



**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**

UNIDROIT 2010
C.G.E./Space Pr./5/W.P. 2
Original: English
November 2010

*EXPLANATORY NOTE
ON
THE DRAFT AGENDA FOR THE SESSION*

(prepared by the UNIDROIT Secretariat)

I. Basic text (item No. 3 on the draft agenda)

1. The main business to be accomplished by the 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 (hereinafter referred to as the *Committee*) at its forthcoming session is, as listed in the draft agenda,¹ consideration of the revised preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets as it emerged from the fourth session of the Committee, held in Rome from 3 to 7 May 2010 (C.G.E./Space Pr./5/W.P. 3) (hereinafter referred to as the *revised preliminary draft Protocol as amended*), *inter alia* in the light of, first, the intersessional consultations with representatives of the international commercial space and financial communities held in Rome on 18 October 2010 (C.G.E./Space Pr./5/W.P. 4), secondly, the intersessional meeting of the Informal Working Group of the Committee on default remedies in relation to components held in Rome from 19 to 21 October 2010 (C.G.E./Space Pr./5/W.P. 5), thirdly, the intersessional meeting of the Informal Working Group of the Committee on limitations on remedies held in Rome on 20 and 21 October 2010 (C.G.E./Space Pr./5/W.P. 6) and, fourthly, such comments and proposals as may be submitted by Governments, Organisations and representatives of the international commercial space, financial and insurance communities (C.G.E./Space Pr./5/W.P. 7).

2. The Secretariat would propose that, at the forthcoming session, attention first be given, as at the previous session, to the issues left outstanding at the conclusion of the fourth session of the Committee and that only when that is completed should the Committee embark on a full reading of the revised preliminary draft Protocol as amended.

¹ C.G.E./Space Pr./5/W.P. 1. This and all the other documents referred to in this document are available on the UNIDROIT web site, at the following address:
<http://www.unidroit.org/english/workprogramme/study072/spaceprotocol/study72j-archive-e.htm#NR2>.

II. Outstanding issues regarding the revised preliminary draft Protocol as amended to be dealt with at the fifth session (*sub* item No. 3 on the draft agenda)

3. It was decided at the fourth session of the Committee, held in Rome from 3 to 7 May 2010, to convene intersessional meetings of two organs of the Committee, the Informal Working Group on default remedies in relation to components (hereinafter referred to as the *Informal Working Group on components*) and the Informal Working Group on limitations on remedies, as well as consultations with representatives of the international commercial space and financial communities (hereinafter referred to as the *consultations*), in particular with a view to building on the progress achieved by the Committee during that session and ensuring timeous completion of the planned Protocol.²

4. It will be for the Secretary-General, who acted as moderator of the Informal Working Group on components and the Informal Working Group on limitations on remedies, to report to the Committee at its forthcoming session on the work accomplished at the meetings of the Informal Working Groups held in Rome from 19 to 21 October 2010³ and on 20 and 21 October 2010⁴ respectively.

5. Likewise, it will be for Mrs A. Veneziano (Italy) and Mr M. Borello (Thales Alenia Space), who acted as co-moderators of the consultations, to report to the Committee at its forthcoming session on the work accomplished at the consultations held in Rome on 18 October 2010.⁵

6. The UNIDROIT Secretariat would propose that these reports be delivered at a time and in an order to be determined closer to the time of the session but in such a way as to fit best with the presentation of the International Registry for aircraft objects by Mr R. Cowan, the Registrar, which will take place at the beginning of the afternoon meeting on the opening day of the session; in this connection, it should be explained that the intervention of the Registrar during discussion of the issue of the definition of "space asset" by the Informal Working Group on components at its aforementioned meeting was found extremely helpful and it is submitted that the Registrar's presentation might, therefore, most usefully take place as closely as possible to discussion of the same issue by the Committee at its forthcoming session.

7. The specific issues left open at the fourth session of the Committee, that will, therefore, require further consideration at its forthcoming session (unless otherwise stated, by the Committee), are as follows:

(a) the suitability of the preamble as one means of dealing with the problem of public service;⁶

(b) review, in the light of the work of the Informal Working Group on components, of the question as to the desirability of maintaining Article I(2)(e) of the revised preliminary draft Protocol as amended;⁷

(c) review of the definition of "salvage interest" in Article I(2)(jj) of the revised preliminary draft Protocol as amended, in the light of the further consideration to be given by the Drafting Committee to Article IV(5);⁸

² Cf. C.G.E./Space Pr./4/Report, §§ 148-149.

³ Cf. C.G.E./Space Pr./5/W.P. 5.

⁴ Cf. C.G.E./Space Pr./5/W.P. 6.

⁵ Cf. C.G.E./Space Pr./5/W.P. 4.

⁶ Cf. C.G.E./Space Pr./4/Report, §§ 47 and 60.

⁷ Cf. C.G.E./Space Pr./4/Report, §§ 63 and 113.

⁸ Cf. C.G.E./Space Pr./4/Report, §§ 115 and 122.

(d) consideration of Article I(2)(l) of the revised preliminary draft Protocol as amended as a whole, in the light of the new definition of "space asset" proposed by the Informal Working Group on components;⁹

(e) review in particular of the words "capable of being independently owned, used or controlled" at present included in Article I(2)(l) of the revised preliminary draft Protocol as amended inside square brackets;¹⁰

(f) the taking of a decision in particular regarding the words "including any such asset in course of manufacture or assembly" at present included in Article I(2)(l) of the revised preliminary draft Protocol as amended inside square brackets;¹¹

(g) consideration of Alternatives I, II and III of Article I(3) of the revised preliminary draft Protocol as amended;¹²

(h) review of Article IV(5) of the revised preliminary draft Protocol as amended, in the light of the further consideration to be given to that paragraph by the Drafting Committee;¹³

(i) consideration of Article XVIII(3) of the revised preliminary draft Protocol as amended, in the light of the proposal of the Informal Working Group on components;¹⁴

(j) consideration, by the Drafting Committee, of the point concerning Article XXIII(2) of the revised preliminary draft Protocol as amended referred to it at the last session of the Committee;¹⁵

(k) consideration, by the Drafting Committee, of the point concerning Article XXVII(2) of the revised preliminary draft Protocol as amended referred to it at the last session of the Committee;¹⁶

(l) review of the case for maintaining the words "or would involve the transfer or assignment of a licence, or the grant of a new licence" at the end of Article XXVII(2) of the revised preliminary draft Protocol as amended, in the light of the deletion of the old Article XVI by the Committee at its last session,¹⁷ in the context of the Committee's discussion of public service;¹⁸

(m) consideration of the square-bracketed Article XXVII *bis* of the revised preliminary draft Protocol as amended, in the light of the proposal of the Informal Working Group on limitations on remedies;¹⁹

(n) review of the criteria for the identification of space assets set forth in Article XXX of the revised preliminary draft Protocol as amended, in the light of the technical information supplied

⁹ Cf. C.G.E./Space Pr./4/Report, §§ 68 and 116; cf. also C.G.E./Space Pr./5/W.P. 5, § 24.

¹⁰ Cf. C.G.E./Space Pr./4/Report, § 19; cf. also C.G.E./Space Pr./5/W.P. 5, § 24.

¹¹ Cf. C.G.E./Space Pr./4/Report, § 21; cf. also C.G.E./Space Pr./5/W.P. 5, § 24.

¹² Cf. C.G.E./Space Pr./4/Report, §§ 22-24 and 117-120.

¹³ Cf. C.G.E./Space Pr./4/Report, §§ 25-30 and 122; cf. also Article I(2)(jj) of the revised preliminary draft Protocol.

¹⁴ Cf. C.G.E./Space Pr./5/W.P. 5, § 29.

¹⁵ Cf. C.G.E./Space Pr./4/Report, §§ 91 ("[o]ne delegation indicated that paragraph 2 required additional clarity and proposed that point (iv) be supplemented by an example such as 'the State of registration'. Another delegation suggested that this be changed to 'State[s] of registration', as sometimes there was more than one State of registration") and 93 ("[i]t was agreed that point (iv) of Article XXIII(2) be referred to the Drafting Committee, to find possible language to deal with the concerns expressed in respect of this provision").

¹⁶ Cf. C.G.E./Space Pr./4/Report, § 98 ("[o]ne delegation expressed concern regarding the potential impact of paragraph 2 on domestic law, notably in relation to the imposition of unilateral sanctions pursuant to national laws and policies and it was suggested that additional language might be included to prevent such a conflict. It was agreed, however, that such an approach would not be appropriate within this provision but that the Drafting Committee should consider dealing with this issue in the preamble").

¹⁷ Cf. C.G.E./Space Pr./4/Report, § 39.

¹⁸ Cf. C.G.E./Space Pr./4/Report, § 99.

¹⁹ Cf. C.G.E./Space Pr./5/W.P. 6, §§ 18 and 19 and 23.

since the last session of the Committee concerning the practical feasibility of the criteria employed in that Article;²⁰ and

(o) consideration of the proposal for new Articles XXXVII *bis* and XXXVIII *bis* tabled by one delegation at the end of the last session of the Committee.²¹

III. Question of the Supervisory Authority of the future international registration system for space assets (item No. 4 on the draft agenda)

8. At its fourth session, the Committee took note of the responses the Secretary-General had received from those Organisations that he had been asked by the Committee at its previous session to sound as to their interest in acting as Supervisory Authority of the future International Registry for space assets and, if so, the internal steps that such an Organisation would need to complete in order to be in a position to respond, at least in principle, to any invitation that might be addressed to it by the future diplomatic Conference so to act.²²

9. The Secretariat was invited, on behalf of the UNIDROIT Governing Council, to approach those Organisations that might be considered as potential candidates for the role of Supervisory Authority with a view to giving them an adequate opportunity to consider their interest in assuming such a role and, if so, finding out the internal authorisations that such an Organisation would need to obtain in order formally to be in a position to respond, at least in principle, to any invitation to assume such functions that might be addressed to it by the future diplomatic Conference.

10. Since that time, in his letter of 22 July 2010, Captain E. Pacha-Vicente, Director-General of the International Mobile Satellite Organization (I.M.S.O.), informed the Secretary-General that the I.M.S.O. Assembly in July 2010 had decided that I.M.S.O. should not assume the functions of Supervisory Authority.

11. The observer representing the International Civil Aviation Organization (ICAO) at the fourth session of the Committee indicated his Organisation's appreciation at being considered as a potential candidate for the role of Supervisory Authority, noting that the work of the Committee was being monitored closely by the ICAO Secretariat, and reported that discussions were underway within ICAO, an organ of which acted as Supervisory Authority of the International Registry for aircraft objects, on the question as to whether it would be appropriate for the body acting as Registrar of that Registry to be able to engage in activities other than the operation of that Registry.²³

12. In an e-mail message of 29 April 2010, Mr A. Guillot, Legal Adviser to, and Head of the Legal Affairs Unit of I.T.U., informed UNIDROIT, that "the I.T.U. continues to follow with the keenest interest the work being carried out under the auspices of UNIDROIT and in particular that for the preparation of a Space Protocol, in which the Union has taken an extremely active part, through the constant participation of a representative of the Radiocommunications Bureau", going on to say that "[r]egarding the functions of Supervisory Authority of the International Registry for space assets under the future Protocol, I can confirm the interest manifested by both the Secretary-General of the I.T.U. and the Director of the Radiocommunications Bureau in the Union, if judged appropriate, being assigned this prestigious and fundamental task for the management and operability of the registration system. This interest is, however, of course, subject to endorsement in principle by the executive organs of the Union (the Council and the Plenipotentiary Conference), which will only be able to give their opinion at such time as the role of the Authority has been

²⁰ Cf. C.G.E./Space Pr./4/Report, § 53; cf. also C.G.E./Space Pr./5/W.P. 4, §§ 21-23 and Appendices V, p. iii, VIII, p. iii and IX.

²¹ C.G.E./Space Pr./4/W.P. 11; cf. also C.G.E./Space Pr./4/Report, §§ 109 and 110.

²² C.G.E./Space Pr./4/W.P. 5; cf. also C.G.E./Space Pr./4/Report, § 100.

²³ Cf. C.G.E./Space Pr./4/Report, § 101.

established precisely and definitively and the structural, operational and, above all, the financial consequences very clearly identified".²⁴

IV. Other issues to be considered at the fifth session of the Committee (items Nos. 5 and 7 on the draft agenda)

13. The decision taken by the UNIDROIT Governing Council at its 89th session, held in Rome from 10 to 12 May 2010, to authorise the holding of a fifth session of the Committee was based on the assumption that this would be the final session of the Committee and that the Governing Council would at its 90th session, to be held in Rome from 9 to 11 May 2011, be in a position, in the light of the progress to be accomplished by the Committee at its fifth session, to decide as to the ripeness of the text of the revised preliminary draft Protocol to come out of that session for submission to a diplomatic Conference, for adoption.

14. As reported in the explanatory note on the revised draft agenda for the last session of the Committee, the Secretariat is in negotiations with a member State regarding the possibility of it hosting the planned diplomatic Conference, with the idea being that the Conference should, in principle, subject to the Governing Council's advice and consent, be held in Spring 2012.

²⁴ Cf. C.G.E./Space Pr./4/W.P. 5, p. 2.