



**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
Fifth session
Rome, 21/25 February 2011**

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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 9.50 a.m.

Agenda Item No. 3 on the draft agenda: consideration of the revised preliminary draft Protocol as it emerged from the fourth session of the *UNIDROIT* Committee (C.G.E./Space Pr./5/W.P. 3): continued

Consideration of outstanding issues regarding the revised preliminary draft Protocol (C.G.E./Space Pr./5/W.P. 2) (continued)

(i) Proposed new Article II(3): Application of the Convention as regards space assets and debtor's rights (continued)

2. The Committee agreed to adopt the proposal of one observer for Article II(3) that would deal with conflicts that might arise concerning objects that could potentially be classified as both an aircraft object and a space object by adding language that would ensure that an object that was an aircraft object pursuant to the Aircraft Protocol would not be capable of being a space asset pursuant to the future Protocol, subject to drafting refinements by the Drafting Committee.

(ii) Proposed new Alternative A of Article XXII: Remedies on insolvency

3. One delegation proposed a new Alternative A to Article XXII that would, first, extend those protections provided for in paragraph 2 for physical assets to debtor's rights and rights assignments and, secondly, make a reference to Article XXVII(2) for additional clarity. This delegation noted that its proposal reflected the equivalent of the Aircraft Protocol.

4. One delegation indicated that care would need to be taken to ensure that such a proposal did not lead to the creation of two different forms of treatment, one for physical assets and another for debtor's rights and rights assignments, rather than having both categories treated in the same way. He noted however, that this concern could be looked at by the Drafting Committee.

5. It was agreed that this proposal should be adopted subject to drafting refinements by the Drafting Committee.

(iii) Proposed new Article XXVII(2): Limitations on remedies

6. One delegation proposed a new Article XXVII(2) designed to extend the application of this Article, under the proposed new sub-paragraph 2(a), to the creation of an international interest as well as the enforcement of default remedies. This delegation noted that its proposal was not meant to interfere with current State practices by requiring that new regulations should be adopted by States that would restrict or attach conditions to the creation of an international interest where such a practice did not already exist but, rather, would simply permit those States that did wish to restrict or attach conditions to the creation of an international interest to do so if they found such a practice to be desirable. This delegation also noted that this Article had been drafted in such a way as to take account of the proposal made by another delegation on the previous day regarding a new Article IX(2) (Formal requirements for rights assignments).

7. One delegation suggested that, if such a proposal were to be adopted, then reference should also be made to the placement of command codes and related data and materials in order to bring this amended Article XXVII(2) into line with Article XX. Another delegation suggested that it might also be appropriate to broaden the proposed new Article XXVII(2) to cover assignments of international interests. Yet another delegation wondered whether, after extending Article XXVII(2) to cover the creation of an international interest, it was still appropriate to include this provision under the title "Limitations on remedies".

8. One delegation, noting its support for the basic concept behind the proposed Article XXVII(2), noted that this proposal raised complex issues and that further consideration should be given to it before the Committee agreed to adopt it.

9. It was agreed that, in the light of, on the one hand, the general support shown for the proposed Article XXVII(2), subject to the suggested amendments, and, on the other, the desire to consider this proposal further, notably sub-paragraph 2(a), this proposal would be discussed further later in the session and that delegations should, in the meantime, make the necessary consultations needed to reach a decision on whether to adopt this proposal.

Consideration of the other provisions of the revised preliminary draft Protocol

Article I(1)

10. One delegation suggested that it might be useful for the Drafting Committee to compile a list of those terms the context of which might compel a meaning different from that set out in the Convention so that those terms could be further examined by the Committee. That delegation noted that it had not yet found any such terms but that it might be useful to keep this avenue open in future.

Article VI

11. It was suggested that the Drafting Committee might consider inserting a reference to "the ability to record a rights assignment" to the list of functions found in this Article.

Article VIII(2)

12. It was pointed out by one delegation that a comma was missing between the word "agreement" and the words "a contract" in the first line of paragraph 2 of this Article.

Article XII(2)

13. One delegation wondered whether it might not be appropriate to insert a reference to

Article 30 of the Convention in paragraph 2. This same delegation wondered whether it was still appropriate to have references to Articles 31 and 32 of the Convention in paragraph 4.

Article XVI: Economic realisation of interests; step-in operators

14. The delegation that had proposed a new Article XVI (Economic realisation of interests; step-in operators) announced the withdrawal of its proposal to enable additional consultations to be undertaken.

Article XVII: Derogation

15. One delegation noted that the Official Commentary should include guidance to indicate that, under Article XVII, some provisions, such as those dealing with treaty matters, could not be varied by agreement between parties.

Article XXII: Remedies on insolvency

16. One delegation signalled to the Committee that, in the light of the overwhelming preference of Contracting States to the Aircraft Protocol for either the parallel provision to Alternative A or for no declaration on insolvency, it would be recommending in future that Alternative B be deleted from this provision.

Article XXVII *bis*: Limitations on remedies

17. Reporting on the work of the Informal Working Group on limitations on remedies, the Secretary-General, in his role as moderator of that Group, presented the proposed new language for Article XXVII *bis* that had emerged (C.G.E./Space Pr./5/W.P. 16). This text received broad support from the Committee.

18. One delegation asked whether the proposal to make this Article subject to an opt-in provision was to be discussed at a later time or whether this Article was not intended to be subject to such a provision. Another delegation noted that it had assumed that the proposed new Article XXVII *bis* was not intended to be subject to any opt-in/opt-out mechanism.

19. Another delegation wondered whether the Drafting Committee might not find a term, carrying more the connotation of the providing of information, to replace the word “notify” in paragraph 3, noting that this word carried significant legal implications for the future Registrar.

20. The Committee, expressing its overall support, adopted this text as the new Article XXVII *bis*, subject to drafting refinements.

Article XXVIII: Supervisory Authority

21. One delegation, noting the experience with the designation of a Supervisory Authority by the diplomatic Conference for the adoption of the Aircraft Protocol, suggested that paragraph 1 be redrafted to take account of the possibility that a Supervisory Authority might not be appointed at the diplomatic Conference, in which case a resolution would necessarily need to be passed at the possible future diplomatic Conference authorising the designation of the Supervisory Authority at a later time.

22. That same delegation suggested deleting the phrase “from among persons nominated by Signatory and Contracting States” in paragraph 3 in favour of the phrase “that have participated in the negotiation of the Protocol” in the light of the technical expertise that would be needed for such a commission of experts.

Final provisions

23. The Chairman indicated that, whilst it was the practice of UNIDROIT to leave the preparation of draft final provisions until the run-up to the diplomatic Conference, some of the final clauses of the revised preliminary draft Protocol would affect the application of the Protocol, and for this reason the Chairman invited the Committee to consider, without prejudice to the eventual consideration of all final clauses by any future diplomatic Conference, Articles XXXVIII (and, in particular, Article XXXVIII(5)), XXXIX, XL, XLIII and XLIV of the revised preliminary draft Protocol.

24. One delegation noted that Article XXXVIII(5)(b) would need to be considered during any future discussions of Article I(3). That delegation also noted that it considered that all declarations capable of being made pursuant to the revised preliminary draft Protocol should be able to be made by a Contracting State at any time, with the exception of the declaration pursuant to Article XXXVIII(3) relating to territorial units which should only be able to be made at the time of a Contracting State's ratification of, or accession to, the future Protocol. Another delegation indicated that it was undertaking consultations on Article XXXVIII and would expect to be able to provide comments on that Article in the future.

25. One delegation indicated that Article XXXVII(1)(b) was an important and necessary provision, because it was important that the revised preliminary draft Protocol contain a provision, which could possibly be supplemented by a resolution of the future diplomatic Conference, leaving no room for doubt as to the steps that would need to be completed in order to bring the future Protocol into force. Another delegation indicated its view that it would not be appropriate for this issue to be dealt with in a resolution of the diplomatic Conference, and that the revised preliminary draft Protocol could reflect the language of the equivalent provision in the Rail Protocol.

26. The Chairman invited the Secretariat to ensure that all comments relating to the final clauses were referred for consideration by the future diplomatic Conference.

Title and preamble

27. The Chairman invited delegations to comment on the title of, and the preamble to the revised preliminary draft Protocol.

28. One delegation suggested that the fourth clause of the preamble should incorporate a reference to instruments of the International Telecommunication Union (I.T.U.). Some delegations supported this proposal, with some noting that similar language was included in Article XXXIV of the revised preliminary draft Protocol. For that reason, one delegation questioned whether the fourth clause of the preamble was necessary. In response to a question from one delegation, it was noted that the word "instruments" was commonly used to describe treaty-level documents produced under the auspices of the I.T.U. The Chairman invited the Drafting Committee to review the fourth clause of the preamble in order to add an appropriate reference to the instruments of the I.T.U.

29. One delegation suggested that the references, in the proposed new Article XXVII(2) that was under consideration by the Committee, to concepts such as "international peace and security" might be considered inappropriate for inclusion in an operative provision of a commercial law treaty such as the revised preliminary draft Protocol and that, perhaps, a reference to such concepts might rather be included in the preamble. Another delegation took the view that it would not be inappropriate for Article XXVII(2) to include a reference to concepts such as "international peace and security". The Chairman indicated that this issue should be considered in the context of the discussions on the proposed new Article XXVII(2),

30. The Chairman adjourned the session at 3.50 p.m.