



**UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS  
FOR THE PREPARATION OF A DRAFT PROTOCOL TO  
THE CONVENTION ON INTERNATIONAL INTERESTS IN  
MOBILE EQUIPMENT ON MATTERS SPECIFIC TO  
SPACE ASSETS  
Third session  
Rome, 7/11 December 2009**

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**REPORT**

*(prepared by the UNIDROIT Secretariat)*

**Opening of the session**

1. Mr J.A. Estrella-Faria, Secretary-General of UNIDROIT, opened the third session of the Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (hereinafter referred to as the *Committee*), at the Headquarters of the Food and Agriculture Organization of the United Nations in Rome, at 9.57 a.m. on 7 December 2009 and welcomed all participants. He invited the Committee to confirm the chairmanship held by Mr S. Marchisio (Italy) during the first and second sessions of the Committee.
2. Mr Marchisio was confirmed as Chairman. He too welcomed all participants and summarised the work that had taken place since the second session of the Committee, held in Rome from 26 to 28 October 2004. He also drew attention to the 2004 position paper prepared by the UNIDROIT Secretariat and the Space Working Group which laid out the reasons why the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets as it emerged from the first session of the Committee, held in Rome from 15 to 19 December 2003 (hereinafter referred to as the *preliminary draft Protocol*) (C.G.E./Space Pr./3/W.P. 4), <sup>1</sup> was important for the space industry. He invited the Committee to consider whether the goals outlined in that paper were still valid and to resolve the issues dealt with in the intersessional work.
3. Mr M.J. Stanford, Deputy Secretary-General of UNIDROIT, was Secretary to the Committee. Ms F. Mestre, Senior Officer, UNIDROIT, Ms M.M. Schneider, Senior Officer, UNIDROIT, Mr J.B. Atwood, Senior Officer, UNIDROIT, and Mr D.A. Porrás, Associate Officer, UNIDROIT, acted as Assistant Secretaries.

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<sup>1</sup> The preliminary draft Protocol is reproduced in *Appendix I* to this Report.

4. The session was attended by 91 representatives of 32 Governments, seven intergovernmental Organisations and six international non-governmental Organisations, as well as 14 representatives of the international commercial space, financial and insurance communities and one other person.<sup>2</sup>

**Item No. 1 on the revised draft agenda: adoption of the agenda**

5. The revised draft Agenda (C.G.E./Space Pr./3/W.P. 1 rev.) was adopted by the Committee as proposed.<sup>3</sup>

**Item No. 2 on the agenda: organisation of work**

6. Mr Stanford illustrated the Order of business (C.G.E./Space Pr./3/O.B. 1) proposed for the session. The Committee adopted the order of business as proposed.

7. Mr Stanford noted that the Drafting Committee of the Committee (hereinafter referred to as the *Drafting Committee*) would be meeting following the daily work of that Committee, beginning on 8 December 2009. He informed the Committee in particular that the Drafting Committee as established at the first session of the Committee had the delegations of Canada, the People's Republic of China, France, Nigeria, Tunisia, the United Kingdom and the United States of America as members and had elected the United Kingdom and Canada as its Co-chairmen.

8. Taking into account the presence at the session of members of the Drafting Committee appointed by the Committee at its first session, the following delegations were, following informal consultations, appointed members of the Drafting Committee for the third session of the Committee: Canada, the People's Republic of China, France, Nigeria, the Russian Federation, Senegal, the United Kingdom and the United States of America.

9. The Drafting Committee was co-chaired by Sir Roy Goode (United Kingdom) and Mr J.M. Deschamps (Canada).

**Item No. 3 on the agenda: consideration of the preliminary draft Protocol (C.G.E./Space Pr./3/W.P. 4) and an alternative version of the preliminary draft Protocol prepared by Sir Roy Goode (United Kingdom) and Mr J.M. Deschamps (Canada) - as Co-chairmen of the Drafting Committee of the Committee - to reflect the conclusions reached by the Steering Committee, set up by the General Assembly at its 61<sup>st</sup> session, held in Rome on 29 November 2007, to build consensus around the provisional conclusions reached by the Government/industry meeting held in New York on 19 and 20 June 2007 (C.G.E./Space Pr./3/W.P. 5 rev.) (hereinafter referred to as the *alternative text (policy issues)*),<sup>4</sup> *inter alia* in the light of the comments and proposals submitted by Governments, Organisations and the international commercial space, financial and insurance communities (C.G.E./Space Pr./3/W.P. 9)**

***General statements***

10. The Chairman invited delegations to raise general comments.

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<sup>2</sup> The list of participants is reproduced in *Appendix II* to this Report.

<sup>3</sup> The agenda is reproduced in *Appendix III* to this Report.

<sup>4</sup> The alternative text (policy issues) is reproduced in *Appendix IV* to this Report.

11. One delegation introduced a proposal (C.G.E./Space Pr./3/W.P. 12) based on concerns conveyed to its Government by stakeholders in the satellite industry and lawyers regarding what they had identified to be weaknesses in the preliminary draft Protocol. The proposal called for any further work refining the text of the preliminary draft Protocol to be postponed, following the third session of the Committee, until the UNIDROIT Secretariat had commissioned an economic assessment of the benefits of the preliminary draft Protocol, as it emerged from that session. This delegation added that the proposal left it to the UNIDROIT Secretariat to determine who should conduct such an economic assessment. A few delegations supported this proposal, noting that industry support was critical for the development of the preliminary draft Protocol and that, in their consultations with stakeholders in the satellite industry, the obstacles intended to be overcome by the preliminary draft Protocol were rare.

12. However, many delegations were in favour of the Committee continuing its work, adducing the following reasons: the UNIDROIT Governing Council at its most recent session, held in Rome from 20 to 23 April 2009, had given the highest priority to the timeous completion of the preliminary draft Protocol; it was important for the Committee to take into account a broad view of the stakeholders in the preliminary draft Protocol, including those in developing and emerging economies, noting the potential benefits of the preliminary draft Protocol for developing infrastructure in such economies; the application of the preliminary draft Protocol extended beyond communication satellites and the completion of a commercially viable instrument would benefit the various sectors of the commercial space sector; and the preliminary draft Protocol was not mandatory and it was up to individual States to determine whether they would ratify the planned Protocol in future.

13. It was agreed that the work of the Committee should not be postponed. Some States questioned the appropriateness of contemplating an economic assessment of the benefits of the preliminary draft Protocol at such an advanced stage in the process and other States suggested that this was a matter for the Governing Council. However, there was also an indication that, subject to whether available financial resources could be found, some States would not object to such an assessment being conducted following the third session of the Committee. It was agreed that this matter should be revisited at the end of the session.

***Re: definition of "space" and "space assets" (Article I(2)(g) of the preliminary draft Protocol / Article I(2)(j) and (k) of the alternative text (policy issues))***

14. Discussions were based on Article I(2)(g) of the preliminary draft Protocol, Article I(2)(j) of the alternative text (policy issues) and a proposal by Mr S. Kozuka in his personal capacity (C.G.E./Space Pr./3/W.P. 10).

15. The following issues were raised in the course of the discussion:

- the appropriateness of adopting a more general definition of space asset within the preliminary draft Protocol while leaving the more specific details to be worked out in the identification criteria for the purposes of registration;
- the appropriateness of the inclusion of a definition for the term "space" as proposed in Article I(2)(j) of the alternative text (policy issues);
- the appropriateness of the inclusion of the phrase "any such asset in course of manufacture or assembly" within the definition of space asset;
- the linkage between the definition of space asset and default remedies in relation to components; and

- the appropriateness of the inclusion of the phrase “all data, manuals and records relating thereto” within the definition of space asset.

16. The Committee reviewed the different texts of the definition of space asset and showed a general preference for the definition as it appeared in the alternative text (policy issues) pending further refinement that would take into account certain aspects of the proposal by Mr Kozuka.

17. In the course of the discussion, the Chairman of the Sub-committee of the Committee to examine certain aspects of the future international registration system for space assets (hereinafter referred to as the *Sub-committee on the future international registration system*) (cf. C.G.E./Space Pr./3/W.P. 7 rev.) gave a brief summary of the conclusions that had emerged on the subject of identification criteria for space assets for the purposes of registration from the meeting of that Sub-committee held in Rome on 26 and 27 October 2009.

18. It was also noted that the question of the definition of space assets as it related to components and the related question of default remedies in relation to components merited the continuation of the work of the Sub-committee set up by the Steering Committee on default remedies in relation to components as a working group of the Committee with, as members, the same members as that Sub-committee, namely Germany, Italy, Japan, the United Kingdom and the United States of America, together with France, and, as observers, Ms C.J. Dubreuil (EADS Astrium), Mr O. Heinrich (BHO Legal Partnership), Ms M. Leimbach (Crédit Agricole S.A.), and Mr B. Schmidt-Tedd (German Space Agency).

19. Following a statement by the representative of the International Telecommunication Union (I.T.U.) (C.G.E./Space Pr./3/W.P. 16), the following issues were referred to the Drafting Committee, on the understanding that the alternative text (policy issues) was an expression of drafting options that could assist the discussions of the Committee and had not been formally adopted:

- to consider whether the definition of “space assets” should incorporate a list of principal categories and residual open-ended criteria, taking into account the list of principal categories contained in the proposed definition of space asset submitted by Mr Kozuka (C.G.E./Space Pr./3/W.P. 10) with a view to avoiding terms that might overlap;
- to consider the implications of deleting the phrase “any such asset in course of manufacture or assembly”;
- to note the relationship between the definition of space asset and the role to be played by the regulations to be promulgated by the Supervisory Authority of the future international registration system for space assets with a view to avoiding the need for a detailed definition of each category of space asset;
- to take into account the fact that the categories listed within the definition of “space assets” would need to be susceptible to default remedies;
- to avoid incorporating within the definition of “space assets” a requirement that the asset in question be registered under any other international registry; and
- to consider modifying, or possibly deleting, the phrase “and all data, manuals and records relating thereto”.

20. One delegation agreed to consult other interested delegations with a view to refining the phrase “serving an independent function” contained in Mr Kozuka’s proposal for a definition of “space assets”.

**Re: *definition of “debtor’s rights” (Article I(2)(a) of the preliminary draft Protocol / Article I(2)(a) of the alternative text (policy issues))***

21. During the discussion of debtor’s rights, there was general support for the inclusion of the concept of debtor’s rights as set out in the alternative text (policy issues). However, the following points were raised concerning such inclusion:

- there was a need for clarification as to what debtor’s rights were intended to cover, notably whether debtor’s rights should be considered only to cover civil contractual and tortious rights related to the asset or whether they should also extend to administrative rights and claims and, in addition, to what extent non-transferable intellectual property rights were accommodated by the preliminary draft Protocol;
- whether it would be more appropriate to deal with debtor’s rights in the preliminary draft Protocol through a reference to those Articles of the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Cape Town Convention*) dealing with associated rights;
- whether it would be appropriate to incorporate in the definition of “debtor’s rights,” rather than in the definition of “space assets,” a reference to a right to all data, manuals and records relating thereto;
- to give consideration to the inclusion of those rights assignments not covered by Article I(2)(h) of the alternative text (policy issues), notably those rights assignments made independently of an international interest, that could not, therefore, be recorded under the future international registration system (cf. C.G.E./Space Pr./3/W.P. 9, pp. 3-4);
- whether a subrogation by the creditor would require that a rights assignment be agreed between the creditor and the debtor (C.G.E./Space Pr./3/W.P. 9, p. 3); and
- whether the extension of the Cape Town Convention to outright sales should be extended also to the outright sale of debtor’s rights, whether by reference to the applicable domestic law or by a provision based on Article 29(3) of the Cape Town Convention.

**Re: *definition of “related rights” (Article I(2)(f) of the preliminary draft Protocol) / definition of “licence” (Article I(2)(f) of the alternative text (policy issues)) / duty of assignor as to licences (Article XII of the alternative text (policy issues))***

22. The proposal found in Article I(2)(f) of the alternative text (policy issues), replacing the term “related rights” with the term “licence”, was endorsed by the Committee.

23. In respect of the proposal found in Article XII of the alternative text (policy issues), it was suggested that the phrase “take all steps within its power” be replaced by more objective criteria for defining the duty required of a debtor in default.

24. It was suggested that the duty of the assignor/debtor should be described by reference to rights and duties under the applicable law. Additional technical proposals were made by Mr Kozuka (C.G.E./Space Pr./3/W.P. 9, pp. 4-5).

***Re: modification of default remedies provisions as regards space assets (Article IX[(4)] of the preliminary draft Protocol / Article XVIII[(4)] of the alternative text (policy issues))***

25. The Chairman of the Informal Working Group on default remedies in relation to components (cf. § 18, supra) presented the report of the Informal Working Group (C.G.E./Space Pr./3/W.P. 24) and, while noting that considerable progress had been made, indicated that there had not been sufficient time for the reaching of a definitive conclusion.

26. It was agreed that the Informal Working Group should continue its work informally with a view to submitting an agreed solution to the following session of the Committee.

***Re: limitations on remedies (Article XVI(3) of the preliminary draft Protocol / Article XXVII(3) of the alternative text (policy issues))***

27. Some delegations, while recognising the importance of public services being protected, expressed preference for an approach that avoided a detailed list of options and, rather, referred to the applicable domestic law of the relevant licencing State the question of limitations on the exercise of default remedies in relation to public services.

28. Some delegations spoke of the appropriateness of a more precise defining of the term “public service” being left to the applicable law.

29. Some other delegations, noting that it was critical for Contracting States to be able to define the limitations on the exercise of default remedies and citing in particular the need for transparency and clarity in describing those limitations, as well as referring to the approach that had been taken in other instruments in the Cape Town Convention system, supported a clear possibility for States to limit the exercise of remedies in respect of space assets performing a public service.

30. Some delegations referred to a declaration mechanism as a means potentially better to define public service or the consequences of an interruption of a public service due to the exercise of default remedies.

31. There was some discussion of the appropriateness of a State other than the State receiving the public service having a role in determining the extent to which those services could be affected by the exercise of a default remedy.

32. One delegation noted the need for transparency and flexibility in respect of limitations on default remedies and questioned whether the existing proposals fully satisfied that need.

33. The Chairman proposed the formation of a working group further to discuss this item with a view to developing a proposal to be referred back to the Committee. The following delegations were appointed to the working group: the People’s Republic of China, the Czech Republic, France, Germany, Greece, India, Spain; and the United States of America.

34. Mr Estrella-Faria presented the report of the Informal Working Group on limitations on remedies, containing a discussion paper setting out a proposal for a new Article XVI *bis* of the preliminary draft Protocol / Article XXVII *bis* of the alternative text (policy issues) (C.G.E./Space Pr./3/W.P. 23).<sup>5</sup> He noted that this proposal had been prepared by the Secretariat on the basis of informal proposals made by one delegation. He also noted that this discussion paper had not, however, been approved by the Informal Working Group nor reviewed by the Drafting Committee but that it was rather intended as the basis for further consultations.

35. One delegation noted that paragraph 5 of the discussion paper did not take account of that delegation's proposal that the requirement of prior notice be treated as unnecessary in the event that the State had exercised an option pursuant to paragraph 3. It was agreed that, given the nature of the discussion paper as the basis of further consultations, this matter could be dealt with at the following session of the Committee.

36. Another delegation sought clarification that the ability of a State, under paragraph 5 of the discussion paper, to register a notice recording that a space asset was used for the provision of a public service in the vital interest of that State within six months after the launch of that asset did not prohibit a State from filing such a notice after the six-month period but that any previously recorded interests would not be affected by such a notice. This point was agreed.

37. A number of delegations welcomed the discussion paper as providing an important step forward in the development of a balanced solution.

***Re: consideration of the proposal by the observer representing leading space insurance underwriters on title salvage and revenue salvage (C.G.E./Space Pr./3/W.P. 9, pp. 5-9)***<sup>6</sup>

38. The observer representing leading space insurance underwriters made a presentation to the Committee elaborating on the proposal set out in C.G.E./Space Pr./3/W.P. 9 to provide for title salvage and revenue salvage under the preliminary draft Protocol.

39. The Committee unanimously supported the proposal and requested the Drafting Committee to draft provisions taking account of commercial practice relating to title salvage and revenue salvage in the preliminary draft Protocol.

**Item No. 3 on the agenda: consideration of those other provisions of the preliminary draft Protocol not previously discussed during the session, with the exception of Chapter VI (Final Provisions), in particular the bracketed language in Article IX(1), Article X[(5)], the bracketed language in Article XII(2), the bracketed language in Article XVI(2), Article XVII(1) and (2), Article XX(1) and [Article XXI *bis*]**

***Re: modification of default remedies provisions (Article IX(1) of the preliminary draft Protocol)***

40. There was discussion as to the appropriateness of the application of Article IX of the preliminary draft Protocol being made subject to a declaration by a Contracting State and in this

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<sup>5</sup> The Report on the work of the Informal Working Group on limitations on remedies is reproduced in *Appendix V* to this Report.

<sup>6</sup> This proposal is reproduced in *Appendix VI* to this Report.

respect departing from the approach taken in the corresponding provision in the Protocol to the Cape Town Convention on Matters specific to Aircraft Equipment (hereinafter referred to as the *Aircraft Protocol*).

41. There was also discussion as to whether Article IX(4) of the preliminary draft Protocol should be found in a provision dealing with priorities.

42. It was agreed that the text should be the subject of further consideration.

**Re: *modification of provisions regarding relief pending final determination (Article X[(5)] of the preliminary draft Protocol)***

43. It was agreed that, in the light of the potential implications for national laws of Article X[(5)] of the preliminary draft Protocol, the text should be the subject of further consideration.

**Re: *insolvency assistance (Article XII (2) of the preliminary draft Protocol)***

44. Following discussion, it was agreed that the square brackets found in Article XII(2) of the preliminary draft Protocol could be removed on the basis that the future Official Commentary would clarify the fact that the phrase “in accordance with the law of the Contracting State” was intended to require only that an action by the courts of the relevant Contracting State was not prohibited and was not intended to convey the idea that the action would need to be specifically authorised by the law of that State.

**Re: *Limitations on remedies (Article XVI (2) of the preliminary draft Protocol)***

45. Following a discussion in which the purpose of the phrase in square brackets was questioned, it was agreed that no amendment should be made pending further work being done on the question of limitations on remedies in respect of public service.

**Item No. 4 on the agenda: consideration of the Report of the Sub-committee of the Committee to examine certain aspects of the future international registration system for space assets (C.G.E./Space Pr./3/W.P. 7 rev.)**

**Re: *identification of space assets (Article VII of the preliminary draft Protocol / Article XVI (3) and (4) of the alternative text (policy issues))***

46. The Chairman of the Sub-committee on the future international registration system gave a brief summary of the conclusions on the issue of identification criteria reached at the meeting of that Sub-committee held in Rome on 26 and 27 October 2009 (C.G.E./Space Pr./3/W.P. 7 rev.).

47. It was agreed that the identification criteria for space assets for the purposes of registration identified by the Sub-committee on the future international registration system were intended to replace Article XVI (3) and (4) of the alternative text (policy issues).

**Re: *the practical operation of the future international registration system for space assets and the designation of the future Supervisory Authority***

48. The Chairman of the Sub-committee on the future international registration system presented those conclusions that had been reached at the meeting of the Sub-committee



regarding the practical operation of the future international registration system for space assets and the designation of the future Supervisory Authority.

49. The Secretariat communicated a statement on behalf of the International Mobile Satellite Organisation (I.M.S.O.) regarding the process that would be involved in its consideration of any possible future role as Supervisory Authority.

50. There was a general discussion as to the potential candidates for the role of the future Supervisory Authority, including the I.T.U., I.M.S.O. and the International Civil Aviation Organization and of the preparations that these potential candidates would need to make so as to be in a position to accept any such role that the diplomatic Conference for the adoption of the future draft Protocol might wish to invite them to assume.

51. One delegation recalled the recommendation that had come out of the meeting of the Sub-committee on the future international registration system as regards the possibility for the Preparatory Committee to be established by the diplomatic Conference for the adoption of the future draft Protocol itself to undertake the procedure for the selection of the future Registrar, subject to approval by the Supervisory Authority.

52. The Committee endorsed the conclusions found in the report of the Sub-committee on the future international registration system.

53. The Committee requested the Secretary-General of UNIDROIT, on behalf of the UNIDROIT Governing Council, to approach those Organisations that might be considered as potential candidates for the role of the future Supervisory Authority with a view to giving those Organisations an adequate opportunity to consider their potential suitability for such a role and, as appropriate, to give them the time required to obtain the internal authorisations that would be needed formally to submit their candidatures for such a role.

**Item No. 5 on the agenda: consideration of technical amendments proposed to the preliminary draft Protocol by Sir Roy Goode and Mr Deschamps, as Co-chairmen of the Drafting Committee (C.G.E./Space Pr./3/W.P. 8 rev.) (hereinafter referred to as the *alternative text (proposed technical amendments)*)**<sup>7</sup>

***Re: definition of controlled goods (Article I(2)(a) of the alternative text (proposed technical amendments))***

54. Following discussion of this proposed technical amendment, it was agreed that further consideration of the proposal would be required.

***Re: location / situation of space asset (Article I(3) of the alternative text (proposed technical amendments))***

55. One delegation raised the question as to the appropriateness in Article I(3) of referring only to the United Nations Convention on Registration of Objects Launched Into Outer Space, which he suggested was misleading in that a space asset might be registered in one or more of three places and since there were other relevant treaties, principles or resolutions of the United

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<sup>7</sup> The alternative text (proposed technical amendments) is reproduced in *Appendix VII* to this Report.

Nations. He suggested that reference should be made either to all such relevant texts or to none.

56. In the light of the reaction by another delegation that a reference of some sort was needed in the future Protocol regarding the location of a space asset, once no longer on Earth, it was agreed that the matter be left open for decision at the following session.

**Re: *exclusion of space assets from coverage by Aircraft Protocol (Article II(3) of the alternative text (proposed technical amendments))***

57. No comments were made on this proposed technical amendment.

**Re: *choice of law in respect of rights assignments and rights reassignments (Article VIII of the alternative text (proposed technical amendments))***

58. Following discussion of this proposed technical amendment, it was agreed that further consideration of this proposal would be required.

**Re: *identification of space assets (Article VII of the alternative text (proposed technical amendments))***

59. No comments were made on this proposed technical amendment.

**Re: *placement of data and materials and placement of command codes (Articles XX and XXVII of the alternative text (proposed technical amendments))***

60. No comments were made in respect of the proposed Article XX of the alternative text (proposed technical amendments) and the proposal was endorsed by the Committee.

61. The proposed Article XXVII of the alternative text (proposed technical amendments), having already been discussed in connection with Article I(2)(a) of the alternative text (proposed technical amendments), it was not further discussed.

**Re: *priority provisions (Article XXIV(2) of the alternative text (proposed technical amendments))***

62. The proposed technical amendment was accepted on the understanding that it remained for the Drafting Committee to elaborate on the precise language of this proposal.

**Re: *Report of the Drafting Committee (C.G.E./Space Pr./3/W.P. 20 rev.)***

63. One of the Co-chairmen of the Drafting Committee presented the report on the work of the Drafting Committee (C.G.E./Space Pr./3/W.P. 20 rev.)<sup>8</sup> and explained the revisions recommended by the Drafting Committee to the Committee. He indicated in particular that the Drafting Committee had found it convenient to conduct its work on the basis of the alternative text (proposed technical amendments) (C.G.E./Space Pr./3/W.P. 8 rev.).

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<sup>8</sup> The Report of the Drafting Committee is reproduced in *Appendix VIII* to this Report.

64. He further noted that there had been five key issues which it had not been possible for the Drafting Committee to deal with pending a clear policy decision by the Committee, namely:

- the choice of law in respect of rights assignments and rights reassignments;
- priority provisions concerning the assignment of debtor's rights;
- policy implications of the duty of co-operation incumbent on the assignor to co-operate with the assignee for the transfer of its licence;
- whether the requirement of commercial reasonableness set forth in Article IX(2) of the preliminary draft Protocol and the qualification of "reasonable prior notice" laid down in Article IX(3) of the same text should be subject to a Contracting State's declaration or be free-standing provisions of the preliminary draft Protocol; and
- whether provision needed to be made for the case where a space asset was never launched.

65. It was agreed by the Committee that future work should be based on the alternative text (proposed technical amendments).

66. It was further agreed that it would be for the Committee at its following session to decide on the five key issues singled out by the Co-chairman of the Drafting Committee as still requiring a clear policy decision by the Committee.

67. Pursuant to the Co-chairman's remark as to the need to amend the heading of Article XII of the alternative text (proposed technical amendments) to reflect that fact that it now also dealt with subrogation, one delegation proposed dividing that Article into two Articles, one dealing with rights assignments and the other with subrogation.

68. Another delegation proposed that, in respect of Article I(2)(1) of the alternative text (proposed technical amendments), it be clarified, perhaps by footnote, that the square brackets that had been put around the words "capable of being independently owned, used or controlled" did not betoken disagreement as regards the need for some such language but rather the desirability of finding more appropriate language.

69. That delegation also raised the question of the need for further clarification as regards which paragraph of Article XXX of the alternative text (proposed technical amendments) would apply in the case of a space asset in respect of which a first international interest was registered prior to launch and then a second international interest was registered after launch. It was agreed that this was a matter needing to be discussed further at the following session.

#### **Item No. 6 on the agenda: future work**

70. The Secretariat recalled the decisions that the Committee had taken regarding the continuation of informal consultations at the level of the Informal Working Group on default remedies in relation to components pending the following session and consultation with States and industry on the discussion paper submitted by the Secretariat in the light of the work of the Informal Working Group on limitations on remedies.

71. The Secretariat also proposed that the Committee authorise it to continue the work begun by the Drafting Committee during the session on giving effect to the decisions taken by the Committee.

72. It was so agreed.

73. Some States reiterated the position they had already announced on the need for an economic impact assessment study or an equivalent survey of States and industry stakeholders.

74. On the other hand, a majority of States expressing themselves on the subject indicated, first, that any such study or survey should not hold up the work of the Committee and, secondly, that for such a study or survey to be mounted it would be necessary to ensure that it did not create an impossible financial burden on the Secretariat and member States.

75. Summing up the discussions, Mr Estrella-Faria noted that the Institute would, subject to its very limited resources, be reaching out, in practical consultations after the session, to both representatives of industry and the academic world with a view to assessing the economic basis for certain key provisions of the preliminary draft Protocol, notably through the discussion paper on limitations on remedies. He urged member States to intensify their contacts with their national industry representatives to ensure adequate input in the process.

76. It was agreed that it would not be appropriate for the work of the Committee to be postponed and that, in the light of the remarkable progress achieved during the session, a fourth session should be held in the first half of 2010.

**Item No. 7 on the agenda: review of report**

77. The Report was reviewed with a number of amendments.

**Item No. 8 on the agenda: any other business**

78. One delegation made a statement referring to the actions of an observer which questioned the extent to which positions taken by that delegation correctly reflected the official position of that delegation's Government. A number of delegations expressed their surprise and deep concern at the situation as it had been described. There was a unanimous expression of solidarity with the delegation concerned.

79. In respect of the submission contained in C.G.E./Space Pr./3/W.P. 19, a number of delegations pointed out that the listing in that document of the membership of some of the organisations identified as subscribers of those submissions was misleading in so far as those delegations understood that members of such associations from their States either were opposed to the views expressed in such communications or had not been consulted on the content of such communications.

80. In response to a query on the basis on which non-governmental Organisations participated in UNIDROIT deliberations, Mr Estrella-Faria noted that member States had a right to participate in the deliberations of UNIDROIT, while non-governmental Organisations were invited to participate as, primarily, the providers of expert advice on the matters before such meetings and, as such, were expected to observe a normal standard of behaviour.

81. Mr Estrella-Faria stressed that the expectation of UNIDROIT and its member States was that representatives of non-governmental Organisations invited to attend UNIDROIT meetings would make constructive use of that privilege.

**Closing of the session**

82. No other business being raised, the Chairman declared the session closed at 4.45 p.m. on 11 December 2009.

## APPENDIX I

### *CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT*

(opened to signature in Cape Town on 16 November 2001):

### *PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC TO SPACE ASSETS*

(as revised by the UNIDROIT Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets during its first session, held in Rome from 15 to 19 December 2003)

#### PREAMBLE

#### CHAPTER I SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I	Defined terms
Article II	Application of the Convention as regards space assets and related rights
Article III	Application of the Convention to sales
Article III <i>bis</i>	Sphere of application
Article IV	Derogation
Article V	Formalities, effects and registration of contracts of sale
Article VI	Representative capacities
Article VII	Identification of space assets
Article VIII	Choice of law

#### CHAPTER II DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article IX	Modification of default remedies provisions
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CONVENTION ON INTERNATIONAL  
INTERESTS IN MOBILE EQUIPMENT:

PRELIMINARY DRAFT PROTOCOL  
ON MATTERS SPECIFIC TO SPACE ASSETS<sup>1 2</sup>

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it desirable to implement the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*)<sup>3</sup> as it relates to space assets, in the light of the purposes set out in the preamble to the Convention,

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<sup>1</sup> The text of the preliminary draft Protocol to the Convention on Matters specific to Space Assets (hereinafter referred to as the *preliminary draft Protocol*) considered by the Committee of governmental experts at its first session, held in Rome from 15 to 19 December 2003, was that established by a working group (the Space Working Group) organised, at the invitation of the President of UNIDROIT, by Peter D. Nsgos, Esq., with the assistance of Dara A. Panahy, Esq., and revised, pursuant to a decision taken by the UNIDROIT Governing Council at its 80<sup>th</sup> session, held in Rome from 17 to 19 September 2001, by a Steering and Revisions Committee - which was convened by UNIDROIT and the membership of which was essentially made up of members of the UNIDROIT Governing Council - meeting in Rome on 1 February 2002 (cf. Study LXXIIJ - Doc. 10 rev.). The text of the preliminary draft Protocol reproduced in this document is that revised by the Committee of governmental experts at its first session (cf. C.G.E. Space Pr./1/Report/Appendix VI).

<sup>2</sup> The preliminary draft Protocol follows very closely the Protocol to the Convention on Matters specific to Aircraft Equipment, opened to signature in Cape Town on 16 November 2001 (hereinafter referred to as the *Aircraft Protocol*).

<sup>3</sup> The Convention and the Aircraft Protocol were opened to signature in Cape Town on 16 November 2001 at the conclusion of a diplomatic Conference organised, under the joint auspices of UNIDROIT and the International Civil Aviation Organization, by the Government of South Africa. This Conference was attended by 68 States and 11 international Organisations. Both the Convention and the Aircraft Protocol have been signed to date by 26 States (Burundi, Chile, China, Congo, Cuba, Ethiopia, France, Germany (with declaration), Ghana, Italy, Jamaica, Jordan, Kenya, Lesotho, Nigeria, Panama, Saudi Arabia, Senegal, South Africa, Sudan, Switzerland (*ad referendum*), Tonga, Turkey, United Kingdom (with declaration), United Republic of Tanzania and United States of America). The Convention and the Aircraft Protocol have to date been ratified by three States (Ethiopia (with declarations under Articles 39(1)(a), 40 and 54(2) of the Convention and Articles XXX(1), (2) and (3) of the Aircraft Protocol), Nigeria (with declaration under Article 54(2) of the Convention) and Panama (with declarations under Articles 13(1), 39, 50, 53 and 54(2) of the Convention and Articles XXX(1), (2) and (3) of the Aircraft Protocol)). The Convention and the Aircraft Protocol have to date been acceded to by one State (Pakistan (with declarations under Articles 39(1)(a), 39(1)(b), 39(4), 40, 52, 53 and 54(2) of the Convention and Articles XXIX and XXX(1), (2) and (3) of the Aircraft Protocol)). The Convention will therefore enter into force as between Ethiopia, Nigeria and Panama on 1 April 2004 *but only as regards a category of objects to which a Protocol applies* and as from the time of entry into force of that Protocol, subject to the terms of that Protocol and as between States Parties to the Convention and that Protocol (cf. Article 49(1) of the Convention) and for Pakistan on 1 May 2004, subject to the same additional requirements (cf. Article 49(2) of the Convention). An Official Commentary on the Convention and Aircraft Protocol has been prepared by Professor Sir Roy Goode, Chairman of the Drafting Committee at the diplomatic Conference, pursuant to Resolution No. 5 adopted by the latter, and is available from UNIDROIT, the publisher. An explanatory memorandum on the system of declarations under the Convention and the Aircraft Protocol (DC9/DEP Doc. 1) has been prepared by UNIDROIT, as depositary, and is also available from UNIDROIT.



MINDFUL of the need to adapt the Convention to meet the particular demand for and the utility of space assets and the need to finance their acquisition and use as efficiently as possible,

MINDFUL of the benefits to all States from expanded space-based services which the Convention and this Protocol will yield,

MINDFUL of the established principles of space law, including those contained in the international space treaties under the auspices of the United Nations,<sup>4 5</sup>

MINDFUL of the continuing development of the international commercial space industry and recognising the need for a uniform and predictable regimen governing the taking of security over space assets and facilitating asset-based financing of the same,

HAVE AGREED upon the following provisions relating to space assets:

## CHAPTER I – SPHERE OF APPLICATION AND GENERAL PROVISIONS

### *Article I – Defined terms*

1. – In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.

2. – In this Protocol the following terms are employed with the meanings set out below:

(a) “debtor’s rights”<sup>6</sup> means all rights to performance or payment due to a debtor by any person with respect to a space asset;<sup>7</sup>

(b) “guarantee contract” means a contract entered into by a person as a guarantor;

(c) “guarantor” means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement,

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<sup>4</sup> Cf. the corresponding clause of the preamble to the Aircraft Protocol (“Mindful of the principles and objectives of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944”).

<sup>5</sup> The preliminary draft Protocol is not intended to affect the obligations of States under the United Nations Outer Space Treaties and Principles; cf. Article XXI *bis*, *infra*.

<sup>6</sup> The definition of “associated rights” remains as it is in the Convention. At the first session of the Committee of governmental experts the Space Working Group made a proposal introducing the new terms “debtor’s rights” and “related rights” but it is suggested that further work is needed to determine how the Convention and the preliminary draft Protocol will apply to these two new terms.

<sup>7</sup> Cf. the proposed new definition of debtor’s rights put before the Committee of governmental experts at its first session by the Space Working Group in UNIDROIT C.G.E./Space Pr./1/W.P. 13. This definition, together with the other proposals contained in that document, will be considered by the Committee of governmental experts at its next session.

gives or issues a suretyship or demand guarantee or standby letter of credit or other form of credit insurance;<sup>8</sup>

(d) “insolvency-related event” means: (i) the commencement of the insolvency proceedings; or (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;

(e) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor’s main interests is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat, or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise;

(f) “related rights” means any permit, licence, authorisation, concession or equivalent instrument that is granted or issued by, or pursuant to the authority of, a national or intergovernmental or other international body or authority to manufacture, launch, control, use or operate a space asset, relating to the use of orbits positions and the transmission, emission or reception of electromagnetic signals to and from a space asset;<sup>9 10</sup>

(g) “space assets” means<sup>11</sup>:

(i) any identifiable<sup>12</sup> asset that is intended to be launched and placed in space or that is in space;

(ii) any identifiable<sup>12</sup> asset assembled or manufactured in space;

(iii) any identifiable<sup>12</sup> launch vehicle that is expendable or can be reused to transport persons or goods to and from space; and

(iv) any separately identifiable<sup>12</sup> component forming a part of an asset referred to in the preceding sub-paragraphs or attached to or contained within such asset.

As used in this definition, the term “space” means outer space, including the Moon and other celestial bodies.

#### *Article II – Application of the Convention as regards space assets and related rights*

1. – The Convention shall apply in relation to space assets as provided by the terms of this Protocol.

2. – The Convention and this Protocol do not determine whether related rights are transferable or assignable, without prejudice however to the application of Article XVI(2).

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<sup>8</sup> Further consideration is required of the inclusion in the definition of demand guarantees, standby letters of credit and credit insurance so as better to understand the consequences thereof.

<sup>9</sup> This definition is limited to regulatory licences and permits necessary for the operation of space assets. The words deleted at the end of this sub-paragraph were replaced by a new substantive provision (new Article II(2)).

<sup>10</sup> Cf. the proposed new definition of related rights put before the Committee of governmental experts at its first session by the Space Working Group in UNIDROIT C.G.E./Space Pr./1/W.P. 13. This definition, together with the other proposals contained in that document, will be considered by the Committee of governmental experts at its next session.

<sup>11</sup> It was agreed that assets in manufacture, transport or pre-launch stages may qualify as space assets.

<sup>12</sup> The term “identifiable” is intended to be read in the context of Article VII.

3. – The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to space assets.

*Article III – Application of the Convention to sales*

The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

Articles 3 and 4;  
 Article 16(1)(a);  
 Article 19(4);  
 Article 20(1) (as regards registration of a contract of sale or a prospective sale);  
 Article 25(2) (as regards a prospective sale); and  
 Article 30.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XIII), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) shall apply to contracts of sale and prospective sales.<sup>13</sup>

*Article III bis – Sphere of application*

The return<sup>14</sup> of a space asset from space does not affect an international interest in that asset.

*Article IV – Derogation*

The parties may, by agreement in writing, exclude the application of Article XI and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article IX(2)-(3).

*Article V – Formalities, effects and registration of contracts of sale*

1. – For the purposes of this Protocol, a contract of sale is one which:

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<sup>13</sup> Cf. the proposed new Article IV dealing with the application of the Convention and the preliminary draft Protocol to debtor's rights and related rights put before the Committee of governmental experts at its first session by the Space Working Group in UNIDROIT C.G.E./Space Pr./1/W.P. 13. This proposal, together with the other proposals contained in that document, will be considered by the Committee of governmental experts at its next session.

<sup>14</sup> The Drafting Committee of the Committee of governmental experts (hereinafter referred to as the *Drafting Committee*) considered that the word "return" covered both intentional and non-intentional return. The Drafting Committee suggested that this interpretation should be reflected in the Commentary on the future Protocol.

- (a) is in writing;
- (b) relates to a space asset of which the seller has power to dispose; and
- (c) enables the space asset to be identified in conformity with this Protocol.

2. – A contract of sale transfers the interest of the seller in the space asset to the buyer according to its terms.

3. – Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

#### *Article VI – Representative capacities*

A person may, in relation to a space asset, enter into an agreement or a contract of sale, effect a registration as defined by Article 16(3) of the Convention and assert rights and interests under the Convention in an agency, trust or representative capacity.<sup>15</sup>

#### *Article VII – Identification of space assets*

A description of a space asset that satisfies the requirements established in the regulations is necessary and sufficient to identify<sup>16</sup> the space asset for the purposes of Article 7(c) of the Convention and Article V(1)(c) of this Protocol.

#### *Article VIII – Choice of law*

1. – This Article applies unless a Contracting State has made a declaration pursuant to Article XXVI(1).

2. – The parties to an agreement, or a contract of sale, or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part.

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<sup>15</sup> This provision was brought into line by the Committee of governmental experts at its first session with the comparable provision (Article IV) of the preliminary draft Protocol to the Convention on Matters specific to Railway Rolling Stock, with the exception of the last words (“on behalf of a creditor or creditors”), because it was felt that this limitation was not appropriate for the preliminary draft Protocol.

<sup>16</sup> “Identifiability is a crucial requirement because the registration system is asset-based”; cf. Sir Roy Goode, *Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Aircraft Equipment*, at 12. The concept of identifiability is to be understood in the context of the “notice filing” registration system envisaged under the Convention, that is a system based on “the filing of particulars which give notice to third parties of the existence of a registration, leaving them to make enquiries of the registrant for further information, as opposed to a system which requires presentation and/or filing of agreements or other contract documents or copies” (cf. *idem* at 88).

3. – Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

## CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

### *Article IX – Modification of default remedies provisions*

1. – This Article applies only where a Contracting State has made a declaration to that effect under Article XXVI(2) [and to the extent stated in such declaration].<sup>17</sup>

2. – (a) Article 8(3) of the Convention shall not apply to space assets.

(b) In relation to space assets the following provisions shall apply:

(i) any remedy given by the Convention shall be exercised in a commercially reasonable manner;

(ii) a remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement between the debtor and the creditor except where such a provision is manifestly unreasonable.

3. – A chargee giving ten or more working days' prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing "reasonable prior notice" specified in Article 8(4) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

[4. When two space assets, one of which is a separately identifiable component of the other within the meaning of Article I(2)(f), are subject to two separate registered interests, both registered interests shall be valid and have priority as determined under Article 29 of the Convention unless otherwise agreed between the holders of such registered interests.]<sup>18</sup>

### *Article IX bis – Placement of data and materials*

The parties to an agreement may specifically agree for the placement of data and materials with another person in order to afford the creditor the opportunity to take possession of, establish control over or operate the space asset.

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<sup>17</sup> A decision regarding the inclusion or otherwise of the bracketed language will hinge on the treatment or consideration of the bracketed language in Article XXVI(2).

<sup>18</sup> This paragraph needs further consideration by the Committee of governmental experts as to whether the protection provided is sufficient or needs extending, especially in order to protect a user of components who is neither in default nor insolvent.

*Article X – Modification of provisions regarding relief pending final determination*

1. – This Article applies only where a Contracting State has made a declaration to that effect under Article XXVI(3) and to the extent stated in such declaration.

2. – For the purposes of Article 13(1) of the Convention, “speedy” in the context of obtaining relief means within such number of working days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.

3. – Article 13(1) of the Convention applies with the following being added immediately after sub-paragraph (d):

“(e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom”,

and Article 43(2) applies with the insertion after the words “Article 13(1)(d)” of the words “and (e)”.

4. – Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor’s international interest has priority under the provisions of Article 29 of the Convention.

[5. – The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.]<sup>19</sup>

*Article XI – Remedies on insolvency*

1. – This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXVI(4).

*Alternative A*

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of or control and operation over the space asset to the creditor no later than the earlier of:

(a) the end of the waiting period; and

(b) the date on which the creditor would be entitled to possession of or control and operation over the space asset if this Article did not apply.

3. – For the purposes of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

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<sup>19</sup> The former Article X(6) was deleted by the Committee of governmental experts at its first session. It was at the same time suggested that further consideration be given to the role of administrative authorities.

4. – References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.

5. – Unless and until the creditor is given possession of or control and operation over the space asset under paragraph 2:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the space asset and maintain it and its value in accordance with the agreement; and

(b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

6. – Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the space asset under arrangements designed to preserve the space asset and maintain it and its value.

7. – The insolvency administrator or the debtor, as applicable, may retain possession of or control and operation over the space asset where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.<sup>20</sup>

8. – No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.

9. – No obligations of the debtor under the agreement may be modified without the consent of the creditor.

10. – Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

11. – No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests.

12. – The Convention as modified by Article IX of this Protocol shall apply to the exercise of any remedies under this Article.

*Alternative B*

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XXVI(4) whether it will:

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<sup>20</sup> The former Article XI(8), Alternative A was deleted by the Committee of governmental experts at its first session. It was at the same time suggested that further consideration be given to the role of administrative authorities.

(a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or

(b) give the creditor the opportunity to take possession of or control and operation over the space asset, in accordance with the applicable law.

3. – The applicable law referred to in sub-paragraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.

4. – The creditor shall provide evidence of its claims and proof that its international interest has been registered.

5. – If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 2, or when it has declared that it will give the creditor the opportunity to take possession of or control and operation over the space asset but fails to do so, the court may permit the creditor to take possession of or control and operation over the space asset upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

6. – The space asset shall not be sold pending a decision by a court regarding the claim and the international interest.

#### *Article XII – Insolvency assistance*

1. – This Article applies only where a Contracting State has made a declaration pursuant to Article XXVI(1).

2. – The courts of a Contracting State: (i) in which the space asset is situated; (ii) from which the space asset may be controlled; (iii) in which the debtor is located; or (iv) otherwise having a close connection with the space asset, shall [, in accordance with the law of the Contracting State,] <sup>21</sup> co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI. <sup>22</sup>

#### *Article XIII – Modification of priority provisions*

1. – A buyer of a space asset under a registered sale acquires its interest in that asset free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.

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<sup>21</sup> One delegation did not agree with the addition of the words in square brackets.

<sup>22</sup> Participants at the third session of the Space Working Group noted the particular importance of heightened cross-border co-operation by Contracting States with regard to the space asset insolvency remedies contemplated in Article XI of the preliminary draft Protocol and recognised that similar obligations existed under the UNCITRAL Model Law on Cross-Border Insolvency.



2. – A buyer of a space asset acquires its interest in that asset subject to an interest registered at the time of its acquisition.

*Article XIV – Modification of assignment provisions*

Article 33(1) of the Convention applies with the following being added immediately after sub-paragraph (b):

“and (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.”

*Article XV – Debtor provisions*

1. – In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the space asset in accordance with the agreement as against:

(a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4)(b) of the Convention or, in the capacity of buyer, Article XIII(1) of this Protocol, unless and to the extent that the debtor has otherwise agreed; and

(b) the holder of any interest to which the debtor’s right or interest is subject pursuant to Article 29(4)(a) of the Convention or, in the capacity of buyer, Article XIII(2) of this Protocol, but only to the extent, if any, that such holder has agreed.

2. – Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to space assets.

*Article XVI – Limitations on remedies*

1. – This Article applies only where a Contracting State has made a declaration pursuant to Article XXVI(1).

2. – A Contracting State [, in accordance with its laws and regulations,]<sup>23</sup> may restrict or attach conditions to the exercise of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol, including the placement of data and materials pursuant to Article IX *bis*, where the exercise of such remedies would involve or require the transfer of controlled goods, technology, data or services, or would involve the transfer or assignment of related rights.

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<sup>23</sup> If the phrase “in accordance with its laws and regulations” were deleted from Article XVI(2), further consideration would need to be given to the rights of Contracting States to place restrictions or limitations on the placement of data and materials with another person as contemplated in Article IX *bis*, given that such restrictions or limitations would no longer be applied in accordance with the relevant domestic laws of a Contracting State.

[3. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare whether and to which extent the remedies provided in Chapter III of the Convention and in Articles IX to XII of this Protocol shall be exercisable for space assets as far as they are used for establishing or maintaining its public services as specified in its declaration or determined by a competent authority of that State notified to the Depository.]<sup>24</sup>

[3. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare any limitations to the exercise of remedies provided in Chapter III of the Convention and in Articles IX to XII of this Protocol with respect to space assets designed and used for flight control and navigation of aircraft, maritime navigation, search and rescue and similar public services as specified in its declaration or determined by a competent authority of that State notified to the Depository.]<sup>24</sup>

### CHAPTER III – REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN SPACE ASSETS

#### *Article XVII – The Supervisory Authority*

1. – The Supervisory Authority shall be designated<sup>25</sup> at the Diplomatic Conference to Adopt a Space Assets Protocol to the Cape Town Convention, provided that such Supervisory Authority is able and willing to act in such capacity.<sup>26 27</sup>

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<sup>24</sup> It was agreed by the Committee of governmental experts at its first session that both texts of Article XVI(3) should be inserted for further consideration at its next session.

Some delegations attending the first session of the Committee of governmental experts expressed the view that Article XVI(3) should narrowly define the circumstances of a public service nature in which Contracting States should be able to limit the exercise of remedies so as to promote the objectives of the preliminary draft Protocol, whereas other delegations took the view that Article XVI(3) should broadly define such circumstances. The Space Working Group indicated that it strongly disagreed with the idea of any provision being included on public service.

It should be considered at a later stage whether Article XVI(3) is subject to the opt-in declaration provided under Article XVI(1).

<sup>25</sup> It was agreed to refer the proposal put forward at a late stage during the first session of the Committee of governmental experts for the addition of the words “or alternatively a process agreed to for a future designation” after the word “designated” for consideration by the Drafting Committee at the next session of the Committee of governmental experts.

<sup>26</sup> The United Nations has been approached as one possible Supervisory Authority. The possibility of the United Nations serving as Supervisory Authority was considered by the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space at its 42<sup>nd</sup> session, held in Vienna from 24 March to 4 April 2003. Other intergovernmental Organisations have also expressed an interest in serving as Supervisory Authority. The possibility of these Organisations serving as Supervisory Authority and other possible options are under consideration.

<sup>27</sup> It was agreed to refer the proposal for the introduction of a new Article XVII(1*bis*) - designed to match the corresponding provision (Article XVII(2)) of the Aircraft Protocol - put forward at a late stage during the first session of the Committee of governmental experts for consideration by the Drafting Committee at the next session of the Committee of governmental experts. Article XVII(2) of the Aircraft Protocol reads as follows: “Where the international entity referred to in the preceding paragraph is not able and willing to act as Supervisory Authority, a Conference of Signatory and Contracting States shall be convened to designate another Supervisory Authority.”

2. – The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity <sup>28</sup> or otherwise.

3. – The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.

#### *Article XVIII – First regulations*

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

#### *Article XIX – Additional modifications to Registry provisions*

1. – For the purposes of Article 19(6) of the Convention, the search criteria for space assets shall be the criteria specified in Article VII of this Protocol.

2. – For the purposes of Article 25(2) of the Convention, and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest shall take such steps as are within its power to procure the discharge of the registration no later than five working days after the receipt of the demand described in such paragraph.

3. – The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers and discharge of the duties contemplated by Article 17(2) of the Convention.

4. – The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis.

5. – The insurance or financial guarantee referred to in Article 28(4) shall cover all liability of the Registrar under the Convention.

6. – Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

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<sup>28</sup> It was agreed to refer the proposal for the addition of the words "Organisation or" before the word "entity" in Article XVII(2) - so as better to reflect the purport of footnote 25 - put forward at a late stage during the first session of the Committee of governmental experts for consideration by the Drafting Committee at the next session of the Committee of governmental experts.

## CHAPTER IV – JURISDICTION

*Article XX – Waiver of sovereign immunity*

1. – Subject to paragraph 2, a waiver of sovereign immunity<sup>29</sup> from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to a space asset under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

2. – A waiver under the preceding paragraph must be in writing and contain a description, in accordance with Article VII, of the space asset.

## CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS

*Article XXI – Relationship with the UNIDROIT Convention on International Financial Leasing*

The Convention as applied to space assets shall supersede the *UNIDROIT Convention on International Financial Leasing* in respect of the subject matter of this Protocol, as between States Parties to both Conventions.

*[Article XXI bis – Relationship with the United Nations Outer Space Treaties and instruments of the International Telecommunication Union<sup>30</sup>*

The Convention as applied to space assets does not affect State Party rights and obligations under the existing United Nations Outer Space Treaties or instruments of the International Telecommunication Union.]<sup>31</sup>

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<sup>29</sup> At a late stage during the first session of the Committee of governmental experts one delegation proposed that the words “by a party to an agreement or contract of sale” be added after the word “immunity” in Article XX(1), so as to make it clear that the waiver in question was one made by a State or governmental agency as a party to a given transaction. Another delegation however objected to this proposal, on the ground that it was too narrow to reflect the fact that in some countries a waiver could be more general and with a view to avoiding the possibility of a waiver being permitted by implication. It was agreed that the question should be referred to the Drafting Committee at the next session of the Committee of governmental experts for the finding of a formulation satisfactory to both points of view.

<sup>30</sup> Experts at the third session of the Space Working Group noted that the concept of “jurisdiction and control” set forth in Article VIII of the 1967 United Nations Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies relating to control and ownership of space objects was quite different from the concept of “jurisdiction” employed by the Convention, which referred to the jurisdiction of national courts.

<sup>31</sup> It was agreed by the Committee of governmental experts that the precise formulation of Article XXI *bis*, and in particular the question as to whether the United Nations Outer Space Treaties should be specifically enumerated, was a matter that would need to be considered further at its next session.

[CHAPTER VI – FINAL PROVISIONS <sup>32</sup>*Article XXII – Signature, ratification, acceptance, approval or accession*

1. – This Protocol shall be open for signature in ... on ... by States participating in the Diplomatic Conference to Adopt a Space Assets Protocol to the Cape Town Convention held at ... from ... to ... . After ..., this Protocol shall be open to all States for signature at ... until it enters into force in accordance with Article XXIV.

2. – This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.

3. – Any State which does not sign this Protocol may accede to it at any time.

4. – Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary. <sup>33</sup>

5. – A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

*Article XXIII – Regional Economic Integration Organisations <sup>34</sup>*

1. – A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

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<sup>32</sup> It is envisaged that, in line with practice, draft Final Provisions will be prepared for the Diplomatic Conference at such time as the Committee of governmental experts has completed its work. The draft Final Provisions set out in Chapter VI are in no way intended to prejudge that process but simply to indicate the suggestions of the Space Working Group on this matter. They are based on the Final Provisions contained in the Aircraft Protocol.

<sup>33</sup> It is recommended that a resolution be adopted at, and contained in the Final Acts and Proceedings of, the Diplomatic Conference to Adopt a Space Assets Protocol to the Cape Town Convention, contemplating the use by Contracting States of a model ratification instrument that would standardise, *inter alia*, the format for the making and/or withdrawal of declarations and reservations.

<sup>34</sup> At its fifth session, the Space Working Group took note of the addition of this Article to the Aircraft Protocol at the Diplomatic Conference and noted that further consideration should be given to the applicability of the type and nature of Organisations to be covered by Article XXIII.

2. – The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. – Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

#### *Article XXIV – Entry into force*

1. – This Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of the [fifth]<sup>35</sup> instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.

2. – For other States, this Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession.

#### *Article XXV – Territorial units*

1. – If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. – Any such declaration shall state expressly the territorial units to which this Protocol applies.

3. – If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.

4. – Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

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<sup>35</sup> In line with UNIDROIT practice, the Space Working Group at its fifth session, taking the view that the entry into force of the Convention as applied to space assets should be accomplished with the minimum number of ratifications/accessions possible, suggested that the appropriate number would be five.

5.– If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:

(a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;

(b) any reference to the location of the space asset in a Contracting State refers to the location of the space asset in a territorial unit to which the Convention and this Protocol apply; and

(c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply.<sup>36</sup>

*Article XXVI – Declarations relating to certain provisions*

1. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare:

(a) that it will not apply Article VIII;

(b) that it will apply any one or both of Articles XII and XVI.

2. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article IX [wholly or in part].<sup>37</sup>

3. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article X wholly or in part.<sup>38</sup> If it so declares with respect to Article X(2), it shall specify the time-period required thereby.

4. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XI and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XI.

5. – The courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State that is the primary insolvency jurisdiction.

<sup>36</sup> But see footnotes 19 and 20, *supra*.

<sup>37</sup> Due consideration should be given to the deletion of the bracketed words in paragraph 2 in order to promote the uniformity of application of declarations made by States.

<sup>38</sup> The deletion by the Drafting Committee of the square brackets that had previously surrounded the words “wholly or in part” is a consequence of the deletion by the Committee of governmental experts of the brackets that had previously surrounded the words “and to the extent stated in such declaration” in Article X(1).

*Article XXVII – Declarations under the Convention*

Declarations made under the Convention, including those made under Articles 39, 40, 53, 54, 55, 57, 58 and 60 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

*Article XXVIII – Reservations and declarations*

1. – No reservations may be made to this Protocol but declarations authorised by Articles XXV, XXVI, XXVII and XXIX may be made in accordance with these provisions.

2. – Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

*Article XXIX – Subsequent declarations*

1. – A State Party may make a subsequent declaration, other than the declaration made in accordance with Article XXVII under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. – Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declaration had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

*Article XXX – Withdrawal of declarations*

1. – Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXVII under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. – Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal of declaration.



*Article XXXI – Denunciations*

1. – Any State Party may denounce this Protocol by notification in writing to the Depositary.

2. – Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

*Article XXXII – Review Conferences, amendments and related matters*

1. – The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regimen established in the Convention as amended by the Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. – At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

(a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the assets covered by its terms;

(b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3. – Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States Parties which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by [five] States Parties in accordance with the provisions of Article XXIV relating to its entry into force.

*Article XXXIII – Depositary and its functions*

1. – Instruments of ratification, acceptance, approval or accession shall be deposited with ..., which is hereby designated the Depositary.

2. – The Depositary shall:

(a) inform all Contracting States of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Protocol;

(iii) each declaration made in accordance with this Protocol, together with the date thereof;

(iv) the withdrawal or amendment of any declaration, together with the date thereof; and

(v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;

(b) transmit certified true copies of this Protocol to all Contracting States;

(c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and

(d) perform such other functions customary for depositaries.]

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<sup>1</sup> Pursuant to the decision taken by the Unidroit Governing Council at its 80<sup>th</sup> session, held in Rome from 17 to 19 September 2001, membership of the Committee is open not only to member States of UNIDROIT but also to member States of the Committee on the Peaceful Uses of Outer Space of the United Nations (U.N./COPUOS).

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## APPENDIX III

### AGENDA

1. Adoption of the agenda
2. Organisation of work
3. Consideration of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets, on the basis of the text of the preliminary draft Protocol as it emerged from the first session of the Committee of governmental experts (C.G.E./Space Pr./3/W.P. 4) and an alternative version of the preliminary draft Protocol prepared by Sir Roy Goode (United Kingdom) and Mr J.M. Deschamps (Canada) - as Co-chairmen of the Drafting Committee of the Committee of governmental experts - to reflect the conclusions reached by the Steering Committee, set up by the General Assembly at its 61<sup>st</sup> session, held in Rome on 29 November 2007, to build consensus around the provisional conclusions reached by the Government/industry meeting held in New York on 19 and 20 June 2007 (C.G.E./Space Pr./3/W.P. 5 rev.)
4. Report of the Sub-committee of the Committee of governmental experts to examine certain aspects of the future international registration system for space assets (C.G.E./Space Pr./3/W.P. 7)
5. Consideration of technical amendments proposed to the preliminary draft Protocol by Sir Roy Goode and Mr Deschamps, as Co-chairmen of the Drafting Committee of the Committee of governmental experts (C.G.E./Space Pr./3/W.P. 8 rev.)
6. Future work
7. Review of report
8. Any other business.

## APPENDIX IV

ALTERNATIVE TEXT OF THE PRELIMINARY DRAFT SPACE PROTOCOL  
AS PREPARED, AT THE REQUEST OF THE STEERING COMMITTEE, FOR  
PRESENTATION TO THE COMMITTEE OF GOVERNMENTAL EXPERTS

### **Explanatory Memorandum on provisions of the alternative text implementing policy issues referred to and examined by the Steering Committee**

by Professor Sir Roy Goode (United Kingdom) and Mr Michel Deschamps (Canada)

#### **Introduction**

1. This Explanatory Memorandum and the accompanying alternative text (policy) are confined to the policy issues referred to and examined by the Steering Committee established by the UNIDROIT Secretariat with the approval of the General Assembly at its meeting in November 2007. These were five in number:

- (1) the sphere of application of the preliminary draft Protocol to the Cape Town Convention on Matters specific to Space Assets ("the Space Protocol"), with particular reference to the definition of "space asset";
- (2) the treatment of debtor's rights and related rights, explained later in this Explanatory Memorandum;
- (3) the criteria for the identification of space assets;
- (4) the exercise of default remedies in relation to a component where this could adversely affect the interests of a different creditor in another component or in the satellite as a whole; and
- (5) the restriction of remedies in relation to space assets fulfilling a function of public importance.

The fourth issue is the subject of informal negotiations with a view to the presentation by the Governments of Germany and the United States of America of a joint proposal to the Committee of governmental experts. This issue is therefore not discussed here. On the remaining issues we have taken into account not only the deliberations of the Steering Committee but also helpful responses to an earlier alternative text ("the first alternative version") prepared by us and circulated for comment in July 2008. A separate Explanatory Memorandum and alternative text (technical) have been prepared incorporating additional provisions and amendments of a technical nature (some of which were included in the first and second alternative versions referred to below but have been omitted from the present text), together with a proposed revised sequence of Articles, for consideration by the Committee of governmental experts and, if so agreed, its Drafting Committee, of which Canada and the United Kingdom are co-Chairmen and we are their representatives.



## I. A BRIEF UPDATE

2. The Space Protocol was considered at the first meeting of the UNIDROIT Committee of governmental experts in December 2003 and a revised version prepared at the conclusion of that session to reflect the Committee's discussions. At that meeting the Space Working Group (S.W.G.) strongly urged the extension of the concept of international interest to embrace the assignment of "debtor's rights" and related rights. By debtor's rights were meant rights to payment or other performance owed by third parties to the debtor with respect to a space asset, for example sums payable to a debtor as lessor under a lease of the space asset or under a grant of capacity or a licence conferring an indefeasible right of use. These were considered to represent a valuable part of the security given by the debtor to its creditor - more valuable, indeed, than the physical assets, since it was difficult to repossess these or change their function. Debtor's rights are to be distinguished from associated rights as defined in Article 1(c) of the Cape Town Convention ("the Convention") and regulated by Chapter IX of the Convention in that associated rights are rights of the *creditor* to payment or other performance by the *debtor*, whereas debtor's rights are rights of the *debtor* to payment or other performance by a third party. "Related rights" were Government and other permits and licences granted to the debtor to manufacture and launch and operate a space asset.

3. The text of the Space Protocol contained definitions of debtor's rights and related rights but no substantive provisions, these being left to be worked up by the S.W.G. At the second session of the Committee of governmental experts held in October 2004 key issues were examined and identified as matters to be pursued in intersessional work, and comments on them were made by Government representatives and representatives of the space industry. The Committee also established a sub-committee to develop proposals relating to the international registration system. For reasons which will appear, the new alternative text does not contain provisions governing related rights.

4. There have been many developments since the second meeting of the Committee of governmental experts, and a proposal by Professor Sir Roy Goode for an alternative version of the text was discussed at the first meeting of the Steering Committee held in Berlin from 7 to 9 May 2008 and was favourably received. The Steering Committee reached a number of conclusions on the issues referred to it and established two sub-committees, one to examine the question of limitation of remedies with respect to space assets used for public services (for which the first alternative version had made provision in Article XXVII) and the other to consider the exercise of default remedies in relation to components.

5. The Steering Committee agreed that the co-chairmen of the Drafting Committee of the Committee of governmental experts (Mr Michel Deschamps, representative of the Government of Canada and Sir Roy Goode, representative of the Government of the United Kingdom) would draft a first alternative version reflecting the decisions taken by the Steering Committee and would circulate this for comment. In the light of the comments received and any reports from the sub-committees they would then prepare and circulate a revised second alternative version.

### **The first alternative version**

6. The first alternative version largely followed Sir Roy's proposal in updating the December 2003 text to reflect decisions on the key outstanding issues concerning the definition of space assets and the incorporation of provisions on debtor's rights and related rights, while also incorporating certain further amendments to reflect the discussion at the meeting of the Steering Committee. It was circulated with an accompanying Explanatory Memorandum dated 22 July 2008 which summarised the nature of the changes made and the reasons for them. There were

a number of responses to the first alternative version which were collated by the UNIDROIT Secretariat.

### **The second alternative version**

7. It had been intended that the second alternative version, apart from reflecting any changes thought to be desirable in the light of responses to the first alternative version, would also embody provisions to give effect to the recommendations of the two Sub-committees. However, since the Sub-committee on public service was not due to meet until immediately before the second meeting of the Steering Committee and informal consultations were continuing with a view to permitting the Governments of Germany and the United States of America to agree on a joint proposal on default remedies in relation to components, and since the responses to the first alternative version, though helpful in identifying matters thought to require clarification, were for the most part not such as to necessitate changes in the text, we confined ourselves to a second alternative version *ad interim* containing only a few minor amendments that were essentially of a technical nature, accompanied by an Explanatory Memorandum. This was circulated in March 2009 as one of the documents sent out for the second meeting of the Steering Committee held in May 2009.

### **The meetings of the sub-committees and Steering Committee**

8. The Sub-committee of the Steering Committee on default remedies relating to components met in Berlin on 31 October and 1 November 2008 and agreed that the Governments of Germany and the United States should produce a text for consideration at the informal consultations held in Paris on 12 and 13 May 2009 and by the Steering Committee at its meeting in Paris on 14 and 15 May. Representatives of the two Governments, together with Sir Roy and the UNIDROIT Secretariat, met informally in Paris on 12 and 13 May, but despite considerable endeavours agreement could not be reached in Paris. It is, however, planned that this will be done in Geneva in October 2009.

9. The Sub-committee of the Steering Committee on public service also met in Paris on 13 May and produced an agreed report proposing the inclusion in the Space Protocol of a range of options from which Contracting States could make a choice. These options were as follows:

- the holder of an international interest in a space asset providing a public service may not exercise default remedies that would result in the interruption of that public service;
- the holder of an international interest in a space asset providing a public service shall have the right to exercise a “step-in” right in the event of default by the debtor providing that public service;
- a Contracting State shall have the right to exercise a “step-in” right in the event of default by a debtor providing a public service;
- fair compensation shall be provided to the holder of an international interest in a space asset providing a public service in the event that a Contracting State intervenes in the operation of that asset;
- default remedies may only be exercised after the elapsing of a specified period of time;
- where a privately owned space asset provides public services to more than one Contracting State, a Contracting State shall declare how it will perform its overall obligations in respect of that asset, for example by the granting of compensation or the exercising of a “step-in” right;
- a Contracting State may record a notice with the future International Registry in respect of a space asset providing a public service, the effect of which will be, first,

that any creditor having registered an international interest in that space asset prior to the recording of such notice may only exercise any default remedy that he possesses under the Convention as applied to space assets to the extent that the Contracting State does not elect to assume the obligations of the defaulting debtor and, secondly, that any creditor having registered an international interest in the space asset after the recording of such notice may only exercise any default remedy that he possesses under the Convention as applied to space assets to the extent that the public service in question is not thereby interrupted;

- a Contracting State may determine the application of public service limitations on a case-by-case basis, namely at the time of the issuing of a licence or permit for the operation of a space asset intended to be used for the provision of a public service; and/or
- a Contracting State may, at the time when the space financing project arises, agree with the holder of an international interest in a space asset providing a public service as to the conditions necessary for “step-in” rights to be exercised.

10. The Sub-committee of the Committee of governmental experts on certain aspects of the future registration system, whose remit is to address identification of space assets and related issues, the practical operation of the future International Registry for space assets and the role of the Supervisory Authority, is to meet in Rome in October 2009.

11. At its meeting the Steering Committee endorsed the report from the public service sub-committee with two additional options, namely a provision for the arbitration of disputes concerning the maintenance of a public service being performed by a space asset and the solution offered by Article XXV of the Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock (“the Luxembourg Protocol”). The Steering Committee also reached the following conclusions and asked that these be incorporated in a revised alternative text to be presented to the Committee of governmental experts at its meeting in Rome in December 2009:

- (1) While it was accepted that the decision to drop uniquely identifiable components (other than transponders, etc.) as a distinct category was correct, the definition of space assets was too limited in its reference to assets capable of being independently controlled. There were means of control other than physical - for example, the termination of contractual rights held by a defaulting debtor - and the definition should be extended to cover assets which, even if not capable of independent control, were capable of being independently owned or used.
- (2) Since Government licences were almost invariably non-transferable the concept of assignable related rights - that is, rights to Government and other official licences and permits - was fundamentally flawed and should be replaced by a duty on the debtor or other assignor to co-operate with its assignee in procuring a termination of the licence granted to the assignor and the issue of a new licence to the assignee.

In addition, a few amendments of a drafting nature were proposed.

### **The position of leading satellite operators and E.S.O.A.**

12. The responses we received included a detailed letter from three leading satellite operators SES S.A., Intelsat Ltd and Eutelsat S.A. (referred to below as “the satellite operators”) and the European Satellite Operators’ Association (E.S.O.A.). While the satellite operators queried the utility of the project (see below), most of the general comments welcomed the first alternative version as a valuable means of carrying the project forward.

13. The satellite operators and E.S.O.A. raised the basic question whether there was any compelling need for the Space Protocol and whether it will be of benefit to the industry. Their views were carefully considered by the UNIDROIT Secretariat which, while acknowledging the concerns raised and the fact that the operators concerned might feel less need of the Space Protocol than others, pointed out that all those engaged in the ongoing work, in particular satellite manufacturers and financial institutions, were clear that the Space Protocol would serve a vital need and should be brought to a successful conclusion expeditiously. However, the above letter also raised specific issues which we found useful in crystallising certain key points and which we address below. Shortly before the second meeting of the Steering Committee the satellite operators wrote again to UNIDROIT expressing concern that it was proceeding with the project despite their prior communication. This second letter was reported to the Steering Committee, which nevertheless strongly endorsed the decision to proceed. A response was sent similar to that given to the first letter.

## **II. THE NEW ALTERNATIVE TEXT**

### **General**

14. As stated above the new alternative text which accompanies this Explanatory Memorandum (hereinafter “the alternative text”) is confined to those provisions introduced or amended in response to views on the policy issues referred to the Steering Committee. The principal changes made to the 2003 Space Protocol issued by the Committee of governmental experts relate to the definition of space assets, the sphere of application of the Space Protocol, the identification criteria and the development of the rules relating to debtor’s rights, which in the December 2003 draft had featured only in a fragmentary way in the definitions and the provision on the sphere of application.

### **Definition of space assets**

15. The satellite operators considered that definitions such as “satellite”, “transponder”, “payload” and “space vehicle” lacked clarity. We had thought that these terms were well understood in the space industry but if this is not the case we would welcome suggestions for refinement. More significantly, the satellite operators felt that the removal of separately identifiable components (in the sense of components other than transponders and other listed items) would limit the utility of the Space Protocol. As to this we can only repeat the three reasons we advanced previously for such removal which were accepted by the Steering Committee, namely:

- (1) Neither of the other Protocols provides for the separate registration of interests in components, and there seems little reason to adopt a different treatment for components of satellites.

- (2) While components are on Earth, dealings in them can be adequately regulated by domestic law. Once they are in space and incapable of independent control, ownership or use they cannot be reached by the creditor financing them and cease to be of value to that creditor, so that there is no point in allowing interests in them to be registered in the International Registry.
- (3) To allow separate registration of interests in components opens the way for a very large number of registrations and raises considerable problems in distinguishing satellite components from other components and in prescribing workable identification criteria.

16. However, there was force in the criticism that limitation of space assets to objects capable of independent control was too limiting, a point also made at the second meeting of the Steering Committee, and as stated above the definition has now been expanded in accordance with the recommendations of the Steering Committee to read as follows:

“space asset” means any man-made uniquely identifiable satellite, satellite bus, satellite transponder, payload, space station, space vehicle, reusable launch vehicle, reusable space capsule or any module or other object, in each case only where capable of being independently owned, used or controlled, in or intended to be launched in or into space or used or intended to be used as a launch vehicle, including any such asset in course of manufacture or assembly, together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto.

17. The following further points arise from the above definition. First, “space asset” is confined to man-made objects so as to exclude celestial objects such as the Moon. Second, the phrase “other object, in each case only where capable of being independently owned, used or controlled,” is intended to accommodate future developments in space technology, for example, the construction of a space hotel. Third, the definition covers interests in space objects while still on the ground. One could leave assets prior to launch to be governed by the relevant territorial law, but this would probably not be effective, as it would always be open to a creditor to register a prospective international interest and thereby secure retrospective priority once the international interest had come into existence. Moreover, it would be awkward to have two different regimes governing the same asset, one for the pre-launch phase, the other post-launch. For the proposed rule for the case where the space asset is never launched, see Article XXXI(3) of the alternative text with proposals for technical amendments (C.G.E./Space Pr./3/W.P. 8 rev.), which has been placed in square brackets.

#### Other definitions

18. The following definitions have been added to those in the 2003 text or amended or deleted:

“Debtor’s rights” (Article I(2)(a))	- definition amended
“Launch vehicle” (Article I(2)(e))	- definition added
“Licence” (Article I(2)(f))	- definition added
“Related rights”	- definition deleted
“Rights assignment” (Article I(2)(h))	- definition added
“Rights reassignment” (Article I(2)(i))	- definition added
“Space” (Article I(2)(j))	- definition added
“Space asset” (Article I(2)(k))	- defined term is now “space asset” in the singular and the definition is amended

## Hosted and other shared payloads

19. The question has been raised whether the Convention and the alternative text of the Space Protocol are adequate to cover hosted and other shared payloads. This question is not, of course, confined to space assets but applies equally to aircraft objects covered by the Aircraft Protocol and railway rolling stock covered by the Luxembourg Protocol.

20. A hosted payload is a payload specially designed for Governments, the military or other public bodies for placement on a commercial satellite which is being used for other commercial purposes by the operator. This reduces costs because the bus, the payload, the launch, etc., are planned into the original commercial project instead of having to be developed internally by the Government, etc. The payload thus consists of a mixture of the hosted payload (secondary payload) and the commercial operator's own payload. In effect hosted payloads are a form of out-sourcing by the public sector to the private sector but involve close collaboration between the Government or military and the commercial operator. It is also common to have shared ownership of certain components of transponders as well as fractional ownership of portions of the satellite structure.

21. Interests in hosted and other shared payloads are readily accommodated within the Convention and the alternative text. Under the Convention an international interest may be held and registered by two or more parties, whether as joint creditors holding a single international interest or as creditors holding joint and several claims (*créances conjointes*) or as separate holders of fractional interests each of which may be held and registered separately and which rank *pari passu*.<sup>1</sup> Indeed, the International Registry for aircraft objects has long accepted such registrations as well as registrations of multiple holdings or fractional interests acquired under contract of sale. So there is no obstacle to registration of shared or fractional interests in a transponder or other parts of a satellite. Moreover, registrations may be effected in the name of a trustee, lead bank or agent, for example under a secured loan syndication or a securitisation of receivables. Moreover, where an international interest is held by two or more creditors, then under Article V of the alternative text rights to payment or other performance due to the debtor, for example, rentals under leasing or lease capacity agreements, may be assigned to the creditors by way of security and under Article VIII of the alternative text such assignments may be recorded against the registration of the related international interest.

## Assignment of debtor's rights

### *Definition of debtor's rights*

22. Article I(2)(a) defines debtor's rights as "all rights to payment or other performance due to a debtor by any person with respect to a space asset." The rights must relate to a space asset, reflecting the principle that the Convention and the Space Protocol are concerned exclusively with space assets and rights relating to them (see paragraph 23). Subject to this, any kind of right vested in the debtor is covered.

### *No independent registration of a rights assignment*

23. It had originally been envisaged by the S.W.G. that assignments to the creditor of debtor's rights and related rights would themselves be registrable as international interests. However, there were seen to be serious drawbacks to extending the concept of an international interest to intangibles. This went against the whole thrust of the Convention, which was concerned with

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<sup>1</sup> Roy Goode, *Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Aircraft Equipment* (revised edition 2008), paras 2.33, 3.55.

interests in tangible and uniquely identifiable assets. To make the assignment of debtor's rights independently registrable as international interests would extend the Convention from physical assets to receivables, which are not themselves susceptible to asset-based registration and would not be revealed by a search against the physical asset. Accordingly, Articles V to IX of the new alternative text follow previous drafts of the alternative text in providing instead for the recording of debtor's rights and related rights as part of the registration of an international interest or a prospective international interest, either at the time of that registration or subsequently. The recorded assignment will then be governed by registration and priority rules similar to those governing the international interest itself and will be inextricably linked to registration of the international interest, so that a rights assignment recorded in the registration of a prospective international interest will be treated as unrecorded unless and until the prospective international interest became an international interest and if a registration of an international interest were discharged the record would likewise be discharged. This will ensure that debtor's rights could not be the subject of an independent registration, which would intrude into the area of general receivables financing covered by the 2001 U.N. Convention on the Assignment of Receivables in International Trade.

*Definition of rights assignment*

24. The alternative text refers to the assignment of the debtor's rights to the creditor as a "rights assignment." This is defined in Article I(2)(h) as:

a contract by which the debtor confers on the creditor an interest (including an ownership interest) in or over the whole or part of existing or future debtor's rights to secure the performance of, or in reduction or discharge of, any existing or future obligation of the debtor to the creditor which under the agreement creating or providing for the international interest is secured by or associated with the space asset to which the agreement relates.

It will be noted that this definition does not cover all assignments, only those typically effected pursuant to a debtor-creditor relationship, namely assignments by way of security and outright assignments in reduction or discharge of the debtor's existing or future obligations. The definition therefore does not cover the sale of debtor's rights. Moreover, the obligations in question must be obligations secured by or associated with the space asset to which the agreement creating or providing for the international interest relates. This restriction is necessary to maintain the linkage with the international interest. If the definition were extended to cover obligations of the debtor to the creditor not linked to the space asset one could have a situation in which the international interest was discharged by payment but the assignment would continue as a free-standing security interest for other obligations. That would destroy the linkage, and, indeed, would be incompatible with Article VIII(5). Similarly if the definition were to cover assignments to secure the obligations of a third party the link with the international interest would be lost. However, it is not necessary that the obligations themselves should arise under the agreement constituting the international interest. It suffices that they are secured by or associated with the asset under that agreement, even if arising under another agreement ("secured by" covers an international interest created by a security agreement, "associated with" an international interest arising in respect of a title reservation or leasing agreement; cf. the definition of "associated rights" in Article 1(c) of the Convention). For example, a conditional sale agreement relating to a transponder is made under which ownership is to pass to the conditional buyer only on payment of the price under that agreement and any other agreement between the parties. The conditional seller makes a loan to the conditional buyer under a subsequent loan agreement. The conditional buyer's assignment to the conditional seller of rights of the conditional buyer against third parties is a rights assignment within the definition because the



effect of the conditional sale agreement is that the obligations under both agreements are associated with the transponder.

#### *Formal requirements for rights assignment*

25. Article VI sets out the formal requirements for a rights assignment. The assignment must be in writing and must enable both the debtor's rights and the space asset to which those rights relate to be identified. In addition, the assignment must enable any obligations secured by the agreement to be identified, though without the need to state the sum or maximum sum secured.

#### *Assignment of future rights*

26. Article VII, which provides for the assignment of future rights, is derived from Article 5(b) of the 1988 UNIDROIT Convention on International Factoring and is designed to be self-executing.

#### *Recording of rights assignment*

27. For the reasons given earlier, a rights assignment may be recorded only as part of the registration of an international interest or a prospective international interest, not independently. The purpose of the rights assignment provisions is to give additional protection to the creditor in whose name the related international interest is registered. Accordingly, until the international interest has been registered there can be no recording of the rights assignment (see Article VIII(1)), and the recorded assignee must be the same person as the registered holder of the international interest. As a corollary, discharge of the registration of the international interest also discharges any record forming part of that registration (Article VIII(5)). Article VIII(1) allows recording of a rights assignment either when the international interest or prospective international interest in the space asset is registered or subsequently by amendment to the registration, thus covering the case where the rights assignment is not made, or the debtor's rights do not arise, until after registration of the international interest or prospective international interest. The request for such recording may identify the assigned rights either specifically or by a statement that the debtor has assigned all or some of the debtor's rights, without further specification.

28. Under Article VIII(2) the registration provisions of the Convention are extended to cover the recording of rights assignments. However, a rights assignment recorded against a registered prospective international interest is treated as unrecorded unless and until the prospective international interest becomes an international interest, in which event the rights assignment has priority from the time it was recorded (Article IX(2)). This parallels the rule in Article 19(4) of the Convention relating to the priority of a prospective international interest upon its becoming an international interest.

#### *Priority of recorded rights assignment*

29. Article IX of the alternative text lays down priority rules for a recorded rights assignment which track those embodied in Article 29(1) of the Convention in relation to registered interests. So a recorded rights assignment has priority over any other rights assignment subsequently recorded and over an unrecorded rights assignment. This, however, is subject to the above-mentioned qualification in the case of recording against registration of a prospective international interest.



*Grantor's duty to creditor*

30. The effect of a rights assignment is to transfer to the creditor the debtor's rights against a third party with respect to the space asset. Article X sets out the conditions in which the third party (i.e. the grantor of the rights to the debtor) comes under a duty to give performance to the creditor. These conditions, requiring notice in writing to the grantor identifying the debtor's rights, parallel those set out in Article 33 of the Convention relating to the assignment of associated rights.

**Reassignment of debtor's rights**

31. Article XI of the alternative text also follows the S.W.G. proposal (albeit with slightly different terminology) in providing for the reassignment of debtor's rights by the creditor or a subsequent assignee and the recording of such reassignment. The provisions relating to a rights reassignment follow those relating to a rights assignment, substituting references to the assignee or subsequent assignee for references to the creditor or holder (of the international interest). However, in line with the principle that recording of an assignment must be in favour of the person shown in the International Registry as the current holder of the international interest a rights reassignment may be recorded only as part of the registration of the assignment of the international interest to the person to whom the rights reassignment was made (Article XI(2)). So, if the original creditor with a registered international interest and a recorded assignment of debtor's rights in its favour were to reassign the debtor's rights while retaining the international interest, the assignee under the rights reassignment would not be able to record the assignment in the International Registry.

**Replacement of "related rights" by duty to co-operate**

32. Draft provisions relating to the transfer of related rights (Government and other licences, etc.) were considered at the second meeting of the Steering Committee but were not supported, the principal reason being that in practice Government licences were not transferable, and the implication that they were might present Governments with difficulties. The procedure usually adopted was for the existing licence to be surrendered or withdrawn and a new licence granted to the creditor or other assignee. Accordingly the Steering Committee concluded that all references to related rights should be removed and endorsed a proposal to replace them with a duty on the debtor to co-operate in procuring the termination of its own licence and the grant of a new licence to the creditor. Article XII of the new alternative text so provides, imposing the duty to co-operate both on a debtor who makes a rights assignment and a creditor or subsequent assignee who makes a rights reassignment.

**Identification of space assets**

33. Under the Convention unique identification of the object is required both for the constitution of an international interest and for registration purposes. At the diplomatic Conference in Luxembourg it was pointed out that for the purposes of the relationship between creditor and debtor there was no need for unique identification, because the creation of an international interest concerns only the parties to the agreement creating or providing for the international interest and is not dependent on registration. All that was necessary was that the asset, including an after-acquired asset, could be identified as falling within the scope of the agreement. On this basis there could be no objection to an agreement covering a class of assets or all present and future assets, and this would avoid the need for a separate agreement each time the debtor acquired a new asset. By contrast when it comes to registration, which affects third parties, unique identification is essential, since the International Registry is asset-based. Accordingly the Luxembourg Protocol distinguishes the identification requirements for the

constitution of an agreement from those applicable to registration, the former allowing generic descriptions (Article V) whilst the latter requires unique identification (Article XIV). We have adopted this approach in Article XVI of the alternative text, which combines the effect of Articles V and XIV of the Luxembourg Protocol.

34. Article XVI(1) sets out the various methods by which space assets may be described for the purposes of satisfying the formalities required for an agreement. As regards the identification criteria for registration, we felt that (a) these should not be left to be dealt with exclusively in regulations, (b) as a minimum the Space Protocol should contain the identification criteria set out in Article XVI(3), which include the orbital parameters specified in Article IV(1)(d) of the 1975 U.N. Convention on Registration of Objects Launched into Outer Space, and (c) where additional criteria were found to be necessary when the registration system is established or in the light of other subsequent developments it should be open to the Supervisory Authority to prescribe these in the regulations. Space industry experts will be able to advise whether the stated criteria are adequate. These relate only to the entire satellite. Separate criteria will need to be formulated for each of the components included within the definition of space asset. These matters will no doubt be examined by the registration sub-committee at its forthcoming meeting in October.

#### **Default remedies as regards rights assignments and reassignments**

35. Article XIX, dealing with default remedies in relation to rights assignments and reassignments, is broadly aligned with Article 34 of the Convention dealing with the comparable position as regards associated rights. Article XIX, like Article 34, is designed to avoid repeating all the provisions on default remedies available under Chapter III of the Convention to a chargee under a security agreement creating or providing for an international interest. The technique is simply to confer the same default remedies on a creditor to whom debtor's rights are assigned and on an assignee to whom such rights are reassigned so far as those remedies are applicable to intangibles. The remedies of physical repossession or the grant of a lease are plainly not applicable to intangibles. However, debtor's rights to payment are reducible to possession by payment or by being placed under the control of the creditor or assignee under a reassignment through a notice of assignment or reassignment, or alternatively may be sold; the income from such payments can be collected or received; the rights can be vested in the creditor or assignee in total or partial satisfaction of the secured obligations. Similarly there is no difficulty in applying Articles 11 to 14 of the Convention to debtor's rights.

Roy Goode  
Michel Deschamps  
30 June 2009

*ALTERNATIVE TEXT OF THE PRELIMINARY DRAFT PROTOCOL TO  
THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE  
EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS*

*(prepared by Professor Sir Roy Goode and Mr Michel Deschamps  
for the third session of the Committee of governmental experts)*

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it desirable to implement the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*) as it relates to space assets, in the light of the purposes set out in the preamble to the Convention,

MINDFUL of the need to adapt the Convention to meet the particular demand for and the utility of space assets and the need to finance their acquisition and use as efficiently as possible,

MINDFUL of the benefits to all States from expanded space-based services which the Convention and this Protocol will yield,

MINDFUL of the established principles of space law, including those contained in the international space treaties under the auspices of the United Nations,

MINDFUL of the continuing development of the international commercial space industry and recognising the need for a uniform and predictable regimen governing the taking of security over space assets and facilitating asset-based financing of the same,

HAVE AGREED upon the following provisions relating to space assets:

CHAPTER I – SPHERE OF APPLICATION AND GENERAL PROVISIONS

*Article I – Defined terms*

1. – In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.

2. – In this Protocol the following terms are employed with the meanings set out below:

(a) “debtor’s rights” means all rights to payment or other performance due to a debtor by any person with respect to a space asset;

(b) “guarantee contract” means a contract entered into by a person as a guarantor;

(c) “guarantor” means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or standby letter of credit or other form of credit insurance;

(d) “insolvency-related event” means: (i) the commencement of the insolvency proceedings; or (ii) the declared intention to suspend or actual suspension of payments by the

debtor where the creditor's right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;

(e) "launch vehicle" means a vehicle used or intended to be used to transport persons or goods to or from space;

(f) "licence" means any permit, licence, authorisation, concession or equivalent instrument that is granted or issued by, or pursuant to the authority of, a national or intergovernmental or other international body or authority, when acting in a regulatory capacity, to manufacture, launch, control, use or operate a space asset, or relating to the use of orbits positions or the transmission, emission or reception of electromagnetic signals to and from a space asset;

(g) "primary insolvency jurisdiction" means the Contracting State in which the centre of the debtor's main interests is situated, which for this purpose shall be deemed to be the place of the debtor's statutory seat, or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise;

(h) "rights assignment" means a contract by which the debtor confers on the creditor an interest (including an ownership interest) in or over the whole or part of existing or future debtor's rights to secure the performance of, or in reduction or discharge of, any existing or future obligation of the debtor to the creditor which under the agreement creating or providing for the international interest is secured by or associated with the space asset to which the agreement relates;

(i) "rights reassignment" means a contract by which the creditor transfers to the assignee, or an assignee transfers to a subsequent assignee, the whole or part of its rights and interest under a rights assignment;

(j) "space" means outer space, including the Moon and other celestial bodies;  
and

(k) "space asset" means any man-made uniquely identifiable satellite, satellite bus, satellite transponder, payload, space station, space vehicle, reusable launch vehicle, reusable space capsule or any module or other object, in each case only where capable of being independently owned, used or controlled, in or intended to be launched in or into space or used or intended to be used as a launch vehicle, including any such asset in course of manufacture or assembly, together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto.

#### *Article II – Application of the Convention as regards space assets and debtor's rights*

1. – The Convention shall apply in relation to space assets and the assignment and reassignment of debtor's rights as provided by the terms of this Protocol.

2. – The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to space assets.

#### *Article III – Application of the Convention to sales*

The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

Articles 3 and 4;  
Article 16(1)(a);  
Article 19(4);  
Article 20(1) (as regards registration of a contract of sale or a prospective sale);  
Article 25(2) (as regards a prospective sale); and  
Article 30.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XXIV), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) shall apply to contracts of sale and prospective sales.

#### *Article IV – Return of a space asset*

The return of a space asset from space does not affect an international interest in that asset.

#### *Article V – Effects of rights assignment*

1. – Except as otherwise agreed by the parties, a rights assignment made in conformity with Article VI transfers to the creditor all debtor's rights.

2. – Subject to paragraph 3, the applicable law shall determine the defences and rights of set-off available to the grantor of debtor's rights against the creditor.

3. – The grantor of debtor's rights may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph other than defences arising from fraudulent acts on the part of the creditor.

#### *Article VI - Formal requirements for rights assignment*

An assignment is constituted as a rights assignment where it is in writing and enables:

- (a) the debtor's rights the subject of the agreement to be identified;
- (b) the space asset to which those rights relate to be identified; and
- (c) the obligations secured by the agreement to be determined, but without the need to state a sum or maximum sum secured.

#### *Article VII - Assignment of future rights*

A provision in a rights assignment by which future debtor's rights are assigned operates to confer on the creditor an interest in the assigned rights when they come into existence without the need for any new act of transfer.

*Article VIII - Recording of rights assignment  
as part of registration of international interest*

1. – The holder of an international interest or prospective international interest in a space asset to whom the debtor has granted an interest in or over debtor's rights under a rights assignment may, when registering the international interest or prospective international interest or subsequently by amendment to such registration, record the rights assignment as part of the registration. Such record may identify the assigned rights either specifically or by a statement that the debtor has assigned all or some of the debtor's rights, without further specification.

2. – Articles 18, 19, 20(1) – (4) and 25(1), (2) and (4) of the Convention apply in relation to a record made in accordance with the preceding paragraph as if:

- (a) references to an international interest were references to a rights assignment;
- (b) references to registration were references to the recording of the rights assignment; and
- (c) references to the debtor were references to the grantor of the debtor's rights.

3. – A search certificate issued under Article 22 of the Convention shall include the particulars recorded.

4. – Where a rights assignment has been recorded as part of the registration of an international interest which is subsequently transferred in accordance with Articles 31 and 32 of the Convention, the transferee of the international interest acquires:

- (a) all the rights of the creditor under the rights assignment; and
- (b) the right to be shown in the record as assignee under the rights assignment.

5. – Discharge of the registration of an international interest also discharges any record forming part of that registration under paragraph 1.

*Article IX - Priority of recorded rights assignment*

1. – Subject to paragraph 2, a recorded rights assignment has priority over any other rights assignment subsequently recorded and over an unrecorded rights assignment.

2. – Where a rights assignment is recorded in the registration of a prospective international interest it shall be treated as unrecorded unless and until the prospective international interest becomes an international interest, in which event the rights assignment has priority as from the time it was recorded.

*Article X - Rights grantor's duty to creditor*

1. – To the extent that the debtor's rights have been assigned to the creditor under a rights assignment, the person from whom payment or other performance of the debtor's rights is due is bound by the rights assignment and has a duty to make payment or give other performance to the creditor, if but only if:

- (a) such person has been given notice of the rights assignment in writing by or with the authority of the debtor; and
- (b) the notice identifies the debtor's rights.

2. – For the purposes of the preceding paragraph, a notice given by the creditor after the debtor defaults in performance of any obligation secured by a rights assignment is given with the authority of the debtor.

3. – Irrespective of any other ground on which payment or performance by the grantor discharges the grantor from liability, payment or performance shall be effective for this purpose if made in accordance with paragraph 1.

4. – Nothing in this Article shall affect the priority of competing rights assignments.

#### *Article XI - Rights reassignment*

1. – Articles V to X apply to a rights reassignment by the creditor or a subsequent assignee as if references to the creditor or holder were references to the assignee or subsequent assignee.

2. – A rights reassignment relating to an international interest in a space asset may be recorded only as part of the registration of the assignment of the international interest to the person to whom the rights reassignment was made.

#### *Article XII - Duty of assignor as to licences*

The assignor under a rights assignment or rights reassignment shall at the request of the assignee take all steps within its power to procure the transfer of its licence to the assignee or the termination of its licence and the grant of a new licence to the assignee, and shall fully co-operate with the assignee to that end.

#### *Article XIII – Derogation*

The parties may, by agreement in writing, exclude the application of Article XXII and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article XVIII(2) - (3).

#### *Article XIV – Formalities, effects and registration of contracts of sale*

1. – For the purposes of this Protocol, a contract of sale is one which:

- (a) is in writing;
- (b) relates to a space asset of which the seller has power to dispose; and
- (c) enables the space asset to be identified in conformity with this Protocol.

2. – A contract of sale transfers the interest of the seller in the space asset to the buyer according to its terms.

3. – Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

*Article XV – Representative capacities*

A person may, in relation to a space asset, enter into an agreement or a contract of sale, effect a registration as defined by Article 16(3) of the Convention and assert rights and interests under the Convention in an agency, trust or representative capacity.

*Article XVI – Identification of space assets*

1. – For the purposes of Article 7(c) of the Convention and Article XIV of this Protocol, a description of a space asset is sufficient to identify the space asset if it contains:

- (a) a description of the space asset by item;
- (b) a description of the space asset by type;
- (c) a statement that the agreement covers all present and future space assets; or
- (d) a statement that the agreement covers all present and future space assets except for specified items or types.

2. – For the purposes of Article 7 of the Convention, an interest in a future space asset identified in accordance with the preceding paragraph shall be constituted as an international interest as soon as the chargor, conditional seller or lessor acquires the power to dispose of the space asset, without the need for any new act of transfer.

3. – A description of a satellite that contains the name of the manufacturer, the model, the launch site, the launch date, the orbital parameters (including inclination, nodal period, apogee and perigee), and the general function of the space asset, and satisfies such other requirements as may be established in the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry.

4. – [Insert separate identification criteria for each other category of space asset, incorporating a similar reference to additional criteria prescribed by the regulations].

*Article XVII – Choice of law*

1. – This Article applies unless a Contracting State has made a declaration pursuant to Article XXXVIII(1).

2. – The parties to an agreement, or a contract of sale, or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part.

3. – Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.



## CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

### *Article XVIII – Modification of default remedies provisions as regards space assets*

1. – This Article applies only where a Contracting State has made a declaration to that effect under Article XXXVIII(2) [and to the extent stated in such declaration].

2. – (a) Article 8(3) of the Convention shall not apply to space assets.

(b) In relation to space assets the following provisions shall apply:

(i) any remedy given by the Convention shall be exercised in a commercially reasonable manner;

(ii) a remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement between the debtor and the creditor except where such a provision is manifestly unreasonable.

3. – A chargee giving ten or more working days' prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing "reasonable prior notice" specified in Article 8(4) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

[4. – Insert any provision as regards enforcement against a space asset functionally linked to another space asset in which another creditor has an interest].<sup>2</sup>

### *Article XIX – Default remedies as regards rights assignments and rights reassignments*

1. – In the event of default by the debtor under a rights assignment Articles 8, 9 and 11 to 14 of the Convention apply in the relations between the assignor and the assignee (and in relation to the debtor's rights apply in so far as those provisions are capable of application to intangible property) as if references:

(a) to the secured obligations and the security interest were references to the obligations secured by the rights assignment and the security interest created by that assignment;

(b) to the chargee or creditor and chargor or debtor were references to the assignee and assignor;

(c) to the object were references to the debtor's rights.

2. – In the event of default by the assignor in performance of any obligation secured by a rights reassignment made by way of security the preceding paragraph applies as if references to the assignment were references to the reassignment.

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<sup>2</sup> Pursuant to a decision of the Sub-committee on default remedies in relation to components, as endorsed by the Steering Committee at its meeting in Paris on 14 and 15 May 2009, informal negotiations are taking place between the Governments of Germany and the United States of America for the preparation of a joint proposal to be submitted to the Committee of governmental experts at its forthcoming session.

*Article XX – Placement of data and materials*

The parties to an agreement may specifically agree for the placement of data and materials with another person in order to afford the creditor the opportunity to take possession of, establish control over or operate the space asset.

*Article XXI – Modification of provisions regarding relief pending final determination*

1. – This Article applies only where a Contracting State has made a declaration to that effect under Article XXXVIII(3) and to the extent stated in such declaration.

2. – For the purposes of Article 13(1) of the Convention, “speedy” in the context of obtaining relief means within such number of working days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.

3. – Article 13(1) of the Convention applies with the following being added immediately after sub-paragraph (d):

“(e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom”,

and Article 43(2) applies with the insertion after the words “Article 13(1)(d)” of the words “and (e)”.

4. – Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor’s international interest has priority under the provisions of Article 29 of the Convention.

[5. – The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.]

*Article XXII – Remedies on insolvency*

1. – This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXXVIII(4).

*Alternative A*

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of or control and operation over the space asset to the creditor no later than the earlier of:

(a) the end of the waiting period; and

(b) the date on which the creditor would be entitled to possession of or control and operation over the space asset if this Article did not apply.

3. – For the purposes of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

4. – References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.

5. – Unless and until the creditor is given possession of or control and operation over the space asset under paragraph 2:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the space asset and maintain it and its value in accordance with the agreement; and

(b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

6. – Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the space asset under arrangements designed to preserve the space asset and maintain it and its value.

7. – The insolvency administrator or the debtor, as applicable, may retain possession of or control and operation over the space asset where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

8. – No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.

9. – No obligations of the debtor under the agreement may be modified without the consent of the creditor.

10. – Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

11. – No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests.

12. – The Convention as modified by Article XVIII of this Protocol shall apply to the exercise of any remedies under this Article.

*Alternative B*

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XXXVIII(4) whether it will:

(a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or

(b) give the creditor the opportunity to take possession of or control and operation over the space asset, in accordance with the applicable law.

3. – The applicable law referred to in sub-paragraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.

4. – The creditor shall provide evidence of its claims and proof that its international interest has been registered.

5. – If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 2, or when it has declared that it will give the creditor the opportunity to take possession of or control and operation over the space asset but fails to do so, the court may permit the creditor to take possession of or control and operation over the space asset upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

6. – The space asset shall not be sold pending a decision by a court regarding the claim and the international interest.

#### *Article XXIII – Insolvency assistance*

1. – This Article applies only where a Contracting State has made a declaration pursuant to Article XXXVIII(1).

2. – The courts of a Contracting State: (i) in which the space asset is situated; (ii) from which the space asset may be controlled; (iii) in which the debtor is located; or (iv) otherwise having a close connection with the space asset, shall [, in accordance with the law of the Contracting State,] co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XXII.

#### *Article XXIV – Modification of priority provisions*

1. – A buyer of a space asset under a registered sale acquires its interest in that asset free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.

2. – A buyer of a space asset acquires its interest in that asset subject to an interest registered at the time of its acquisition.

#### *Article XXV – Modification of assignment provisions*

Article 33(1) of the Convention applies with the following being added immediately after sub-paragraph (b):

“and (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.”

#### *Article XXVI – Debtor provisions*

1. – In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the space asset in accordance with the agreement as against:

(a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4)(b) of the Convention or, in the capacity of buyer, Article XXIV(1) of this Protocol, unless and to the extent that the debtor has otherwise agreed; and

(b) the holder of any interest to which the debtor's right or interest is subject pursuant to Article 29(4)(a) of the Convention or, in the capacity of buyer, Article XXIV(2) of this Protocol, but only to the extent, if any, that such holder has agreed.

2. – Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to space assets.

*Article XXVII – Limitations on remedies*

1. – This Article applies only where a Contracting State has made a declaration pursuant to Article XXXVIII(1).

2. – A Contracting State [, in accordance with its laws and regulations,] may restrict or attach conditions to the exercise of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol, including the placement of data and materials pursuant to Article XX, where the exercise of such remedies would involve or require the transfer of controlled goods, technology, data or services, or would involve the transfer or assignment of a licence, or the grant of a new licence, to the creditor.

[3. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare whether and to which extent the remedies provided in Chapter III of the Convention and in Articles XVIII to XXIII of this Protocol shall be exercisable for space assets as far as they are used for establishing or maintaining its public services as specified in its declaration or determined by a competent authority of that State notified to the Depository.]<sup>3</sup>

[3. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare any limitations to the exercise of remedies provided in Chapter III of the Convention and in Articles XVIII to XXIII of this Protocol with respect to space assets designed and used for flight control and navigation of aircraft, maritime navigation, search and rescue and similar public services as specified in its declaration or determined by a competent authority of that State notified to the Depository.]<sup>3</sup>

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<sup>3</sup> The Sub-committee on public service proposed a menu of nine options from which Contracting States could make a selection by declaration at the time of ratification or accession. Subject to further elaboration on precise wording these were:

- the holder of an international interest in a space asset providing a public service may not exercise default remedies that would result in the interruption of that public service;
- the holder of an international interest in a space asset providing a public service shall have the right to exercise a "step-in" right in the event of default by the debtor providing that public service;
- a Contracting State shall have the right to exercise a "step-in" right in the event of default by a debtor providing a public service;
- fair compensation shall be provided to the holder of an international interest in a space asset providing a public service in the event that a Contracting State intervenes in the operation of that asset;
- default remedies may only be exercised after the elapsing of a specified period of time;
- where a privately owned space asset provides public services to more than one Contracting State, a Contracting State shall declare how it will perform its overall obligations in respect of that asset, for example by the granting of compensation or the exercising of a "step-in" right;
- a Contracting State may record a notice with the future International Registry in respect of a space asset providing a public service, the effect of which will be, first, that any creditor having registered an international interest in that space asset prior to the recording of such notice may only exercise any default remedy that he possesses under the Convention as applied to space assets to the extent that the Contracting State does not elect to assume the obligations of the defaulting debtor and, secondly, that any creditor having registered an international interest in the space asset after the recording of such notice may only exercise

### CHAPTER III – REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN SPACE ASSETS

#### *Article XXVIII – The Supervisory Authority*

1. – The Supervisory Authority shall be designated at the Diplomatic Conference to Adopt a Space Assets Protocol to the Cape Town Convention, provided that such Supervisory Authority is able and willing to act in such capacity.

2. – The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.

3. – The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.

#### *Article XXIX – First regulations*

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

#### *Article XXX – Additional modifications to Registry provisions*

1. – For the purposes of Article 19(6) of the Convention, the search criteria for space assets shall be the criteria specified in Article XVI of this Protocol.

2. – For the purposes of Article 25(2) of the Convention, and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest shall take such steps as are within its power to procure the discharge of the registration no later than five working days after the receipt of the demand described in such paragraph.

3. – The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers and discharge of the duties contemplated by Article 17(2) of the Convention.

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any default remedy that he possesses under the Convention as applied to space assets to the extent that the public service in question is not thereby interrupted;

- a Contracting State may determine the application of public service limitations on a case-by-case basis, namely at the time of the issuing of a licence or permit for the operation of a space asset intended to be used for the provision of a public service; and/or
- a Contracting State may, at the time when the space financing project arises, agree with the holder of an international interest in a space asset providing a public service as to the conditions necessary for "step-in" rights to be exercised.

The Steering Committee endorsed these proposals with two additional options, namely a provision for the arbitration of disputes concerning the maintenance of a public service being performed by a space asset and the solution offered by Article XXV of the Luxembourg Protocol.

4. – The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis.

5. – The insurance or financial guarantee referred to in Article 28(4) shall cover all liability of the Registrar under the Convention.

6. – Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

#### CHAPTER IV – JURISDICTION

##### *Article XXXI – Waiver of sovereign immunity*

1. – Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to a space asset under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

2. – A waiver under the preceding paragraph must be in writing and contain a description, in accordance with Article XVI, of the space asset.

#### CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS

##### *Article XXXII – Relationship with the UNIDROIT Convention on International Financial Leasing*

The Convention as applied to space assets shall supersede the *UNIDROIT Convention on International Financial Leasing* in respect of the subject matter of this Protocol, as between States Parties to both Conventions.

##### *[Article XXXIII – Relationship with the United Nations Outer Space Treaties and instruments of the International Telecommunication Union]*

The Convention as applied to space assets does not affect State Party rights and obligations under the existing United Nations Outer Space Treaties or instruments of the International Telecommunication Union.]

#### [CHAPTER VI – FINAL PROVISIONS

##### *Article XXXIV – Signature, ratification, acceptance, approval or accession*

1. – This Protocol shall be open for signature in ... on ... by States participating in the Diplomatic Conference to Adopt a Space Assets Protocol to the Cape Town Convention held at ... from ... to ... . After ..., this Protocol shall be open to all States for signature at ... until it enters into force in accordance with Article XXXVI.

2. – This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.

3. – Any State which does not sign this Protocol may accede to it at any time.

4. – Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

5. – A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

#### *Article XXXV – Regional Economic Integration Organisations*

1. – A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. – The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. – Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

#### *Article XXXVI – Entry into force*

1. – This Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of the [fifth] instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.

2. – For other States this Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession.

#### *Article XXXVII – Territorial units*

1. – If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.



2. – Any such declaration shall state expressly the territorial units to which this Protocol applies.

3. – If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.

4. – Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. – If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:

(a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;

(b) any reference to the location of the space asset in a Contracting State refers to the location of the space asset in a territorial unit to which the Convention and this Protocol apply; and

(c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply.

*Article XXXVIII – Declarations relating to certain provisions*

1. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare:

(a) that it will not apply Article XVII;

(b) that it will apply any one or both of Articles XXIII and XXVII.

2. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article XVIII [wholly or in part].

3. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article XXI wholly or in part. If it so declares with respect to Article XXI(2), it shall specify the time-period required thereby.

4. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XXII and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XXII.

5. – The courts of Contracting States shall apply Article XXII in conformity with the declaration made by the Contracting State that is the primary insolvency jurisdiction.

*Article XXXIX – Declarations under the Convention*

Declarations made under the Convention, including those made under Articles 39, 40, 53, 54, 55, 57, 58 and 60 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

*Article XL – Reservations and declarations*

1. – No reservations may be made to this Protocol but declarations authorised by Articles XXXVII, XXXVIII, XXXIX and XLI may be made in accordance with these provisions.

2. – Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depository.

*Article XLI – Subsequent declarations*

1. – A State Party may make a subsequent declaration, other than the declaration made in accordance with Article XXXIX under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depository to that effect.

2. – Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depository. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depository.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declaration had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

*Article XLII – Withdrawal of declarations*

1. – Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXXIX under Article 60 of the Convention, may withdraw it at any time by notifying the Depository. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depository.

2. – Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal of declaration.

*Article XLIII – Denunciations*

1. – Any State Party may denounce this Protocol by notification in writing to the Depository.

2. – Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depository.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

*Article XLIV – Review Conferences, amendments and related matters*

1. – The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regimen established in the Convention as amended by the Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. – At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

- (a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the assets covered by its terms;
- (b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;
- (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and
- (d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3. – Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States Parties which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by [five] States Parties in accordance with the provisions of Article XXXVI relating to its entry into force.

*Article XLV – Depositary and its functions*

1. – Instruments of ratification, acceptance, approval or accession shall be deposited with ..., which is hereby designated the Depositary.

2. – The Depositary shall:

- (a) inform all Contracting States of:
  - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
  - (ii) the date of entry into force of this Protocol;
  - (iii) each declaration made in accordance with this Protocol, together with the date thereof;
  - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and

(v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;

(b) transmit certified true copies of this Protocol to all Contracting States;

(c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and

(d) perform such other functions customary for depositaries.]

**REPORT**

**ON THE WORK OF THE INFORMAL WORKING GROUP  
ON LIMITATIONS ON REMEDIES**

(prepared by the UNIDROIT Secretariat)

1. The Informal Working Group on limitations on remedies set up by the Committee of governmental experts on 9 December 2009 held four meetings on 10 December 2009. Representatives of the following States participated in its work: Canada, the Czech Republic, the People's Republic of China, France, Germany, Greece, India, Italy, Japan, Spain and the United States of America. Ms M. Leimbach (Crédit Agricole S.A.) and Mr B. Schmidt-Tedd (German Space Agency) participated as observers. The meetings were chaired by the Secretary-General of UNIDROIT.

2. A discussion paper setting out a proposal for a new Article XVI *bis* of the preliminary draft Protocol / Article XXVII *bis* of the alternative text (on policy issues) on limitations on remedies has been prepared by the UNIDROIT Secretariat designed to reflect the extensive discussions held by the Informal Working Group, on the basis of informal proposals submitted by the representative of Germany. This discussion paper was not, however, approved by that Group and has not been reviewed by the Drafting Committee: it is intended in the first instance for consideration by the Committee of governmental experts and, depending on the reaction of that Committee, to serve as the basis for further consultations on this issue. The discussion paper is set out below.

3. Subject to endorsement by the Committee of governmental experts, it is proposed that the proposal contained in this discussion paper be incorporated in the text of the preliminary draft Protocol in square brackets, in place of the current Article XVI(3) of the preliminary draft Protocol/Article XXVII(3) of the alternative text (on policy issues). It would form the subject of an Article separate from the current Article XVI(3)/Article XXVII(3), on the basis that it would not be subject to an opt-in declaration in the way that Article XVI(1) and (2)/Article XXVII(1) and (2) are intended to be.

**DISCUSSION PAPER**

**SETTING OUT A PROPOSAL FOR A NEW ARTICLE XVI *bis* OF THE PRELIMINARY DRAFT  
PROTOCOL / ARTICLE XXVII *bis* OF THE ALTERNATIVE TEXT (ON POLICY ISSUES)**

**Article XVI /XXVII *bis***

1. A State has the right to object to the exercise of default remedies, as provided in Chapter III of the Convention and Articles IX to XII / XVIII to XXIII of this Protocol, in respect of a space asset needed for the provision or maintenance of a public service which is in the vital interest of that State if the exercise of those remedies would cause interruption in the provision or maintenance of that service.

2. Within 20 days from the date on which the State has notified the creditor of its objection to the exercise of remedies under the preceding paragraph, the creditor may exercise the right to step in and assume responsibility for the provision or maintenance of the relevant service in the State concerned or appoint a substitute entity for that purpose, with the consent of that State and of the licencing State.

3. If the creditor chooses not to exercise its rights under the preceding paragraph, the State that objects to the exercise of default remedies by the creditor under paragraph 1 shall have the option of:

(a) curing the default by the debtor by paying to the creditor all sums outstanding for the entire period of default; or

(b) taking or procuring possession, use or control of the space asset and assuming the debtor's obligations by stepping into the obligations of the debtor for the provision of a public service in the State concerned.<sup>1</sup>

4. A State that objects to the exercise of default remedies by the creditor under paragraph 1 shall exercise its rights under the preceding paragraph within 90 days. After such period, the creditor shall be free to exercise any of the remedies provided in Chapter III of the Convention and in Articles IX to XII / XVIII to XXIII of this Protocol, in respect of the relevant space asset.<sup>2</sup>

5. A State may only invoke the right to object to the exercise of default remedies in accordance with this Article if it has registered in the International Registry a notice recording that the space asset is used for providing a public service in the vital interest of that State prior to the registration of an international interest in that space asset by a creditor [or if it has registered such notice within six months of the launch of a space object, even if after the registration of an international interest by the creditor].

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<sup>1</sup> During the discussion of these provisions, it was noted that further information would be needed on the practical implications of the question as to how a State could exercise a step in right in respect of an operator licenced in a foreign country or operating through equipment located in a third country.

<sup>2</sup> During the discussion of these provisions, it was noted that further consultation would be needed on the question as to whether the time-periods provided in this proposed Article should preclude a filing for insolvency during the 90-day period by the debtor or by a third party against the debtor.

COMMENTS AND PROPOSALS

*submitted by Governments, Organisations and the international commercial space,  
financial and insurance communities*

*(Omissis)*

***Ms P.L. Meredith (Co-Chair, Space Law Practice Group, Zuckert Scoutt & Rasenberger,  
L.L.P., Washington D.C.), on behalf of leading space insurance underwriters***<sup>1</sup>

**Re: satellite insurers' salvage interests: proposed additions to the preliminary  
draft Protocol and the alternative text**

The preliminary draft Protocol and the alternative text as currently drafted do not accommodate a well established legal principle, namely, insurer salvage, as it applies to satellite insurance.

Salvage plays a unique and important role in satellite insurance. Once a satellite loss has been paid in full, the insurer is entitled to salvage by way of title to, or revenues or sales proceeds generated from the malfunctioning satellite. Salvage is particularly significant in satellite insurance because the satellite may have substantial life left (salvage value) even after it has been declared a Constructive Total Loss.

Salvage interests *cannot* be registered under the preliminary draft Protocol and the alternative text. In Sir Roy Goode's words, "[t]his means that having paid out the claim in full and acquired salvage rights in the satellite the insurer has nothing it can register so as to protect itself against subsequent international interests . . ." **Consequently, a subsequent buyer or creditor by registering an international interest would wipe out an insurer's salvage interest, even when with knowledge of its existence.**

To remedy this unintended consequence of the preliminary draft Protocol and the alternative text as currently drafted, major space insurance underwriters would ask UNIDROIT to add language to the preliminary draft Protocol to address this concern. Insurance plays a critical role in the very satellite financing the preliminary draft Protocol seeks to promote. Indeed, creditors, as a rule, demand that the satellite operator (debtor) take out insurance to protect the satellite asset.

*(a) The meaning of salvage*

In the context of commercial satellite insurance, salvage<sup>2</sup> usually refers to the right of insurers, upon full payment of a satellite loss: (1) to take title to the degraded satellite

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<sup>1</sup> The leading space insurance underwriters in question are Munich Re, Swiss Re, SCOR, La Réunion Spatiale, Space Co-Groupe AGF, and Atrium.

<sup>2</sup> Salvage is "the property saved or remaining after a fire or other loss, sometimes retained by an insurance company that has compensated the owner for the loss," amongst other meanings. Black's Law Dictionary 1367 (8th ed. 2004). See also John A. Appleman, Insurance Law & Practice (Matthew Bender 1st

(hereinafter referred to as *Title Salvage*) or (2) to receive a portion of the revenues generated from the operation of, or sales proceeds from that satellite (hereinafter referred to as *Revenue Salvage*).

Satellite insurance policies customarily provide for salvage. In the United States of America, insurers' salvage interests may also arise by operation of equity.<sup>3</sup>

*(b) The significance of salvage in satellite insurance*

Salvage plays a key role in satellite insurance that is different from other industries. The way satellite insurance policies are structured, even when the satellite is declared a Constructive Total Loss and insurers pay the full amount of the insurance, the satellite may have significant remaining life, albeit with partial or degrading functionality.

In other words, the satellite may have considerable value left even after it has been declared a Constructive Total Loss. Having paid the loss, insurers are entitled to that value as salvage. This salvage interest is not being accommodated by the preliminary draft Protocol and the alternative text.

*(c) Salvage interests do not qualify for registration*

The preliminary draft Protocol and the alternative text provide for an International Registry<sup>4</sup> for the registration and protection of "international interests" and certain other interests<sup>5</sup> in satellites and other space assets.<sup>6</sup> Salvage interests do not qualify.

An international interest is defined as an "interest held by a creditor" that is: (1) granted under a security agreement; (2) vested in the conditional seller under a title reservation agreement; (3) vested in the lessor under a leasing agreement; or (4) vested in a buyer under a contract of sale.<sup>7</sup>

A salvage interest is not an "international interest" or any other registrable interest.<sup>8</sup> It does not meet the criteria listed in (1)-(4);<sup>9</sup> it is also not "held by a creditor" as that term is defined.<sup>10</sup>

ed., 2007) § 3808 ("[T]he term 'salvage' may also be used . . . as designating that part of the property that survives the peril and is saved.").

<sup>3</sup> See, e.g., *The Republic of China v. National Union Fire Ins. Co.*, 163 F. Supp. 812, 815-16 (D. Md. 1958) ("payment of a total loss by the insurers . . . gives them an equitable right to the property, or what remains of it . . .") (quoting Willard Phillips, *A Treatise on the Law of Insurance*, § 1707 (5th ed. 1867) (recited in Stephen W. Schwab *et al.*, *Onset of an Offset Revolution: The Application of Set-Offs in Insurance Insolvencies*, 95 Dick. L. Rev. 449, 492 (1991) (for the same proposition)).

<sup>4</sup> Preliminary draft Protocol, attached as W.P. 4 to UNIDROIT's invitation of 28 July 2009 to participate in the third session of the UNIDROIT Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (Rome, 7/11 December 2009), Ch. III; alternative text, attached as W.P. 5 to UNIDROIT's same invitation, Ch. III; Convention on International Interests in Mobile Equipment, 2001 (hereinafter referred to as the *Convention*), Art. 17(2)(a).

<sup>5</sup> Convention, Art. 16(1)(a) (non-consensual rights and interests); Art. 16(1)(b)-(e).

<sup>6</sup> See preliminary draft Protocol, Art. I(2)(g)(i), (iv); alternative text, Art. I(2)(k) (defining "space assets" to include satellites and transponders, amongst other space assets).

<sup>7</sup> Convention, Arts. 1(o), 2(2)(a)-(c). See preliminary draft Protocol, Art. III; alternative text, Art. III (applying the Convention to a contract of sale and treating the buyer as the creditor and the seller as the debtor); Convention, Art. 41 (providing that Protocols may specify that the Convention shall apply to sales and prospective sales).

<sup>8</sup> Convention, Art. 16(1).



(d) *The preliminary draft Protocol and the alternative text do not accommodate salvage*

As the preliminary draft Protocol and the alternative text are currently drafted, a *subsequent* buyer or creditor would wipe out insurers' salvage interests (even after the insurers have paid the loss and acquired salvage) simply by registering the sale or security interest in the form of an international interest under the future Protocol.

A "registered interest has priority . . . over an *unregistered interest*,"<sup>11</sup> such as, insurers' salvage interests, which cannot be registered. The priority applies *even if the creditor has knowledge of the pre-existing salvage interest*.<sup>12</sup> These are some examples:

(i) Buyer takes title free and clear of salvage, even with knowledge

A subsequent buyer of a satellite under a registered sale "acquires its interest in that asset free from . . . an unregistered interest, *even if the buyer has actual knowledge* of the unregistered interest."<sup>13</sup> In other words, the buyer acquires the satellite free of any salvage obligations to the insurer, even where he knows that the insurers have paid a loss and acquired salvage rights.

(ii) Creditors may exercise default remedies at the expense of salvage, even with knowledge.

A subsequent creditor under a security agreement may exercise the following default remedies without regard for the insurers' existing salvage, even with knowledge of the salvage interest:

- (a) take possession or control of the satellite;
- (β) sell or lease the satellite; or
- (γ) collect and receive any income or profits from the use of the satellite.<sup>14</sup>

(e) *Proposed language to be added to the preliminary draft Protocol and the alternative text*

To remedy this situation, the insurers initially, in 2007, requested that they be allowed to *register* salvage interests, but have instead agreed to request that the following clauses be

<sup>9</sup> It is not an interest granted under a security agreement, because it is not intended "to secure the performance of any existing or future obligation of the [debtor/insured] or a third person." Convention, Art. 1(ii). It is not an interest vested in a conditional seller under a title reservation agreement or in a lessor under a leasing agreement. Not even Title Salvage would, without more, qualify as an interest vested in a buyer under a contract of sale.

<sup>10</sup> *Id.* Arts. 1(i) and 2(2); preliminary draft Protocol, Art. III; alternative text, Art. III.

<sup>11</sup> Convention, Art. 29(1) (emphasis added). *See id.* Art. 1(mm) (defining an unregistered interest as "an interest . . . which has not been registered, whether or not it is registrable under this Convention . . .").

<sup>12</sup> *Id.* Art. 29(2) ("The priority over the first-mentioned interest under the preceding paragraph applies: (a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and (b) even as regards value given by the holder of the first-mentioned interest with such knowledge.").

<sup>13</sup> Preliminary draft Protocol, Art. XIII(1); alternative text, Art. XXIV(1) (emphasis added).

<sup>14</sup> Convention, Art. 8(1).

added to the preliminary draft Protocol and the alternative text for Title Salvage and Revenue Salvage, respectively:

“For the purposes of Article III of the Protocol, an interest in a space asset acquired by a satellite insurer as a salvage interest is deemed to have been acquired by way of sale.<sup>15</sup>

For the purposes of Article 16(1)(c) of the Convention, when an insurer makes a payment of insurance proceeds for a covered loss of an insured space asset in which a creditor has an international interest, the insurer shall have the right of subrogation to the creditor’s associated rights and related international interest and any recorded debtor’s rights in the space asset to the extent of the insurer’s salvage interest. This right of subrogation shall be in addition to and shall not affect any right of subrogation the insurer may have under national law or the insurance policy.”

(f) *The objective of the proposed clauses*

The Title Salvage clause is intended to remedy the current situation where the acquisition of title (ownership) through salvage is not registrable. By treating the acquisition of Title Salvage as a sale, it may be registered. Sir Roy Goode proposed as follows:

“[S]ince the draft Space Protocol, like the Aircraft Protocol, extends the Convention to cover outright sales, a paragraph could be added that for the purpose of Article III an interest in a satellite acquired by a satellite insurer as a salvage interest is deemed to have been acquired by way of sale . . .”<sup>16</sup>

The Revenue Salvage clause is intended to allow for subrogation to the creditor’s international interest by insurers that have paid proceeds for a satellite loss, thereby affording the insurer a means to protect its claim to salvage. Without the clause, “[t]he insurer has no right of subrogation to the creditor’s international interest because this has been discharged by payment and there can be no right of subrogation against the debtor . . .”<sup>17</sup> To remedy this

<sup>15</sup> See Sir Roy Goode, A proposal for an alternative text of the preliminary draft Space Protocol in the light of the provisional conclusions reached at the Government/Industry meeting held in New York on 19 and 20 June 2007, Explanatory Memo (April 2008) (hereinafter referred to as the *Explanatory memorandum*), ¶ 19 (proposing the text).

<sup>16</sup> Explanatory memorandum, ¶ 19.

<sup>17</sup> *Id.* ¶ 18. In the United States of America, as a general rule, payment of proceeds to a creditor *extinguishes* the insured’s debt to the creditor, thus leaving no claim or security interest for the insurer to subrogate into. See, e.g., **New York Jurisprudence: Ins.** §2193 [2nd ed.] (“[P]ayment by the insurer to the mortgagee, to the extent of his or her interest, under a standard mortgage clause is ordinarily regarded as having been made on behalf of the mortgagor and extinguishes the mortgagor’s debt . . .”) (quoting **Reed v. Federal Ins. Co.**, 510 N.Y.S.2d 618, 623 (N.Y. App. Div. 1987)). The rule does *not* apply if the insurer is not liable under the policy due to some fault of the insured; in that case the debt is not extinguished and the insurer has an equitable subrogation right. See, e.g., **In re SPG of Schenectady, Inc.**, 833 F.2d 413, 418 (2nd Cir. 1987) (“[O]nly a showing of the mortgagor’s culpable conduct would prevent the insurance proceeds from being applied to the mortgage debt and would trigger the insurer’s subrogation rights . . .”); **Merchants Nat’l Bank v. Southeastern Fire Ins. Co.**, 854 F.2d 100, 105 (5th Cir. 1988) (citing **Tolar v. Bankers Trust Savings & Loan Ass’n.**, 363 So.2d 732 (Miss. 1978)) (similar statement). This rule against subrogation against one’s own insured/mortgagor extends also to *contractual* subrogation, with limited exceptions. See, e.g., **Lee L. Russ, Couch on Insurance**, § 224.1 (3d ed. 2003) (citing **AGIP Petroleum Co., Inc. v. Gulf Island Fabrication, Inc.**, 920 F. Supp. 1318 (S.D. Tex. 1996) and **Vesta Ins. Co. v. Amoco Production Co.**, 986 F.2d 981 (5th Cir. 1993)) (reimbursement); **Farr**

consequence, the proposed text allows insurers who have paid insurance proceeds and acquired salvage interests a limited right of subrogation, to the extent of their salvage interests.

## APPENDIX VII

### ALTERNATIVE TEXT OF THE PRELIMINARY DRAFT SPACE PROTOCOL INCORPORATING TECHNICAL AMENDMENTS, FOR PRESENTATION TO THE COMMITTEE OF GOVERNMENTAL EXPERTS

#### **Explanatory Memorandum on technical amendments in the alternative text**

by Professor Sir Roy Goode (United Kingdom) and Mr Michel Deschamps (Canada)

#### **Introduction**

1. Our first Explanatory Memorandum and accompanying alternative text (policy) were directed to the policy issues referred to and examined by the Steering Committee. The alternative text accompanying this second Explanatory Memorandum incorporates technical additions and amendments which were not referred to the Steering Committee but are submitted for consideration by the Committee of governmental experts and by its Drafting Committee of which Canada and the United Kingdom are co-Chairmen and we are their representatives. The purpose of this Explanatory Memorandum is to explain these technical additions and amendments, several of which derive from lessons learned at the Luxembourg diplomatic Conference in February 2007, when the Luxembourg Protocol relating to railway rolling stock was adopted. All ensuing references to the alternative text are to the technical version accompanying this Explanatory Memorandum.

2. The first Protocol to the Cape Town Convention (“the Convention”) was that relating to aircraft objects and was concluded in November 2001 at the same time as the Convention. The policy in relation to subsequent Protocols has been to preserve uniformity by following the provisions of the Aircraft Protocol, departing from them only where required by the particular subject-matter even where the drafting might have been improved. However, there were a few drafting errors and uncertainties in the Convention and Aircraft Protocol which had to be explained in the Official Commentary on those instruments, and we have followed the Luxembourg Protocol in addressing these.

#### **Revised arrangement of Articles**

3. We have rearranged the Articles so as to provide a sequence that we regard as both more logical and more closely aligned to the two earlier Protocols. In the Table the numbers in brackets are those of the Articles in the alternative text (policy).

#### **Additional definition**

4. Article I(2)(a) provides a definition of “controlled goods” missing from the December 2003 text and relevant to Article XXVII(2) of the alternative text.

#### **Location/situation of space asset**

5. Various provisions of the Convention and the preliminary draft Protocol to the Convention on Matters specific to Space Assets (“the Space Protocol”) refer to the location or situation of the space asset. We refer to Articles 1(n), 43(1), 52(5)(b) and 54(1) of the Convention and Article

XXIII(2) of the Space Protocol (technical). However, these are not appropriate in relation to a space asset when not on Earth. For such assets Article I(3) substitutes a reference to the State which is the State of registry of the object or space asset for the purposes of the United Nations Convention on Registration of Objects Launched into Outer Space opened for signature in New York on 14 January 1975 (“the 1975 U.N. Convention”). It seemed to us that this provides the most reliable criterion for determining matters such as internal transactions, jurisdiction, and the like, as regards a space asset when not on Earth. But while the space asset is on Earth the above provisions will continue to apply.

6. The question arises what happens if the space asset is never launched. We have sought to cover this by a provision in Article XXXI(3) empowering the debtor to apply for discharge of a registration where the asset is not in or launched into space within [one year] of the date of registration.

#### **Exclusion from Aircraft Protocol**

7. Article II(3) of the alternative text ensures that an object which is a space asset does not become subject to the Aircraft Protocol while in airspace and en route to outer space.

#### **Choice of law**

8. Article VIII, in providing for party autonomy as regards the choice of law in their agreements, follows the Aircraft and Luxembourg Protocols. It does not, however, extend to rights assignments and reassignments, for which those Protocols do not provide. It is for the Committee of governmental experts to decide whether Article VIII should be extended to cover rights assignments and reassignments.

#### **Identification of space assets**

9. Under the Convention unique identification of the object is required both for the constitution of an international interest and for registration purposes. At the diplomatic Conference at which the Luxembourg Protocol was opened to signature it was pointed out that for the purposes of the relationship between creditor and debtor there was no need for unique identification. All that was necessary was that the asset, including an after-acquired asset, could be identified as falling within the scope of the agreement. On this basis there could be no objection to an agreement covering a class of assets or all present and future assets and this would avoid the need for a separate agreement each time the debtor acquired a new asset. Accordingly, the Luxembourg Protocol distinguishes the identification requirements for the constitution of an agreement from those applicable to registration, the former allowing generic descriptions (Article V) while the latter requires unique identification (Article XIV). We have, therefore, ventured to adopt this approach by separating the very flexible identification requirements for the constitution of an international interest in a space asset (Article VII) from the more stringent requirements for registration of an international interest in the International Registry (Article XXX). Article VII(2), dealing with an interest in a future space asset, follows Article 5(b) of the 1988 UNIDROIT Convention on International Factoring.

10. It seems desirable that the identification criteria should not be left exclusively to regulations. Article XXX(1) therefore contains some suggested basic criteria for a satellite as a whole which can be supplemented by regulations. At the suggestion of the U.S. delegation, these include the orbital parameters set out in Article IV(1)(d) of the 1975 U.N. Convention. It is for consideration whether these are adequate. It will also be necessary to develop distinct identification criteria for each of the principal components (transponders, etc).

### **Placement of command codes**

11. Articles XX and XXVII, dealing with the placement of data and materials, have been amended to include a reference to the placement of command codes, which are very relevant to the exercise of control over a space asset.

### **Priority provisions**

12. We have amended Article XXIV(2) to remove an inconsistency between paragraph 1 and paragraph 2 derived from the Aircraft Protocol. Attention was drawn to this inconsistency in paragraph 5.72 of the Official Commentary on the Convention and Aircraft Protocol, which stated that paragraph 2 should be interpreted in the manner in which it is now expressed in the present Article XXIV(2).

### **Entry into force**

13. Article XXXVII of the alternative text follows Article XXIII of the Luxembourg Protocol in containing provisions designed to ensure that the future Space Protocol cannot enter into force until the future International Registry for space assets is fully operational.

### **Transitional provisions**

14. Article 60 of the Convention contains transitional provisions which, due to the pressure of time, were not worked out as clearly as they might have been, leaving several issues to be clarified by the Official Commentary. Article XXXIX follows Article XXVI of the Luxembourg Protocol in helping to remove the uncertainties.

### **Article XL(1)(b)**

15. The words “any one” have been changed to “either.” “Any one” was taken from the Aircraft Protocol, where it was used correctly because there were three references. By contrast Article XXVII(1) of the Luxembourg Protocol, which contains only two references, correctly substituted “either” for “any one” and we have done the same.

### **Salvage interests**

16. Salvage insurers had requested that the Space Protocol be revised to permit registration of salvage interests and prospective salvage interests and to make creditors’ remedies subject to these. The satellite operators considered this would create unacceptable priority situations and we believe that others may have shared this concern. We understand, however, that salvage insurers are no longer seeking to create a new type of international interest but merely to provide for a limited right of subrogation to the international interest held by the creditor whose claim has been discharged by the salvage insurer, in which case the problem presented by the satellite operators will not arise. As the question was outside the purview of the Steering Committee and will have to be decided by the Committee of governmental experts we say no more about it.

Roy Goode  
Michel Deschamps  
5 July 2009.

## TABLE

Note: the numbers in brackets are those of the Articles in the alternative text (policy) where different.

### PREAMBLE

#### CHAPTER I

#### SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I	Defined terms
Article II	Application of the Convention as regards space assets and debtor's rights
Article III [IV]	Return of a space asset
Article IV [III]	Application of the Convention to sales
Article V [XIV]	Formalities, effects and registration of contracts of sale
Article VI [XV]	Representative capacities
Article VII [XVI(1), (2)]	Identification of space assets
Article VIII [XVII]	Choice of law
Article IX [VI]	Formal requirements for rights assignment
Article X [V]	Effects of rights assignment
Article XI [VII]	Assignment of future rights
Article XII [VIII]	Recording of rights assignment as part of registration of international interest
Article XIII [IX]	Priority of recorded rights assignment
Article XIV [X]	Rights grantor's duty to creditor
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*ALTERNATIVE TEXT OF THE PRELIMINARY DRAFT PROTOCOL TO  
THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE  
EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS*

*(prepared by Professor Sir Roy Goode and Mr Michel Deschamps  
for the third session of the Committee of governmental experts)*

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it desirable to implement the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*) as it relates to space assets, in the light of the purposes set out in the preamble to the Convention,

MINDFUL of the need to adapt the Convention to meet the particular demand for and the utility of space assets and the need to finance their acquisition and use as efficiently as possible,

MINDFUL of the benefits to all States from expanded space-based services which the Convention and this Protocol will yield,

MINDFUL of the established principles of space law, including those contained in the international space treaties under the auspices of the United Nations,

MINDFUL of the continuing development of the international commercial space industry and recognising the need for a uniform and predictable regimen governing the taking of security over space assets and facilitating asset-based financing of the same,

HAVE AGREED upon the following provisions relating to space assets:

CHAPTER I – SPHERE OF APPLICATION AND GENERAL PROVISIONS

*Article I – Defined terms*

1. – In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.

2. – In this Protocol the following terms are employed with the meanings set out below:

(a) “controlled”, in relation to goods, technology, data or services to which Article XXVII(2) applies means that their transfer is subject to governmental requirements or restrictions;

(b) “debtor’s rights” means all rights to payment or other performance due to a debtor by any person with respect to a space asset;

(c) “guarantee contract” means a contract entered into by a person as a guarantor;

(d) “guarantor” means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or standby letter of credit or other form of credit insurance;

(e) “insolvency-related event” means: (i) the commencement of the insolvency proceedings; or (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;

(f) “launch vehicle” means a vehicle used or intended to be used to transport persons or goods to or from space;

(g) “licence” means any permit, licence, authorisation, concession or equivalent instrument that is granted or issued by, or pursuant to the authority of, a national or intergovernmental or other international body or authority, when acting in a regulatory capacity, to manufacture, launch, control, use or operate a space asset, or relating to the use of orbits positions or the transmission, emission or reception of electromagnetic signals to and from a space asset;

(h) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor’s main interests is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat, or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise;

(i) “rights assignment” means a contract by which the debtor confers on the creditor an interest (including an ownership interest) in or over the whole or part of existing or future debtor’s rights to secure the performance of, or in reduction or discharge of, any existing or future obligation of the debtor to the creditor which under the agreement creating or providing for the international interest is secured by or associated with the space asset to which the agreement relates;

(j) “rights reassignment” means a contract by which the creditor transfers to the assignee, or an assignee transfers to a subsequent assignee, the whole or part of its rights and interest under a rights assignment;

(k) “space” means outer space, including the Moon and other celestial bodies; and

(l) “space asset” means any man-made uniquely identifiable satellite, satellite bus, satellite transponder, payload, space station, space vehicle, reusable launch vehicle, reusable space capsule or any module or other object, in each case only where capable of being independently owned, used or controlled, in or intended to be launched in or into space or used or intended to be used as a launch vehicle, including any such asset in course of manufacture or assembly, together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto.

3. – In the Convention and this Protocol references to a Contracting State, or territorial unit of a Contracting State, on the territory of which an object or space asset is located or situated or from which it is controlled shall, as regards a space asset when not on Earth, be treated as references to the State which is the State of registry of the object or space asset for the purposes of the United Nations Convention on Registration of Objects Launched into Outer Space opened for signature in New York on 14 January 1975.

#### *Article II – Application of the Convention as regards space assets and debtor’s rights*

1. – The Convention shall apply in relation to space assets and the assignment and reassignment of debtor’s rights as provided by the terms of this Protocol.

2. – The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to space assets.

3. – An object which is a space asset as defined by Article I(2)(l) shall not constitute an aircraft object for the purposes of the Convention as applied to aircraft objects, whether the object is on earth or in air or space.

*Article III – Return of a space asset*

The return of a space asset from space does not affect an international interest in that asset.

*Article IV – Application of the Convention to sales*

The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

Articles 3 and 4;  
Article 16(1)(a);  
Article 19(4);  
Article 20(1) (as regards registration of a contract of sale or a prospective sale);  
Article 25(2) (as regards a prospective sale); and  
Article 30.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XXIV), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) shall apply to contracts of sale and prospective sales.

*Article V – Formalities, effects and registration of contracts of sale*

1. – For the purposes of this Protocol, a contract of sale is one which:

- (a) is in writing;
- (b) relates to a space asset of which the seller has power to dispose; and
- (c) enables the space asset to be identified in conformity with this Protocol.

2. – A contract of sale transfers the interest of the seller in the space asset to the buyer according to its terms.

3. – Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

*Article VI – Representative capacities*

A person may, in relation to a space asset, enter into an agreement or a contract of sale, effect a registration as defined by Article 16(3) of the Convention and assert rights and interests under the Convention in an agency, trust or representative capacity.

*Article VII – Identification of space assets*

1. – For the purposes of Article 7(c) of the Convention and Article V of this Protocol, a description of a space asset is sufficient to identify the space asset if it contains:

- (a) a description of the space asset by item;
- (b) a description of the space asset by type;
- (c) a statement that the agreement covers all present and future space assets; or
- (d) a statement that the agreement covers all present and future space assets except for specified items or types.

2. – For the purposes of Article 7 of the Convention, an interest in a future space asset identified in accordance with the preceding paragraph shall be constituted as an international interest as soon as the chargor, conditional seller or lessor acquires the power to dispose of the space asset, without the need for any new act of transfer.

*Article VIII – Choice of law*

1. – This Article applies unless a Contracting State has made a declaration pursuant to Article XL(1).

2. – The parties to an agreement, or a contract of sale, or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part.

3. – Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

*Article IX – Formal requirements for rights assignment*

An assignment is constituted as a rights assignment where it is in writing and enables:

- (a) the debtor's rights the subject of the agreement to be identified;
- (b) the space asset to which those rights relate to be identified; and
- (c) the obligations secured by the agreement to be determined, but without the need to state a sum or maximum sum secured.

*Article X – Effects of rights assignment*

1. – Except as otherwise agreed by the parties, a rights assignment made in conformity with Article IX transfers to the creditor all debtor's rights.

2. – Subject to paragraph 3, the applicable law shall determine the defences and rights of set-off available to the grantor of debtor's rights against the creditor.

3. – The grantor of debtor's rights may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph other than defences arising from fraudulent acts on the part of the creditor.

*Article XI – Assignment of future rights*

A provision in a rights assignment by which future debtor's rights are assigned operates to confer on the creditor an interest in the assigned rights when they come into existence without the need for any new act of transfer.

*Article XII – Recording of rights assignment  
as part of registration of international interest*

1. – The holder of an international interest or prospective international interest in a space asset to whom the debtor has granted an interest in or over debtor's rights under a rights assignment may, when registering the international interest or prospective international interest or subsequently by amendment to such registration, record the rights assignment as part of the registration. Such record may identify the assigned rights either specifically or by a statement that the debtor has assigned all or some of the debtor's rights, without further specification.

2. – Articles 18, 19, 20(1) – (4) and 25(1), (2) and (4) of the Convention apply in relation to a record made in accordance with the preceding paragraph as if:

- (a) references to an international interest were references to a rights assignment;
- (b) references to registration were references to the recording of the rights assignment; and
- (c) references to the debtor were references to the grantor of the debtor's rights.

3. – A search certificate issued under Article 22 of the Convention shall include the particulars recorded.

4. – Where a rights assignment has been recorded as part of the registration of an international interest which is subsequently transferred in accordance with Articles 31 and 32 of the Convention, the transferee of the international interest acquires:

- (a) all the rights of the creditor under the rights assignment; and
- (b) the right to be shown in the record as assignee under the rights assignment.

5. – Discharge of the registration of an international interest also discharges any record forming part of that registration under paragraph 1.

*Article XIII – Priority of recorded rights assignment*

1. – Subject to paragraph 2, a recorded rights assignment has priority over any other rights assignment subsequently recorded and over an unrecorded rights assignment.

2. – Where a rights assignment is recorded in the registration of a prospective international interest it shall be treated as unrecorded unless and until the prospective international interest becomes an international interest, in which event the rights assignment has priority as from the time it was recorded.

*Article XIV – Rights grantor's duty to creditor*

1. – To the extent that the debtor's rights have been assigned to the creditor under a rights assignment, the person from whom payment or other performance of the debtor's rights is due is bound by the rights assignment and has a duty to make payment or give other performance to the creditor, if but only if:

- (a) such person has been given notice of the rights assignment in writing by or with the authority of the debtor; and
- (b) the notice identifies the debtor's rights.

2. – For the purposes of the preceding paragraph, a notice given by the creditor after the debtor defaults in performance of any obligation secured by a rights assignment is given with the authority of the debtor.

3. – Irrespective of any other ground on which payment or performance by the grantor discharges the grantor from liability, payment or performance shall be effective for this purpose if made in accordance with paragraph 1.

4. – Nothing in this Article shall affect the priority of competing rights assignments.

*Article XV – Rights reassignment*

1. – Articles IX to XIV apply to a rights reassignment by the creditor or a subsequent assignee as if references to the creditor or holder were references to the assignee or subsequent assignee.

2. – A rights reassignment relating to an international interest in a space asset may be recorded only as part of the registration of the assignment of the international interest to the person to whom the rights reassignment was made.

*Article XVI – Duty of assignor as to licences*

The assignor under a rights assignment or rights reassignment shall at the request of the assignee take all steps within its power to procure the transfer of its licence to the assignee or the termination of its licence and the grant of a new licence to the assignee, and shall fully co-operate with the assignee to that end.

*Article XVII – Derogation*

The parties may, by agreement in writing, exclude the application of Article XXII and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article XVIII(2) - (3).

## CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

*Article XVIII – Modification of default remedies provisions as regards space assets*

1. – This Article applies only where a Contracting State has made a declaration to that effect under Article XL(2) [and to the extent stated in such declaration].

2. – (a) Article 8(3) of the Convention shall not apply to space assets.

(b) In relation to space assets the following provisions shall apply:

(i) any remedy given by the Convention shall be exercised in a commercially reasonable manner;

(ii) a remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement between the debtor and the creditor except where such a provision is manifestly unreasonable.

3. – A chargee giving ten or more working days' prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing "reasonable prior notice" specified in Article 8(4) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

[4. – Insert any provision as regards enforcement against a space asset functionally linked to another space asset in which another creditor has an interest].<sup>1</sup>

*Article XIX – Default remedies as regards rights assignments and rights reassignments*

1. – In the event of default by the debtor under a rights assignment Articles 8, 9 and 11 to 14 of the Convention apply in the relations between the assignor and the assignee (and in relation to the debtor's rights apply in so far as those provisions are capable of application to intangible property) as if references:

(a) to the secured obligations and the security interest were references to the obligations secured by the rights assignment and the security interest created by that assignment;

(b) to the chargee or creditor and chargor or debtor were references to the assignee and assignor;

(c) to the object were references to the debtor's rights.

2. – In the event of default by the assignor in performance of any obligation secured by a rights reassignment made by way of security the preceding paragraph applies as if references to the assignment were references to the reassignment.

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<sup>1</sup> Pursuant to a decision of the Sub-committee on default remedies in relation to components, as endorsed by the Steering Committee at its meeting in Paris on 14 and 15 May 2009, informal negotiations are taking place between the Governments of Germany and the United States of America for the preparation of a joint proposal to be submitted to the Committee of governmental experts at its forthcoming session.

*Article XX – Placement of data and materials*

The parties to an agreement may specifically agree for the placement of command codes and other data and materials with another person in order to afford the creditor the opportunity to take possession of, establish control over or operate the space asset.

*Article XXI – Modification of provisions regarding relief pending final determination*

1. – This Article applies only where a Contracting State has made a declaration to that effect under Article XL(3) and to the extent stated in such declaration.

2. – For the purposes of Article 13(1) of the Convention, “speedy” in the context of obtaining relief means within such number of working days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.

3. – Article 13(1) of the Convention applies with the following being added immediately after sub-paragraph (d):

“(e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom”,  
and Article 43(2) applies with the insertion after the words “Article 13(1)(d)” of the words “and (e)”.

4. – Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor’s international interest has priority under the provisions of Article 29 of the Convention.

[5. – The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.]

*Article XXII – Remedies on insolvency*

1. – This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XL(4).

*Alternative A*

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of or control and operation over the space asset to the creditor no later than the earlier of:

(a) the end of the waiting period; and

(b) the date on which the creditor would be entitled to possession of or control and operation over the space asset if this Article did not apply.

3. – For the purposes of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

4. – References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.



5. – Unless and until the creditor is given possession of or control and operation over the space asset under paragraph 2:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the space asset and maintain it and its value in accordance with the agreement; and

(b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

6. – Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the space asset under arrangements designed to preserve the space asset and maintain it and its value.

7. – The insolvency administrator or the debtor, as applicable, may retain possession of or control and operation over the space asset where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

8. – No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.

9. – No obligations of the debtor under the agreement may be modified without the consent of the creditor.

10. – Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

11. – No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests.

12. – The Convention as modified by Article XVIII of this Protocol shall apply to the exercise of any remedies under this Article.

*Alternative B*

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XL(4) whether it will:

(a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or

(b) give the creditor the opportunity to take possession of or control and operation over the space asset, in accordance with the applicable law.

3. – The applicable law referred to in sub-paragraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.

4. – The creditor shall provide evidence of its claims and proof that its international interest has been registered.

5. – If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 2, or when it has declared that it will give the creditor the opportunity to take possession of or control and operation over the space asset but fails to do so, the court may permit the creditor to take possession of or control and operation over the space asset upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

6. – The space asset shall not be sold pending a decision by a court regarding the claim and the international interest.

#### *Article XXIII – Insolvency assistance*

1. – This Article applies only where a Contracting State has made a declaration pursuant to Article XL(1).

2. – The courts of a Contracting State: (i) in which the space asset is situated; (ii) from which the space asset may be controlled; (iii) in which the debtor is located; or (iv) otherwise having a close connection with the space asset, shall [, in accordance with the law of the Contracting State,] co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XXII.

#### *Article XXIV – Modification of priority provisions*

1. – A buyer of a space asset under a registered sale acquires its interest in that asset free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.

2. – A buyer of a space asset under a registered sale acquires its interest in that asset subject to an interest registered at the time of its acquisition.

#### *Article XXV – Modification of assignment provisions*

Article 33(1) of the Convention applies with the following being added immediately after sub-paragraph (b):

“and (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.”

#### *Article XXVI – Debtor provisions*

1. – In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the space asset in accordance with the agreement as against:

(a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4)(b) of the Convention or, in the capacity of buyer, Article XXIV(1) of this Protocol, unless and to the extent that the debtor has otherwise agreed; and

(b) the holder of any interest to which the debtor's right or interest is subject pursuant to Article 29(4)(a) of the Convention or, in the capacity of buyer, Article XXIV(2) of this Protocol, but only to the extent, if any, that such holder has agreed.

2. – Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to space assets.

*Article XXVII – Limitations on remedies*

1. – This Article applies only where a Contracting State has made a declaration pursuant to Article XL(1).

2. – A Contracting State [, in accordance with its laws and regulations,] may restrict or attach conditions to the exercise of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol, including the placement of command codes and other data and materials pursuant to Article XX, where the exercise of such remedies would involve or require the transfer of controlled goods, technology, data or services, or would involve the transfer or assignment of a licence, or the grant of a new licence, to the creditor.

[3. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare whether and to which extent the remedies provided in Chapter III of the Convention and in Articles XVIII to XXIII of this Protocol shall be exercisable for space assets as far as they are used for establishing or maintaining its public services as specified in its declaration or determined by a competent authority of that State notified to the Depository.]<sup>2</sup>

[3. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare any limitations to the exercise of remedies provided in Chapter III of the Convention and in Articles XVIII to XXIII of this Protocol with respect to space assets designed and used for flight control and navigation of aircraft, maritime navigation, search and rescue and similar public services as specified in its declaration or determined by a competent authority of that State notified to the Depository.]<sup>2</sup>

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<sup>2</sup> The Sub-committee on public service proposed a menu of nine options from which Contracting States could make a selection by declaration at the time of ratification or accession. Subject to further elaboration on precise wording these were:

- the holder of an international interest in a space asset providing a public service may not exercise default remedies that would result in the interruption of that public service;
- the holder of an international interest in a space asset providing a public service shall have the right to exercise a "step-in" right in the event of default by the debtor providing that public service;
- a Contracting State shall have the right to exercise a "step-in" right in the event of default by a debtor providing a public service;
- fair compensation shall be provided to the holder of an international interest in a space asset providing a public service in the event that a Contracting State intervenes in the operation of that asset;
- default remedies may only be exercised after the elapsing of a specified period of time;
- where a privately owned space asset provides public services to more than one Contracting State, a Contracting State shall declare how it will perform its overall obligations in respect of that asset, for example by the granting of compensation or the exercising of a "step-in" right;
- a Contracting State may record a notice with the future International Registry in respect of a space asset providing a public service, the effect of which will be, first, that any creditor having registered an international interest in that space asset prior to the recording of such notice may only exercise any default remedy that he possesses under the Convention as applied to space assets to the extent that the Contracting State does not elect to assume the obligations of the defaulting debtor and, secondly, that any creditor having registered an international interest in the space asset after the recording of such notice may only exercise

CHAPTER III – REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS  
IN SPACE ASSETS

*Article XXVIII – The Supervisory Authority*

1. – The Supervisory Authority shall be designated at the Diplomatic Conference to Adopt a Space Assets Protocol to the Cape Town Convention, provided that such Supervisory Authority is able and willing to act in such capacity.

2. – The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.

3. – The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.

*Article XXIX – First regulations*

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

*Article XXX – Identification of space assets for registration purposes*

1. – A description of a satellite that contains the name of the manufacturer, the model, the launch site, the launch date, the orbital parameters (including inclination, nodal period, apogee and perigee), and the general function of the space asset, and satisfies such other requirements as may be established in the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry.

2. – [Insert separate identification criteria for each other category of space asset, incorporating a similar reference to additional criteria prescribed by the regulations].

*Article XXXI – Additional modifications to Registry provisions*

1. – For the purposes of Article 19(6) of the Convention, the search criteria for space assets shall be the criteria specified in Article XXX of this Protocol.

any default remedy that he possesses under the Convention as applied to space assets to the extent that the public service in question is not thereby interrupted;

- a Contracting State may determine the application of public service limitations on a case-by-case basis, namely at the time of the issuing of a licence or permit for the operation of a space asset intended to be used for the provision of a public service; and/or
- a Contracting State may, at the time when the space financing project arises, agree with the holder of an international interest in a space asset providing a public service as to the conditions necessary for "step-in" rights to be exercised.

The Steering Committee endorsed these proposals with two additional options, namely a provision for the arbitration of disputes concerning the maintenance of a public service being performed by a space asset and the solution offered by Article XXV of the Luxembourg Protocol.

2. – For the purposes of Article 25(2) of the Convention, and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest shall take such steps as are within its power to procure the discharge of the registration no later than five working days after the receipt of the demand described in such paragraph.

[3. – Where a space asset in respect of which an interest has been registered is not in or launched into space within [one year] of such registration, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at the address stated in the registration].

3. [*bis*] – The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers and discharge of the duties contemplated by Article 17(2) of the Convention.

4. – The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis.

5. – The insurance or financial guarantee referred to in Article 28(4) shall cover all liability of the Registrar under the Convention.

6. – Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

#### CHAPTER IV – JURISDICTION

##### *Article XXXII – Waiver of sovereign immunity*

1. – Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to a space asset under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

2. – A waiver under the preceding paragraph must be in writing and contain a description, in accordance with Article VII, of the space asset.

#### CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS

##### *Article XXXIII – Relationship with the UNIDROIT Convention on International Financial Leasing*

The Convention as applied to space assets shall supersede the *UNIDROIT Convention on International Financial Leasing* in respect of the subject matter of this Protocol, as between States Parties to both Conventions.

*[Article XXXIV – Relationship with the United Nations Outer Space Treaties and instruments of the International Telecommunication Union*

The Convention as applied to space assets does not affect State Party rights and obligations under the existing United Nations Outer Space Treaties or instruments of the International Telecommunication Union.]

[CHAPTER VI – FINAL PROVISIONS

*Article XXXV – Signature, ratification, acceptance, approval or accession*

1. – This Protocol shall be open for signature in ... on ... by States participating in the Diplomatic Conference to Adopt a Space Assets Protocol to the Cape Town Convention held at ... from ... to ... . After ..., this Protocol shall be open to all States for signature at ... until it enters into force in accordance with Article XXXVII.

2. – This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.

3. – Any State which does not sign this Protocol may accede to it at any time.

4. – Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

5. – A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

*Article XXXVI – Regional Economic Integration Organisations*

1. – A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. – The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. – Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

*Article XXXVII – Entry into force*

1. – This Protocol enters into force between the States which have deposited instruments referred to in sub-paragraph (a) on the later of:

(a) the first day of the month following the expiration of three months after the date of the deposit of the [fifth] instrument of ratification, acceptance, approval or accession, and

(b) the date of the deposit by [the Secretariat] with the Depositary of a certificate confirming that the International Registry is fully operational.

2. – For other States this Protocol enters into force on the first day of the month following the later of:

(a) the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession; and

(b) the date referred to in sub-paragraph (b) of the preceding paragraph.

*Article XXXVIII – Territorial units*

1. – If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. – Any such declaration shall state expressly the territorial units to which this Protocol applies.

3. – If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.

4. – Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. – If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:

(a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;

(b) any reference to the location of the space asset in a Contracting State refers to the location of the space asset in a territorial unit to which the Convention and this Protocol apply; and

(c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply.

*Article XXXIX – Transitional Provisions*

In relation to space assets Article 60 of the Convention shall be modified as follows:

- (a) in paragraph 2(a), after "situated" insert "at the time the right or interest is created or arises";
- (b) replace paragraph 3 with the following:

"3. – A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when Articles 29, 35 and 36 of the Convention as modified or supplemented by the Protocol will become applicable, to the extent and in the manner specified in the declaration, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in that State. Any priority of the right or interest under the law of that State, so far as applicable, shall continue if the right or interest is registered in the International Registry before the expiration of the period specified in the declaration, whether or not any other right or interest has previously been registered."

*Article XL – Declarations relating to certain provisions*

1. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare:

- (a) that it will not apply Article VIII;
- (b) that it will apply either or both of Articles XXIII and XXVII.

2. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article XVIII [wholly or in part].

3. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article XXI wholly or in part. If it so declares with respect to Article XXI(2), it shall specify the time-period required thereby.

4. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XXII and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XXII.

5. – The courts of Contracting States shall apply Article XXII in conformity with the declaration made by the Contracting State that is the primary insolvency jurisdiction.

*Article XLI – Declarations under the Convention*

Declarations made under the Convention, including those made under Articles 39, 40, 53, 54, 55, 57, 58 and 60 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.



*Article XLII – Reservations and declarations*

1. – No reservations may be made to this Protocol but declarations authorised by Articles XXXVIII, XL, XLI and XLIII may be made in accordance with these provisions.

2. – Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

*Article XLIII – Subsequent declarations*

1. – A State Party may make a subsequent declaration, other than the declaration made in accordance with Article XLI under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. – Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declaration had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

*Article XLIV – Withdrawal of declarations*

1. – Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XLI under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. – Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal of declaration.

*Article XLV – Denunciations*

1. – Any State Party may denounce this Protocol by notification in writing to the Depositary.

2. – Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

*Article XLVI – Review Conferences, amendments and related matters*

1. – The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regimen established in the Convention as amended by the Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. – At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

(a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the assets covered by its terms;

(b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3.– Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States Parties which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by [five] States Parties in accordance with the provisions of Article XXXVII relating to its entry into force.

*Article XLVII – Depositary and its functions*

1. – Instruments of ratification, acceptance, approval or accession shall be deposited with ..., which is hereby designated the Depositary.

2. – The Depositary shall:

(a) inform all Contracting States of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Protocol;

(iii) each declaration made in accordance with this Protocol, together with the date thereof;

(iv) the withdrawal or amendment of any declaration, together with the date thereof; and

(v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;

(b) transmit certified true copies of this Protocol to all Contracting States;

(c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and

(d) perform such other functions customary for depositaries.]

## APPENDIX VIII

### REPORT OF THE DRAFTING COMMITTEE

The Drafting Committee in the composition established by the Committee of governmental experts on 8 December 2009, met on 8 December 2009 from 5.45 p.m. to 8.30 p.m., on 9 December 2009 from 6 p.m. to 7.20 p.m., on 10 December 2009 from 4 p.m. to 8 p.m. and on 11 December from 9.30 a.m. to 11 a.m.

The following delegations were represented on the Drafting Committee: Canada, the People's Republic of China, France, the Russian Federation, Senegal, the United Kingdom and the United States of America. Ms Martine Leimbach (Credit Agricole S.A.) participated as an observer.

Sir Roy Goode (United Kingdom) and Mr Michel Deschamps (Canada) acted as co-Chairmen of the Drafting Committee.

The Drafting Committee agreed to take the alternative text (technical amendments) (W.P. 8 rev.) as a basis for its work and agreed to the following amendments:

#### TEXT OF THE PROVISIONS CONSIDERED AND REVISED BY THE DRAFTING COMMITTEE

(revisions highlighted)

#### *Article I – Defined terms*

##### **Article I(2)(a)**

(a) "controlled", in relation to goods, technology, data or services to which Article XXVII(2) applies means that their transfer is subject to governmental restrictions;

##### **Article I(2)(b)**

(b) "debtor's rights" means all rights to payment or other performance due or to become due to a debtor by any person with respect to a space asset;

##### **Article I(2)(l)**

(l) "space asset" means any man-made uniquely identifiable asset [capable of being independently owned, used or controlled,] in space or intended to be launched into space without losing its distinct identity, such as a satellite, space station, satellite bus, transponder, module, space vehicle, launch vehicle or space capsule [including any such asset in course of manufacture or assembly,] together with all installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating to its ownership, use or control.

#### *Article IV – Application of the Convention to sales*

1. The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if

references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

Articles 3 and 4;  
Article 16(1)(a);  
Article 19(4);  
Article 20(1) (as regards registration of a contract of sale or a prospective sale);  
Article 25(2) (as regards a prospective sale); and  
Article 30.

2. The provisions of this Protocol applicable to rights assignments also apply to an assignment to the buyer of a space asset of rights to payment or other performance due or to become due to the seller by any person in respect of the space asset, with the references in these provisions to the debtor and the creditor being read as referring to the seller and the buyer respectively.

3. In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XXIV), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) apply to contracts of sale and prospective sales.

#### ***Article IX – Formal requirements for rights assignment***

An assignment of debtor's rights is constituted as a rights assignment where it is in writing and enables:

- (a) the debtor's rights the subject of the rights assignment to be identified;
- (b) the space asset to which those rights relate to be identified; and
- (c) in the case of a rights assignment by way of security, the obligations secured by the agreement to be determined, but without the need to state a sum or maximum sum secured.

#### ***Article X – Effects of rights assignment***

1. – A rights assignment made in conformity with Article IX transfers to the creditor debtor's rights the subject of the rights assignment to the extent permitted by the applicable law.

2. – Subject to paragraph 3, the applicable law shall determine the defences and rights of set-off available to the grantor of debtor's rights against the creditor.

3. – The grantor of debtor's rights may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph other than defences arising from fraudulent acts on the part of the creditor.

#### ***Article XII – Recording of rights assignment as part of registration of international interest***

1. – The holder of an international interest or prospective international interest in a space asset on whom the debtor has conferred an interest in or over debtor's rights under a

rights assignment or who has acquired such an interest by subrogation may, when registering the international interest or prospective international interest or subsequently by amendment to such registration, record the rights assignment or acquisition by subrogation as part of the registration. Such record may identify the rights so assigned or acquired either specifically or by a statement that the debtor has assigned, or the holder of the international interest or prospective international interest has acquired, all or some of the debtor's rights, without further specification.

***Article XXX – Identification of space assets for registration purposes***

1. – With respect to a space asset that has not been launched, a description of the space asset that contains the name of its manufacturer, its manufacturer's serial number, and its model designation, and satisfies such other requirements as may be established in the regulations, is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry.

2. – With respect to a space asset that has been launched, a description of the space asset that contains the date and time of its launch, its launch site, the name of its launch provider and [...], is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry.