

Space Law Symposium IISL / ECSL

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Knowledge for Tomorrow

Space Law Symposium IISL / ECSL 2013

The UNIDROIT Space Protocol

The negotiations at Berlin - What promise for the future?

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Knowledge for Tomorrow

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Participation at the Diplomatic Conference held in Berlin from 27 Feb. to 9 March 2012

Representatives of Governments of 40 States

34 States presented credentials

Brazil	India	Mexico	Spain
Burkina Faso	Indonesia	Nigeria	Sudan
Canada	Iraq	Pakistan	Turkey
China	Ireland	Republic of Korea	United Kingdom of Great Britain / Northern Ireland
Czech Republic	Italy	Russian Federation	USA
Denmark	Japan	Saudi Arabia	Yemen
France	Latvia	Senegal	Zimbabwe
Germany	Luxembourg	Slovenia	
Ghana	Madagascar	South Africa	

Further participating States

Albania	Iran	Portugal
Columbia	Malawi	Moldavia

One Regional Economic Integration Organisation : EU

Four IGO's: ESA , OTIF , ICAO , ITU

Five Non-Governmental Organisations:

Aviation Working Group (AWG)

European Satellite Operators Association (ESOA)

International Bar Association (IBA)

International Institute of Space Law (IISL)

Rail Working Group (RWG)

and a certain number of technical advisers.



Basic approach of the Protocol: Asset-based instead of project-based financing

The Berlin Protocol is part of the Cape Town regime, which is developed to make asset-based financing more easily and widely available. In the first five years of operation of the International registry under the Aircraft Protocol more than 300,000 had been made.

Asset-based financing is a new option besides the actual practice of project-based financing.

Financing against the value of assets gives new financing opportunities for entrepreneurs and especially for start-up companies.



Status of the Protocol at the beginning of the Berlin Conference Policy Considerations

- *At the conclusion of the **fifth session of the Committee of governmental experts** there was **consensus** that the text of the draft Protocol was **ripe for transmission to a diplomatic Conference for adoption.***

- *Within the scope of the general exchange of views **at the beginning of the Berlin Conference***

*the **vast majority of the delegations** considered the draft Protocol*

***some delegations** considered the draft Protocol*

- *an optional tool*
- *that could greatly benefit the development of the commercial space sector*
- *in particular in the emerging and developing worlds*
- *a further supranational layer of legal regulations to space financing*
- *that increases, rather than decreases the cost of such financing*



Status of the Protocol at the beginning of the Berlin Conference Legal Considerations

Key outstanding Issues in Legal Terms

Sphere of application of the Protocol

- *enumerative vs open approach*
- *criteria for identification*
- *sphere of application prior to the launch*

Competing rights in physically linked assets

- *priority of competing rights*
- *inter-creditor agreements*
- *identification of competing rights in the registry*

Public service exemptions from default remedies

- *mere inclusion of such a clause*
- *balance of the State's interest in the continuance of public services and the rights of the creditor*



Outcome of the Berlin Conference

Results in relation to the key outstanding issues

Sphere of application of the Protocol

- *open definition of the term space asset*
- *criteria for the identification of a space asset are to be defined by the regulations*
- *the Protocol applies prior to the launch*

Competing rights in physically linked assets

- *inter creditor agreements claim priority to the Protocol*
- *in absence of an inter creditor a creditor may not impair or interfere with the operation of another asset*

Public service exemptions from default remedies

- *exercise of default remedies limited, if it makes the asset unavailable for the provision of public services*
- *subject to a mandatory declaration*



Final Act

of the Diplomatic Conference for the adoption of the draft Protocol to the
Convention on International Interests in Mobile Equipment on Matters specific to Space Assets

Protocol opened for signature in Berlin 9 March 2012

<i>Annex I</i>	<i>Space Assets Protocol (Berlin Protocol)</i>
<i>Annex II</i>	<i>Resolution 1: Setting up of the Preparatory Commission</i>
<i>Annex III</i>	<i>Resolution 2: Establishment of the Supervisory Authority</i>
<i>Annex IV</i>	<i>Resolution 3: Regulations of the International Registry</i>
<i>Annex V</i>	<i>Resolution 4: Reasonable Discounts on Exposure Rates</i>
<i>Annex VI</i>	<i>Resolution 5: Official Commentary</i>

The Final Act was signed by 25 States and the EU.



Resolution 1: Preparatory Commission (Prep Com)

Conscious of the need

to undertake preparatory work regarding the establishment of the Int. Registry ... in order to ensure that it be operational by the time when the Protocol enters into force

RESOLVES:

to establish a Prep Com to act with the full authority as Provisional Supervisory Authority

for the establishment of the Int. Registry for space assets under the guidance of the General Assembly of UNIDROIT

composed of persons having the necessary qualifications and experience, nominated by 1/3 of the negotiating States,

ITU, ICAO, OTIF

and representatives of the commercial space, financial and insurance communities ... as observers.



The Prep Com has three specific functions:

- (1) set up of the int. registration system under an objective selection process ... target: three years from the adoption of the Protocol,
by the time of the entry into force of the Protocol***
- (2) to ensure the necessary liaison and co-ordination with the commercial space, financial and insurance communities (user community)***
- (3) working on other matters relating to the Int. Registry as may be required***



Resolution 2: Supervisory Authority

Considering the interest expressed by the International Telecommunication Union (ITU) ... without prejudice to the decision to be taken ...

RESOLVES:

TO INVITE the governing bodies of the ITU:

- (1) to consider the matter of the ITU becoming Supervisory Authority upon or after the entry into force of the Protocol and take the necessary action, as appropriate; and***
- (2) to inform the Secretary-General of UNIDROIT accordingly.***



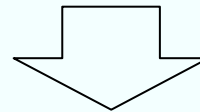
The Supervisory Authority

Three options have been taken into consideration, namely

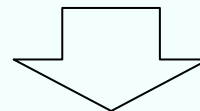
*International Civil Aviation
Organization (ICAO)*

*The International
Telecommunication
Union (ITU)*

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In October 2012 the ITU Council authorized the Secretary General to attend the Berlin Conference and to express the interest for ITU to become the Supervisory Authority without prejudice to a final decision



Resolution 2



Resolution 3: Regulations of the Int. Registry

Having adopted, in Article XVII (3)

[Modification of default remedies provisions as regards space assets]

[3. – Unless otherwise agreed, a creditor may not enforce an international interest in a space asset that is physically linked with another space asset so as to impair or interfere with the operation of the other space asset if an international interest or sale has been registered with respect to the other space asset prior to the registration of the international interest being enforced ...]

RESOLVES:

***TO INVITE* the Supervisory Authority of the Int. Registry for space assets ... to ensure that, so far as practicable, any search of the Int. Registry relating to physically linked assets reveal all international interests registered against such assets, as also any right assignments, acquisitions by subrogation and rights reassignments recorded as part of the registration of those assets.**



Regulations of the International Registry

*According to **Art. XXIX** of the Protocol*

The first regulations shall be made by the Supervisory Authority so as to take effect on the entry into force of this Protocol.

The regulations are relevant for

- *the identification of space assets for the purpose of registration and the*
- *Identification of competing rights in relation to physically linked assets (cf. Resolution 3)*



The relevant regulations in the Protocol are,

Art. I, 2. (k) (Defined terms)

(k) “space asset” means any man-made uniquely identifiable asset in space or designed to be launched into space, and comprising

(i) a spacecraft, such as a satellite, space station, space module, space capsule, space vehicle or reusable launch vehicle ...

(ii) a payload ...

(iii) a part of a spacecraft or payload ...

Art. XXX (Identification of space assets *for registration purposes*) *

A description of a space asset in accordance with the criteria for identification *provided by the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry.*

**** For the constitution of an interest see Art. VII***



Resolution 4: Reasonable Discounts on Exposure Rates

Financing costs of aircrafts are reduced in the Contracting States of the Aircraft Protocol up to 30% . Resolution 4 refers to this potential benefit for space assets financing.

Resolution 5: Official Commentary

Sir Roy Goode has prepared the commentary in 2012 and the draft was interated according to the resolution until the end of the year. The finalisation is under process.





