



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONALE POUR L'UNIFICATION DU DROIT PRIVE

LEGAL SUBCOMMITTEE TO THE U.N. COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

(60th session, Vienna, 31 May - 11 June 2021)

Agenda Item 3: General exchange of views.

STATEMENT

by the observer representing UNIDROIT

1. The International Institute for the Unification of Private Law (UNIDROIT) greatly appreciates the invitation to attend and address the 60th session of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS) and the opportunity to report on the developments that have taken place concerning the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (the *Space Protocol*), as well as to speak to UNIDROIT's application for the status of a Permanent Observer at COPUOS.
2. UNIDROIT is pleased to be able to report good progress in respect of not only the Space Protocol, but also the Convention on International Interests in Mobile Equipment (the *Cape Town Convention*), the Protocol to the Convention on Matters specific to Aircraft Equipment (the *Aircraft Protocol*), the Luxembourg Protocol to the Convention on Matters specific to Railway Rolling Stock (the *Luxembourg Rail Protocol*), and the Protocol to the Convention on Matters specific to Mining, Agricultural and Construction Equipment (the *MAC Protocol*). The Cape Town Convention, now with 83 States Parties, and its Aircraft Protocol with 80 States Parties, have been regarded by many as some of the most commercially beneficial international private law treaties ever adopted. They continue to attract new accessions and the International Registry for aircraft objects is expanding exponentially, having celebrated its one millionth registration in 2019.
3. Additionally, implementation of the Luxembourg Rail Protocol has also begun to pick up speed: it now has nine signatories, three Contracting States (Gabon, Luxembourg and Sweden) and one Contracting Regional Economic Integration Organisation (the European Union). I am happy to report that legislative processes to ratify the convention is in latest stages in several jurisdictions, and therefore the Luxembourg Rail Protocol is expected to enter into force soon, hopefully within the current calendar year.
4. Recently, in November 2019, the MAC Protocol was adopted at a Diplomatic Conference in Pretoria, South Africa, extending the application of the Cape Town Convention to three additional industries: mining, agriculture, and construction. The MAC Protocol was signed by four States at the Diplomatic Conference (Gambia, Republic of Congo, Nigeria, and Paraguay), with the United States of America becoming the fifth signatory in 2020. Preparations are now underway for the appointment of a registrar and the establishment of the international infrastructure necessary to facilitate entry into force of this instrument.
5. The Space Protocol, adopted in Berlin in 2012, has also continued to be recognised by governments and industry alike as an important tool for space financing, particularly with the

rise of NewSpace, which is primarily private sector based and in need of additional investments. Four States have already signed the Space Protocol (Burkina Faso, Germany, Saudi Arabia, and Zimbabwe), and several additional States have recently indicated to UNIDROIT that they have started their internal consultation processes to consider this instrument, especially keeping in mind the boost which the Aircraft Protocol has given to their domestic aviation industries. 10 ratifications or accessions are needed to trigger the entry into force of the Space Protocol, as well as a certification by the Supervisory Authority that the future International Registry for space assets is fully operational.

6. The Berlin Diplomatic Conference established a Preparatory Commission to act as Provisional Supervisory Authority for this future International Registry, and to further the implementation of the treaty. I am pleased to report that since 2012, the Space Preparatory Commission has convened five times. It approved the first draft of the Space Registry Regulations at its fourth session in 2015 and has also prepared a draft of the tender document to be published to allow bids for the setting up of the International Registry.

5. The Preparatory Commission operates under the guidance of the UNIDROIT General Assembly and is composed of experts nominated by one-third of the negotiating States in Berlin. The following States participate in the work of the Preparatory Commission: Brazil, People's Republic of China, Czech Republic, France, Germany, India, Italy, Russian Federation, Saudi Arabia, South Africa, and United States of America. The Preparatory Commission's sessions are also attended by several observers. Additionally, regular meetings of an informal Sub-Group established to reassess industry participation for the promotion and development of the Space Protocol are also held via teleconference to further the implementation of the treaty.

6. With regard to the appointment of a Supervisory Authority for the future International Registry to be established under the Space Protocol, the Preparatory Commission, pursuant to Resolution 2 of the Berlin Conference, engaged with the International Telecommunications Union (ITU) to consider the role. At its Plenipotentiary Conference in 2018, despite strong support from the ITU Secretariat, the ITU informed the Preparatory Commission that it would reconsider this matter in 2022, should it be invited again to do so. The Preparatory Commission continues to monitor this situation and has given consideration to several options with regard to this matter, including considering the suitability of other relevant international organisations for this role.

7. The UNIDROIT Secretariat has continued to promote the Space Protocol in order to facilitate building the international infrastructure necessary for its entry into force, as well as to encourage States and industry participants to recognise the benefits of asset-based financing for the space sector. This includes specific consideration of the benefits of the Space Protocol, as an international system of secured transactions law specifically designed for the space sector, for NewSpace, including innovative technologies such as space resource utilisation, in-orbit servicing, mega-constellations, space manufacturing, as well as for further promoting space sustainability.

8. The space industry has recently seen tremendous growth which is expected to multiply in the near future, it is estimated that the revenue generated by the global space industry will increase to \$1.1 trillion or more in 2040, with significant parts of this coming from the private sector. Prior to the Space Protocol, there existed no international legal framework providing for asset-based financing within the space industry. To assist in the development of the space industry, an efficient international financial ecosystem needs to be developed and this is exactly what the Space Protocol provides. It provides a stable and secure legal environment for transactions in space assets, based on the tried and tested mechanism of asset-based financing.

9. The Cape Town Convention has been a remarkable success in providing a sound and efficient basis for international financing of high-value equipment. The Aircraft Protocol entered into force alongside the Convention in 2006. Since then, there have been over 1 Million registrations recorded in its International Registry against more than 250,000 aircraft objects, with an estimated value of collateral of over 500 billion USD. Moreover, recent economic

assessments of the Luxembourg Rail Protocol, as well as the MAC Protocol have shown significant financial benefits for the sectors they apply to.¹

10. The level of efficiency and the enhanced legal certainty created by the Cape Town Convention system are such that all export credit agencies that participate in the "Aircraft Sector Understanding" negotiated under the auspices of the Organisation for Economic Cooperation and Development (OECD) grant reductions of up to 10% off the minimum premium rate ("Cape Town Discount") if the aircraft operator is based in a country that has ratified the Cape Town Convention and implemented it in an acceptable manner. Similar arrangements have been proposed and are being considered for other Protocols as well.

11. The main beneficiaries of the Cape Town system have been airlines in developing countries and smaller carriers with a medium to lower credit rating. As such, the Protocol both helps the renewal of the aircraft fleet – thus contributing to improved aviation safety – and also stimulates competition in the aviation sector. Nothing suggests that similar benefits may not flow from the Space Protocol. On the contrary, the active participation of developing countries throughout the negotiation of the Protocol, as well as their continued engagement with UNIDROIT on the matter, clearly indicates the belief of their governments in the positive prospects offered by the Space Protocol.

12. As more and more countries look to private investment to promote certain space activities, within the framework of their international obligations and national policies, the Space Protocol offers a new and efficient tool to assist their private sector – often not yet sufficiently mature to secure the required level of financing solely on the basis of their balance sheets – to tap the resources of private investment and financial markets on more affordable terms. Enhanced credit terms, made possible through a robust legal basis for asset-specific financing, should also help public agencies to re-direct resources from the support of commercial activities to the infrastructure investment needed by their countries to expand their space capabilities. Those large operators that do not need the type of asset-based financing contemplated by the Space Protocol may choose not to use it. UNIDROIT is, however, proud to have contributed to opening up this new avenue of financing for those companies to which it can make a difference.

13. The negotiation of the Space Protocol benefited a great deal from the continued support provided by COPUOS and its Legal Subcommittee, and to our efforts to reach out to the broad membership of the UN, particularly in the developing world. Additionally, UNIDROIT and COPUOS both have within their common interest to promote the use of harmonised commercial laws, with a particular focus on space financing. In order to keep informed with the latest space-related developments, especially with regard to the space economy; to continue to inform COPUOS Member States of the implementation status of the Space Protocol; as well as to stay current in utilising the benefits of the peaceful uses of outer space for sustainable development, UNIDROIT has applied in 2021 to seek the status of Permanent Observer at COPUOS. With regard to this, I am very grateful for your kind consideration of this matter, and remain available for any inquiries.

14. UNIDROIT looks forward to continuing to work closely with COPUOS Member States and Observers in the process of securing the implementation of the Space Protocol, and to promote the use of harmonised private law in the space sector, and wishes the Subcommittee every success in its deliberations.

¹ For economic assessments of the Cape Town Convention and its Protocols, see <https://ctcap.org/repository/economic-assessment/>