international space law and the rights and obligations of States arising from the future Protocol to take into account to a sufficient extent the unique nature, the constant evolutionary processes of space technology and the limited physical access to space assets placed in orbit.

2. TRANSFER OF OWNERSHIP

No transfers should be made to creditors located in a different jurisdiction without the approval of the relevant competent governmental authority. The appropriate regulatory framework must be established for the transfer of space assets from the nationals of one State jurisdiction to another. This procedure must be legally controlled through the concluding of appropriate arrangements between Contracting States to the future Protocol on Matters specific to Space Assets.

The transferability of such rights should be determined by the national legislation pursuant to which they were granted. The national legal framework should guarantee that such activities were duly authorised and are continuously supervised by the relevant State. The transfer of space assets under the future Protocol might avoid cases where the "launching State" will no longer have jurisdiction and control over a space asset, even though it will be liable for damage caused under the Convention on International Liability for Damage Caused by Space Objects. Issues relating to

domestic regulatory practice would also require further consideration, particularly the implications of licencing and export control upon the transfers contemplated under the future Protocol.

The issue of default remedies in relation to components should provide for certain limitations on the exercise by the creditor of its default remedies in respect of a space asset where this would adversely affect the interests of another creditor in an independent space asset. However, these limitations on the exercise of default remedies should particularly be applied to those independent space assets that are physically and functionally linked.

3. RELATED RIGHTS

Related rights are *intuitu personae* and cannot, therefore, be the subject of a transaction or a security interest. They cannot be either terminated or transferred. The concept of "related rights" is, in its origin, a concept of a public nature.

4. PUBLIC SERVICE

Public interest should be duly protected and prevail. Space activities, even if they are realised by non-governmental entities, as a rule, are supposed to serve the public interest, i.e. the interests of the whole community.

Further consideration should be given to the implications of the future Protocol for space assets that are publicly funded in part and ensuring that the exercise of creditors' remedies would not compromise the continuation of public services provided by particular space assets.

5. REGISTRATION

Notwithstanding the private nature of the relationship arising under international interests in space assets, control of these activities should be exercised, as at present, by public entities, and the States under the jurisdiction of which such activities are carried out should bear responsibility for the actions of their nationals.

The assumption by the United Nations of the function of Supervisory Authority might contribute to its main purpose of promoting international co-operation in solving various international problems as enshrined in the Charter of the United Nations. Moreover, the United Nations, if it agreed to exercise this role, would help avoid conflicts between the International Registry to be established pursuant to the future Space Assets Protocol and the International Register of Objects Launched into Outer Space under the Convention on Registration of Objects Launched into Outer Space.

Therefore, it might be reasonable to establish a link between the information to be contained in the Registry envisaged by the future Protocol and the U.N. Register maintained under the Registration Convention, in order to allow adequate access by States to both sets of information and compatibility of data. The interrelationship with the I.T.U. and COSPAR data bases / registries might be considered expedient for the purpose of ensuring the completeness of information. Such access could facilitate the identification of the parties truly responsible in the case of damage caused by space assets.

Such a system for registering international interests in space assets should enjoy the confidence of potential users.

6. INDEPENDENT OPERATION, USE AND CONTROL

The independent operation, use and legal & technical control of this object should be secured. Moreover, the object itself should be accessible to a creditor in the case of default.

7. LIABILITY

In order to resolve issues relating to the correlation between the liability obligations of the "launching State" under the Liability Convention and the possible transfers of ownership or possession contemplated under the future Protocol, it might be appropriate to provide for a right of recourse that could be exercised by such "launching States" against those actually in control of the object causing damage.