



**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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EXPLANATORY NOTE TO THE DRAFT AGENDA

1. At its first session, held in Rome from 15 to 19 December 2003, the UNIDROIT Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*) on Matters specific to Space Assets (hereinafter referred to as the *Committee*) made considerable progress in its consideration of the text of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (hereinafter referred to as the *preliminary draft Protocol*) drawn up, at the invitation of the President of UNIDROIT, by the Space Working Group¹ and authorised for transmission to Governments by the UNIDROIT Governing Council at its 80th session, held in Rome from 17 to 19 September 2001 (cf. Report on the session (C.G.E./Space Pr./1/Report/Appendix III)).

2. A number of the issues considered during that session concerned matters of fundamental importance for the practical viability of the end-product of the Committee's work. From the outset of this work, as may be appreciated from the President of UNIDROIT's decision to entrust the preparation of a first draft of the preliminary draft Protocol to the Space Working Group, UNIDROIT has been particularly conscious of the need to ensure that its efforts in this area be judged to be practically viable by the relevant business parties. Without a reasonable modicum of practical viability, it is clear that the prescriptions of the Committee will fall well short of the key objective of the preliminary draft Protocol expressed in the preamble thereto, namely "the need to adapt the Convention to meet the particular demand for and the utility of space assets and the need to finance their acquisition and use as efficiently as possible". And, to that extent, all the best efforts of Government notwithstanding, any future Space Assets Protocol would be of limited practical use, in particular in the promotion of space financing.

3. In these circumstances, given the quite different perspectives from which the representatives of Government and industry seemed at times to be approaching issues of fundamental importance for the practical viability of the preliminary draft Protocol during the first session of the Committee, the UNIDROIT Secretariat has judged it desirable to use the second

¹ The Space Working Group is a body established by - but independent of - UNIDROIT representing the interests of the different sectors (manufacturers, operators, financiers and insurers) of the space industry in relation to the preliminary draft Protocol. It was organised, and is co-ordinated by Mr Peter D. Nesgos (Partner, Milbank, Tweed, Hadley & McCloy, New York).

session of the Committee, above all, as an opportunity for the representatives of Government and industry to focus on those points of deliberation raising issues of such key importance for the practical viability of the preliminary draft Protocol rather than proceeding to a second reading thereof.

4. For this reason, the Secretariat would propose that the second session of the Committee be principally devoted to in-depth discussion - between, on the one hand, representatives of Government and, on the other, representatives of industry - of precisely such points, with a view to enabling both parties to present their perspectives on the issues involved and thus to achieving mutually satisfactory solutions. Until such matters have been clarified the Secretariat considers that it would not be appropriate to embark on a second reading of the preliminary draft Protocol.

5. The Secretariat would propose that the issues meriting such in-depth discussion at the second session concern *inter alia*, first, the concept of "space assets" as defined in Article I(2)(g) of the preliminary draft Protocol, secondly, the issues involved in the application of the Convention and the preliminary draft Protocol to "debtor's rights" and "related rights" under the proposed new Article IV tabled by the Space Working Group at the first session of the Committee (cf. C.G.E./Space Pr./2/W.P.4), thirdly, the question whether the protection granted under Article IX(4) is sufficient or needs extending, especially in order to protect a user of components who is neither in default nor insolvent, fourthly, the question of the desirability under Article IX of providing financial assurances for potential transferees of "related rights" pending the taking of the final decision by the competent regulatory Authority or body regarding the transferability of such rights, fifthly, the question as to whether Article X(5) is needed in the context of space assets and, sixthly, the limitations that may be placed on the exercise of remedies under Article XVI, in particular in respect of space assets used for the establishing or maintaining of public services. The background to these issues may be found in the deliberations of the Committee at its first session as recorded in the Report thereon. This proposed list is not, however, intended to be exhaustive of the issues that may be raised for discussion at the second session. In the Secretariat's opinion, what is essential at this stage in the negotiating process is to take stock of the choices that lie ahead for the Committee if the end-product of its labours is to justify the objectives heralded in the aforementioned clause of the preamble to the preliminary draft Protocol.

6. It should be noted that it is not envisaged, under the Secretariat's proposal, that the Drafting Committee will meet during the second session of the Committee, although, depending on the progress achieved during that session, it would of course be open to the Committee to consider inviting the Drafting Committee to meet at a date subsequent to the session with a view to implementing any conclusions that it might reach.

7. Given the ongoing consideration being given in different international fora to the question of the body to act as Supervisory Authority of the international registration system to be established under the future Space Assets Protocol, it should finally be noted that the Secretariat is proposing that time also be found during the second session for an update regarding the situation in this respect.