

**Minutes of the Workshop on the UNIDROIT Space
Protocol to the Cape Town Convention**

Sponsored by the UK Space Agency

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London Institute of Space Policy and Law
Charles Clore House, 17 Russell Square, London WC1B 5DR

1. Welcome by Prof Sa'id Mosteshar

Prof Mosteshar welcomed the group to the Workshop.

2. Welcome and Introduction by Prof Richard Crowther

2.1 Prof Crowther welcomed the group to the Workshop and informed the group that Germany had agreed to host a Diplomatic Conference to be held in Berlin in February 2012. The purpose of this Conference would be to agree a text that could be considered for Ratification by States.

2.2 Prof Crowther expressed his hope that the Workshop attendees would work in the spirit of collaboration to consider possible improvements to the text of the draft Space Protocol that could be considered for introduction at the Diplomatic Conference. He confirmed that participation in the Workshop and its work would not be interpreted as agreement to, or support for, the Protocol.

3. Overview of the Convention and Protocol

3.1 Prof Goode provided the Workshop with an overview of the Convention and the draft Space Protocol.

4. Questions and Comments

4.1 An attendee asked who would be responsible for making the regulations governing the International Registry for space assets. Professor Goode replied that this was the responsibility of the Supervisory Authority, when appointed, pending which the first regulations would usually be made by a Preparatory Commission as provisional Supervisory Authority. However, since it was the industry itself that best knew what it needed, the procedure adopted for the Aircraft Registry was that the regulations were drafted by a group of industry experts and then submitted to the Supervisory Authority for approval.

- 4.2 Another attendee indicated that insurers had concerns regarding salvage rights and questioned how the Protocol would impact salvage interest. Prof Goode reported that it was likely no provisions on salvage would be proposed and that the Protocol would simply contain a provision that it did not affect salvage rights.
- 4.3 It was questioned whether there was still scope to work on the Protocol, at a drafting level, before the conference in February 2012. Prof Goode confirmed he was happy to receive suggestions for amendments and comments on the draft by e-mail. However, he warned that there was little time left before the Conference and drafting changes were time consuming and slow.
- 4.4 One of the attendees suggested that there were a number of regulations affecting any change of ownership of a space asset. There is also not a sufficient definition of “right of use.” He also suggested the definition of space asset would need to be re-considered.
- 4.5 It was questioned if the “right of use”, that is not a physical asset, would be covered by the Protocol. “Right of use” is considered the most crucial aspect in funding a space project, as it is this right that generates an income stream. Attendees were unclear why “right of use” was separated from the asset value. Prof Goode informed the Workshop that the income stream generated by a “right of use” granted by the debtor was of great value. The Protocol provides a means of securing priority for a secured creditor who took a security assignment of “debtor’s rights”, that is, payments and other performances due to the debtor from third parties. Such assignments could not themselves be registered as international interests, because the Convention was concerned with registration of physical assets.
- 4.6 However, a creditor who had registered an international interest could record an assignment of debtor’s rights against the registration of the international interest and in this way obtain priority over subsequently recorded assignments and unrecorded assignments. The debtor would grant these rights. The contract would protect the creditors’ rights. Some attendees observed that national authorities grant such rights. Debtors cannot grant such rights. Several attendees commented that financing could dry-up if a structure is in place that causes concern to financiers.
- 4.7 Attendees gave an example of a typical use of communication satellites and the multiplicity of the relationships involved and the complexity of their connection to the physical asset and regulatory regimes. Prof Goode indicated his interest in receiving a short note on the satellite regulatory regime.
- 4.8 It was suggested that creditors do not want to end up with overall control of the spacecraft; overall control will need to be held by an operator. Prof Goode indicated that there was nothing restricting the creditors approving a new operator.
- 4.9 Prof Crowther closed the questions and comments section and suggested all further comments be e-mailed either directly to Prof Goode or could be sent to Prof Crowther or Prof Mosteshar who will pass them on to Prof Goode.

5. Overview of the Outstanding Policy issues

Prof Goode provided the Workshop with an overview of the outstanding policy issues, namely:

- The proposed public service provisions
- Restriction on Remedies as regards Physically Linked Assets
- Remedies as regards Controlled Goods

6. Discussion of above issues

- 6.1 Prof Goode introduced the text relating to “limitation on remedies in respect of public good” explaining that it had arisen out of a need to balance creditor protection interests with possible government interests in the continuance of a service of public importance. The absence of a definition of “public service” was queried and the question was posed what would be included in its scope. Prof Goode reported that it would be up to each contracting State to decide what would be included.
- 6.2 It was reported that many governments already deal with regulatory issues to protect public services, although, public interest is not solely a government concern. Problems can arise when there is a need to work with multiple creditors and multiple countries. There is also a question of dealing with political issues during changes in government. It was further stated that the public service provisions were most important for creditors. If this proposal were adopted, it would be highly unlikely that creditors would actually be able to provide finance. Prof Goode stated that the provision contains various safeguards for creditors. First, there has to be agreement between the debtor, the public services provider and the Contracting State for the registration of a public service notice, failing which the public service provision would not be triggered. Secondly, the suspension comes into effect if the public services provider fails to perform its duties under the agreement and the Convention. Thirdly, the provision does not apply to international interests registered before the public service notice.
- 6.3 It was suggested the provision gives governments an enhanced expectation of negotiations. This could lead to the dynamics of the negotiations being distorted by the perception of the text. It was further suggested that adding this further layer of complications would greatly inhibit the finance of satellite projects. Financiers are happy to work with the contractors that are already in place within individual countries. It was suggested the current status quo worked perfectly well and questioned if there was a need for the Protocol.
- 6.4 One of the attendees questioned who would define the “component parts.” Prof Goode reported that this was a matter for the Registry regulations made by the Supervisory Authority that would be in place to define component parts. However, in practice, as stated earlier, these were likely to be drafted by industry experts. The purpose of leaving components to the regulations was on the one hand to exclude items of no value to the creditor once incorporated into a spacecraft, e.g. nuts, bolts and screws, but on the other to accommodate new technological developments. The Supervisory Authority would work out its own control function over what was included and registrable. It would be difficult to set out in advance what should be included before it is known what would happen in the future. The supervisory authority will be industry driven.

- 6.5 It was reported to the Workshop by one of the attendees that in the Aircraft Protocol, the “aircraft” is defined at the start. It was questioned how an international law could be created without actually being able to define to what it should apply. Prof Goode said that the major items, the spacecraft and the payload, were defined, and what was left to be determined by regulations was what parts of a spacecraft or payload should be registrable. That depended on a variety of factors, including technological developments, which could not be specified in advance.
- 6.6 The Workshop was informed that the Aviation Working Group, together with its Legal Advisory Panel, provides a useful means of evaluating all proposals. It was considered that this Space Protocol needs a similar working group to guide it.

7. Introduction to and Perspectives on the impact of the Aircraft Protocol

- 7.1 Zohar Zik presented the Workshop with an introduction to and perspectives on the impact of the Aircraft Protocol. Zohar Zik indicated that at any given time an aircraft frame or engine could be anywhere in the world, not known to its owner.
- 7.2 Zohar Zik also highlighted the right of ratifying States to make declarations and reservations in relation to some provisions of the Aircraft Protocol, and of the Space Protocol, resulting in a lack of uniformity across jurisdictions. Such declarations and reservations can be changed at any time.

8. Final Questions and Comments

- 8.1 Attendees expressed serious doubts that the approach of the Aviation Protocol could transfer successfully to the space world.
- 8.2 After viewing the Aviation Protocol presentation, a number of attendees had concerns that there would be an additional burden put on industry that it did not require.
- 8.3 Zohar Zik explained that the Aviation Working Group had helped set up the Aircraft Protocol, as there was a need and push from industry. This need was financially driven, as there were uncertainties over the transfers of titles.
- 8.4 Prof Goode reported the registration system was very simple to use and cheap to implement. An attendee reminded other attendees that the legal fees would be very high.
- 8.5 Prof Crowther thanked Prof Sir Roy Goode and the Workshop attendees. The Workshop attendees were reminded to send any comments they had either directly to Prof Goode or to himself or Prof Mosteshar.