



**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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## **REPORT**

### **ON THE WORK OF THE INFORMAL WORKING GROUP ON LIMITATIONS ON REMEDIES**

(prepared by the UNIDROIT Secretariat)

1. The Informal Working Group on limitations on remedies set up by the Committee of governmental experts on 9 December 2009 held four meetings on 10 December 2009. Representatives of the following States participated in its work: Canada, the Czech Republic, the People's Republic of China, France, Germany, Greece, India, Italy, Japan, Spain and the United States of America. Ms M. Leimbach (Crédit Agricole S.A.) and Mr B. Schmidt-Tedd (German Space Agency) participated as observers. The meetings were chaired by the Secretary-General of UNIDROIT.

2. A discussion paper setting out a proposal for a new Article XVI *bis* of the preliminary draft Protocol / Article XXVII *bis* of the alternative text (on policy issues) on limitations on remedies has been prepared by the UNIDROIT Secretariat designed to reflect the extensive discussions held by the Informal Working Group, on the basis of informal proposals submitted by the representative of Germany. This discussion paper was not, however, approved by that Group and has not been reviewed by the Drafting Committee: it is intended in the first instance for consideration by the Committee of governmental experts and, depending on the reaction of that Committee, to serve as the basis for further consultations on this issue. The discussion paper is set out below.

3. Subject to endorsement by the Committee of governmental experts, it is proposed that the proposal contained in this discussion paper be incorporated in the text of the preliminary draft Protocol in square brackets, in place of the current Article XVI(3) of the preliminary draft Protocol/Article XXVII(3) of the alternative text (on policy issues). It would form the subject of an Article separate from the current Article XVI(3)/Article XXVII(3), on the basis that it would not be subject to an opt-in declaration in the way that Article XVI(1) and (2)/Article XXVII(1) and (2) are intended to be.

## DISCUSSION PAPER

### SETTING OUT A PROPOSAL FOR A NEW ARTICLE XVI *bis* OF THE PRELIMINARY DRAFT PROTOCOL / ARTICLE XXVII *bis* OF THE ALTERNATIVE TEXT (ON POLICY ISSUES)

#### Article XVI /XXVII *bis*

1. A State has the right to object to the exercise of default remedies, as provided in Chapter III of the Convention and Articles IX to XII / XVIII to XXIII of this Protocol, in respect of a space asset needed for the provision or maintenance of a public service which is in the vital interest of that State if the exercise of those remedies would cause interruption in the provision or maintenance of that service.

2. Within 20 days from the date on which the State has notified the creditor of its objection to the exercise of remedies under the preceding paragraph, the creditor may exercise the right to step in and assume responsibility for the provision or maintenance of the relevant service in the State concerned or appoint a substitute entity for that purpose, with the consent of that State and of the licencing State.

3. If the creditor chooses not to exercise its rights under the preceding paragraph, the State that objects to the exercise of default remedies by the creditor under paragraph 1 shall have the option of:

(a) curing the default by the debtor by paying to the creditor all sums outstanding for the entire period of default; or

(b) taking or procuring possession, use or control of the space asset and assuming the debtor's obligations by stepping into the obligations of the debtor for the provision of a public service in the State concerned. <sup>1</sup>

4. A State that objects to the exercise of default remedies by the creditor under paragraph 1 shall exercise its rights under the preceding paragraph within 90 days. After such period, the creditor shall be free to exercise any of the remedies provided in Chapter III of the Convention and in Articles IX to XII / XVIII to XXIII of this Protocol, in respect of the relevant space asset. <sup>2</sup>

5. A State may only invoke the right to object to the exercise of default remedies in accordance with this Article if it has registered in the International Registry a notice recording that the space asset is used for providing a public service in the vital interest of that State prior to the registration of an international interest in that space asset by a creditor [or if it has registered such notice within six months of the launch of a space object, even if after the registration of an international interest by the creditor].

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<sup>1</sup> During the discussion of these provisions, it was noted that further information would be needed on the practical implications of the question as to how a State could exercise a step in right in respect of an operator licenced in a foreign country or operating through equipment located in a third country.

<sup>2</sup> During the discussion of these provisions, it was noted that further consultation would be needed on the question as to whether the time-periods provided in this proposed Article should preclude a filing for insolvency during the 90-day period by the debtor or by a third party against the debtor.