



## General Assembly

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### **Committee on the Peaceful Uses of Outer Space**

Legal Subcommittee

Fortieth session

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Item 8 of the provisional agenda\*

**Consideration of the draft convention of the  
International Institute for the Unification of Private Law  
(Unidroit) on international interests in mobile equipment  
and the preliminary draft protocol thereto on matters  
specific to space property**

### **Consideration of the draft convention of the International Institute for the Unification of Private Law (Unidroit) on international interests in mobile equipment and the preliminary draft protocol thereto on matters specific to space property**

#### **Working paper submitted by the secretariat of the International Institute for the Unification of Private Law**

1. At its forty-third session, the Committee on the Peaceful Uses of Outer Space agreed that, at its fortieth session, its Legal Subcommittee should consider the draft convention of the International Institute for the Unification of Private law (Unidroit) on international interests in mobile equipment (the “draft convention”) and the preliminary draft protocol thereto on matters specific to space property (the “preliminary draft protocol”) and that the secretariats of the Office for Outer Space Affairs and Unidroit should jointly prepare a background paper to assist discussion in the Legal Subcommittee.<sup>1</sup>

2. In the concluding paragraph of that paper (A/AC.105/C.2/L.225, para. 45 (c)) the two secretariats noted that one of the issues that the Legal Subcommittee might care to consider when looking at the draft convention and the preliminary draft protocol was the manner and scope of future interaction in that regard between the

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\* A/AC.105/C.2/L.222.

Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee, on the one hand, and Unidroit, on the other.

3. The Unidroit secretariat has the honour to submit the present paper for the consideration of the Legal Subcommittee with a view to outlining how the manner and scope of such future interaction might, in its opinion, be envisaged.

4. At its next session, to be held in Rome from 17 to 19 September 2001, the Unidroit Governing Council is expected to decide upon the readiness of the preliminary draft protocol for transmission to Governments and the convening of governmental experts responsible for the finalization of a draft protocol capable of being submitted for adoption. The Unidroit Space Working Group has made excellent progress in carrying out the task referred to it by the President of Unidroit, namely, the preparation of the text of a preliminary draft protocol for submission to the Unidroit Governing Council.

5. Two issues have however arisen in the course of the Space Working Group's preparation of the preliminary draft protocol that, in both its opinion and that of the Unidroit secretariat, merit due consideration by the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee before its submission to the Unidroit Governing Council in September.

6. The first of those two issues concerns the intergovernmental body that might suitably be entrusted with the exercising of the important responsibilities to be conferred upon the supervisory authority of the international registry for space property that is intended to underpin the preliminary draft protocol. Both the Unidroit secretariat and the Space Working Group tend in principle to believe that the intergovernmental body best fitted to play that role would, by virtue of its general responsibility for space activities and in particular the fact that it is its Office for Outer Space Affairs that maintains the Registry provided for under articles III and IV of the Convention on Registration of Objects Launched into Outer Space (General Assembly resolution 3235 (XXIX), annex), be the United Nations. It is however desirable that the body interested in acting as the future supervisory authority begin participating in the process that will determine the shape and modalities of the future international registration system for space property at the earliest possible opportunity. Its identification is accordingly a matter of considerable urgency.

7. The second issue concerns the relationship between the draft convention/preliminary draft protocol and existing international space law. As noted in the background paper (A/AC.105/C.2/L.225, para. 31), both Unidroit and the Space Working Group have concluded that there is nothing in the preliminary draft protocol that is necessarily inconsistent with the existing body of space law, in particular the obligations subscribed to by States under the United Nations treaties on outer space. The only areas where the restricted informal group of experts convened by Unidroit in Rome on 18 and 19 October 2000, with a view, inter alia, to identifying any such potential problem areas, was able to identify possible difficulties arising out of the interaction of the preliminary draft protocol with international space law concerned article II of the Convention on International Liability for Damage Caused by Space Objects (resolution 2777 (XXVI), annex) and articles VI and VIII of the Treaty on Principles Governing the Activities of States in

the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (resolution 2222 (XXI), annex) (A/AC.105/C.2/L.225, para. 36).

8. On both issues the Unidroit secretariat and the Space Working Group would welcome some indication of the thoughts of the members of the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee before forwarding the preliminary draft protocol to the Unidroit Governing Council. The views expressed by the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee will be reported to the Governing Council at its next session.

9. Once that immediate target has, however, been reached and the Governing Council has decided upon the transmission to Governments of the preliminary draft protocol, there will be a continuing need to monitor the interaction of the preliminary draft protocol with existing international space law and the Unidroit secretariat will therefore suggest that the Governing Council consider authorizing invitations to participate in the future intergovernmental negotiations being addressed not only to Unidroit member States but also to all member States of the Committee on the Peaceful Uses of Outer Space.

10. For the same reason, the Unidroit secretariat would suggest that the Committee on the Peaceful Uses of Outer Space consider maintaining the preliminary draft protocol on the agenda of the Legal Subcommittee in the years ahead, at least until such time as work on the intended space property protocol has been completed. In the event that the Committee and its Legal Subcommittee were to look favourably upon the idea, it would in particular facilitate an in-depth exploration by the Legal Subcommittee of the implications of the United Nations acting as supervisory authority of the future international registry for space property, including whether or not and, if so, how such an international registry should interface with the Registry maintained by the Office for Outer Space Affairs.

11. The draft convention and a draft protocol on matters specific to aircraft equipment (the “draft protocol”) are due to be adopted at a diplomatic conference to be held in Cape Town, South Africa, from 29 October to 16 November 2001. Given the repercussions on the preliminary draft protocol of the solutions to be adopted in Cape Town in respect of the draft convention, applicable as it is also to space property, the Unidroit secretariat would strongly urge member States of the Committee on the Peaceful Uses of Outer Space to advise their Governments to ensure that their delegations to the diplomatic conference include experts competent to advise the conference on those issues of particular importance for the application of the draft convention to space property. To the extent that such a course of action might be considered appropriate, the Unidroit secretariat would accordingly invite the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee to consider the adoption of a resolution addressed to member States formally urging them to give the maximum importance to appropriate participation in the forthcoming diplomatic conference.

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#### Notes

<sup>1</sup> *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 20 (A/55/20), para. 166.*