

BRIEF SUMMARY OF THE FOURTH MEETING OF THE UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A PROTOCOL TO THE CAPE TOWN CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS, (Rome, May 3 -7, 2010)

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Prof. Sergio Marchisio, Italy, chaired the Committee (substituted occasionally by Prof Kopal, Vice chairman). The meeting was attended by 37 countries.

Work on the space protocol began in 1997 when UNIDROIT established an industry working group. Treaty protocols on aviation and rail assets already exist. The protocol on space assets would be the third protocol to the Cape Town Convention. UNIDROIT is planning additional protocols on other kinds of mobile equipment.

Purpose of the space protocol would be (1) to establish an international register of secured interests in space assets, giving notice to third parties and thereby establishing priorities, (2) to provide remedies against default and insolvency,, (3) to meet the needs of the space industry, (4) to encourage creditors to finance acquisition of space assets, and (5) generally to facilitate financing of space assets.

The draft space protocol on space assets has progressed so far that UNIDROIT is contemplating finalization of this treaty instrument at a diplomatic conference. At the May 2010 meeting the Governmental Experts Committee considered a revised draft prepared by the co-chairmen of the drafting committee M. Deschamps, Canada, and Sir Roy Goode, UK. Significant written comments had been received prior to the meeting from two major satellite operators, SES and INTELSAT. Their concerns were raised principally by the US delegation. The Committee made a special effort to include in the protocol the special concerns raised by the two satellite operators

in order to produce a widely acceptable draft. This effort continues. Issues of special interest considered by the committee were:

- Ascertainment of the scope of the protocol by defining those “space assets” entitled to treaty protection. The Committee sought to include entire space projects from manufacture through launch, as well as provision for separate financing of individually identifiable space assets.

- Of particular interest to the IISL was treaty acknowledgement that the space protocol does not affect the rights and obligations of states under the existing public law space treaties and under the ITU treaty instruments. This superiority principle is now firmly recognized in Art. XXXIV of the draft space protocol.

- Related to recognition of the superiority of the existing public law space treaties is the application of these treaties. The Committee is particularly concerned with application of Outer Space Treaty, Art VIII, which subjects space objects launched into outer space to the jurisdiction and control of the state of registry and guarantees continuance of national property rights to space objects. Delegations discussed the application of Art VIII to financing agreements and security in financed space assets, subject to the jurisdiction of the state of registry. This issue becomes particularly relevant when various components of space objects are financed (and possibly repossessed) by financial institutions outside of the State of registry.

- Related to this discussion of the scope of Art. VIII is also the Registration Convention, which requires states parties to agree among themselves on a single state to register a space object and thus become the state of registry for the purpose of Art. VIII.

- Yet to be resolved are the rights of States to continue use of those satellites which are of vital governmental interest (public service), regardless of creditors' rights to exercise default remedies.

- Finally the issue of whether the space protocol should provide specifically that insurance companies have the right of subrogation in case of loss of insured space assets.

The final report of the Fourth Session of the Committee of Governmental Experts has been issued by UNIDROIT. The Committee decided that the text of the protocol was not yet ready for transmission to a diplomatic conference. It decided instead on a fifth session, which will be held at the beginning of 2011, followed by a diplomatic conference. Informal working groups on specific issues will meet in the interim. The Committee recommended that individual delegations should consult with their space industry regarding the potential economic impact of the new space protocol.

The UNIDROIT Council has endorsed the recommendations of the Committee.