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

SUMMARY REPORT
FOR
11 DECEMBER 2009

(prepared by the UNIDROIT Secretariat)

Opening of the session

Item No. 3 on the revised draft agenda (*continued*)

T.   **CONSIDERATION OF THE WORK OF THE REPORT OF THE INFORMAL WORKING GROUP ON LIMITATIONS ON REMEDIES (C.G.E./SPACE PR./3/W.P. 23)**

1.   The Chairman opened the session at 11.37 p.m.

2.   The Secretary-General presented the report of the Informal Working Group on limitations on remedies, containing 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 (policy issues) (C.G.E./Space Pr./3/W.P. 23). He noted that this proposal had been prepared by the Secretariat on the basis of informal proposals made by the representative of the Government of Germany. He also noted that this discussion paper had not, however, been approved by the Informal Working Group nor reviewed by the Drafting Committee but that it was rather intended as the basis for further consultations.

3.   The representative of one State noted that § 5 of the discussion paper did not take account of her State's proposal that the requirement of prior notice be treated as unnecessary in the event that the State had exercised an option pursuant to §3. It was agreed that, given the nature of the discussion paper as the basis of further consultations, this matter could be dealt with at the following session of the Committee.

4.   The representative of another State sought clarification that the ability of a State, under § 5 of the discussion paper, to register a notice recording that a space asset was used for the provision of a public service in the vital interest of that State within six months after the launch of that asset did not prohibit a State from filing such a notice after the six-month period but that any previously-recorded interests would not be affected by such a notice. This point was agreed.

5.   A number of States welcomed the discussion paper as providing an important step forward in the development of a balanced solution.

U.   CONSIDERATION OF THE REPORT OF THE INFORMAL WORKING GROUP ON DEFAULT REMEDIES IN RELATION TO COMPONENTS (C.G.E./SPACE PR./3/W.P. 24)

6.   The Chairman of the Informal Working Group on default remedies in relation to components presented the report of the Informal Working Group (C.G.E./Space Pr./3/W.P. 24) and, while noting that considerable progress had been made, that there had not been sufficient time for the reaching of a definitive conclusion.

7.   It was agreed that this Informal Working Group should continue its work informally with a view to submitting an agreed solution to the following session of the Committee.

Item No. 3 on the revised draft agenda (*continued*)

8.   One of the Co-chairmen of the Drafting Committee noted five key outstanding issues that would require a decision by the Committee before any drafting could take place, notably:

-      the choice of law in respect of rights assignments and rights reassignments;
-      priority provisions concerning the assignment of debtor's rights;
-      policy implications of the duty of co-operation incumbent on the assignor to co-operate with the assignee for the transfer of its licence;
-      whether the requirement of commercial reasonableness set forth in Article IX(2) of the preliminary draft Protocol and the qualification of "reasonable prior notice" laid down in Article IX(3) should be subject to a Contracting State's declaration or be free-standing provisions of the preliminary draft Protocol; and
-      whether provision needs to be made for the case where a space asset is never launched.

9.   It was agreed that it would be for the Committee at its following session to decide on these issues.

10.   The Chairman adjourned the session at 12.29 p.m.