



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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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

First session (Rome, 15 - 19 December 2003)

DRAFT REPORT

PLENARY SESSION
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AGENDA ITEM NO. 1: ELECTION OF THE CHAIRMAN (CONT.D)

25. At the proposal of the delegation of India seconded by the delegation of Italy, Mr J. Sanchez Cordero (Mexico), External Adviser on Private International Law Matters to the Legal Adviser, Ministry of Foreign Affairs, and Member of the UNIDROIT Governing Council, was elected First Deputy Chairman and Ms Lyndall Shope-Mafole (South Africa) Chairperson of the Presidential National Commission on Information Society and Development, was elected Second Deputy Chairperson.

AGENDA ITEM NO. 3: ORGANISATION OF WORK (CONT.D)

26. After informal consultations the Drafting Committee was established with the delegations of Canada, China, France, Nigeria, Tunisia, the United Kingdom and the United States of America as members.

AGENDA ITEM NO. 5: CONSIDERATION OF THE PRELIMINARY DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS (CONT.D)

Article 1 cont.d

27. In response to a query from one delegation, the adviser of the S.W.G., while confirming that the type of space financing currently prevalent that would be covered by the preliminary draft Space Protocol was typically project financing in nature, nevertheless insisted on the great potential the preliminary draft Protocol had to make asset-based financing facilities more widely available for commercial space financing. He stressed that pre-launch financing was most challenging as it required money up front.

28. Turning to the definition of space assets, the Committee considered whether component parts and space assets under construction intended to be launched, as well as the ground segment and ground facilities to control and command the satellites and assets returned to earth from space should be covered by the definition despite the fact that all the above were not mobile equipment.

29. The issue of environmental protection, including post mission debris disposal, was raised. It was suggested that this issue would fall within the scope of national regulation.

30. As regards the definitions of “guarantee contract”, “guarantor”, “insolvency-related event” and “primary insolvency jurisdiction” in Article I(2)(b) – (e), it was decided that they should be considered when Article XI was discussed.

31. With reference to footnote 9, one delegation referred to the sentence indicating that at the third session of the S.W.G. participants had raised the issue whether the definition of “space assets” should apply to State-owned assets intended to be commercially financed in whole or in part. It was suggested that this question should be discussed in the context of Article IX.

Article II

32. With reference to Article II, one delegation wondered whether it was necessary to have this article in the Protocol considering that in Article 6 the Convention already had a provision on the relationship between the Convention and the Protocols. It was observed that Article II was intended to assist the reader and mirrored similar provisions contained in the Aircraft Protocol and the preliminary draft Rail Protocol.

Article III

33. One delegation raised the question of whether the order of the words placed in correspondence in Article III (debtor – seller, creditor – buyer) was correct. It was confirmed that this was indeed so.

34. One delegation questioned the reference to Article XIV(1) as Article XIV had only one paragraph. It was explained that this was an error and that the reference should be to Article XIII(1).

Article IV

35. It was observed that the title of the article (“Sphere of application”) had been taken over from the corresponding article of the Aircraft Protocol which, however, contained also other paragraphs. A title that would better reflect the content of Article IV would therefore be “Derogation”. It was decided that the Drafting Committee should consider this question.

36. It was proposed that the proviso “except Article IX(2)-(3)” be deleted for brevity and clarity. It was suggested that the Drafting Committee should further consider the relationship between Articles IV and IX.

Article V

37. One delegation observed that although Article V dealt with contracts of sale, para. (1)(b) referred to the “transferor” and not to the “seller”. It therefore suggested that “transferor” be replaced by “seller”. This suggestion was accepted.

Article VI

38. With reference to Article VI, it was observed that the inconsistency in the wording noted in footnote 11 still existed. It was suggested that a formulation along the lines of that of Article IV of the preliminary draft Rail Protocol replace the current wording. This suggestion was accepted.

Article VII

39. Delegations queried the meaning of the words “necessary and sufficient”, in particular in cases where some items were not available at the time of registration. Furthermore, doubts were raised concerning some of the criteria indicated in Article VII. It was suggested that there was no need to provide exact criteria in the text, and that the Supervisory Authority would provide the criteria in the first regulations it would adopt under Article XVIII of the Protocol.

40. One delegation suggested that Article VII(vi) referred to “regulations” in general, whereas Article XVIII referred only to the first regulations. Misunderstandings might therefore ensue. It suggested that the reference to Article XVIII might therefore be deleted, or alternatively Article XVIII might be modified. It was suggested that the Drafting Committee consider the wording of Article XVIII.

Article VIII

41. It was observed that the Convention and Protocol made no provision for choice of law and referred this question to the internal law of States. Article VIII was an opt-out clause and applied only if States had made no declaration.

42. Observing that formulating the article as an opt-out clause deviated from the Aircraft Protocol, it was queried whether it should not be formulated as an opt-in clause instead. It was suggested that this was a question that the Committee should decide.

43. The meaning of the words “wholly or in part” was queried. It was observed that the modern trend was that different aspects of a contract were governed by different national laws and this was provided for by the words queried.