



**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
Fourth session
Rome, 3/7 May 2010**

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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 fourth 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 9.53 a.m. on 3 May 2010, and welcomed all participants.
2. *Mr S. Marchisio (Italy), Chairman of the Committee*, drew attention to the documentation for the current session, in particular the report of the previous session of the Committee (C.G.E./Space Pr./3/Report rev.) and the revised version of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (as prepared by Professor Sir Roy Goode (United Kingdom) and Mr J.M. Deschamps (Canada), as Co-chairmen of the Drafting Committee - to reflect the conclusions reached by the Committee at its third session, held in Rome from 7 to 11 December 2009, and to incorporate drafting improvements - and as reviewed by the Drafting Committee) (C.G.E./Space Pr./4/W.P. 3 rev.) (hereinafter referred to as the *revised preliminary draft Protocol* and reproduced in *Appendix I* to this report).
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. Porras, Associate Officer, UNIDROIT, acted as Assistant Secretaries.
4. The session was attended by 94 representatives of 37 Governments, five intergovernmental Organisations and five international non-governmental Organisations, as well as 12 representatives of the international commercial space, financial and insurance communities and one other person (see List of participants reproduced in *Appendix II* to this report).

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

5. The revised draft Agenda (C.G.E./Space Pr./4/W.P. 1 rev.) was adopted by the Committee. It is reproduced in *Appendix III* to this report.

Item No. 2 on the revised draft agenda: organisation of work

6. *Mr Stanford* introduced this item on the Agenda. In particular, he proposed that the membership of the Drafting Committee agreed upon at the previous session be confirmed, namely Canada, the People's Republic of China, France, Nigeria, the Russian Federation, Senegal, the United Kingdom and the United States of America. It was so decided.

7. In the light of the absence of the First and Second Deputy Chairmen of the Committee, the Government of Japan nominated Mr V. Kopal (Czech Republic) as Third Deputy Chairman to cover the eventuality of the Chairman of the Committee's absence; this nomination, seconded by the Governments of the United Kingdom and the People's Republic of China, was carried. In the absence of Mr Marchisio, Mr Kopal was in the chair for part of the proceedings on 3 and 4 May 2010.

Item No. 3 on the revised draft agenda: consideration of the revised preliminary draft Protocol, *inter alia* in the light of the comments submitted by Governments, Organisations and representatives of the international commercial space, financial and insurance communities (C.G.E./Space Pr./4/W.P. 4 rev. and W.P. 4 rev. Add. 1)***General statements***

8. *The Chairman of the Committee* invited delegations to raise general comments.

9. Recognising the efforts by the representatives of States, international Organisations and industry in developing the revised preliminary draft Protocol, one delegation observed that, given the concerns expressed by some members of the international commercial space, financial and insurance communities, it was concerned that the remaining unresolved issues facing the revised preliminary draft Protocol risked rendering the latter ineffective and, potentially, counterproductive. In this context, that delegation indicated that until industry problems had been resolved and an economic assessment had been made, further steps for transmitting the text to a diplomatic Conference should not be taken. The same delegation indicated that it shared many of the concerns that were raised.

10. Another delegation pointed out that the comments submitted by a satellite operator, whilst being a member of that delegation, did not reflect that delegation's views.

11. A number of delegations, whilst acknowledging that there were some outstanding issues which needed to be resolved, expressed the view that, following their own consultations with representatives of their own domestic commercial space sectors, the views that had previously been expressed by some members of the commercial space sector to the UNIDROIT Secretariat were not representative of the whole of that industry and that the revised preliminary draft Protocol had the potential to benefit those seeking financing for space assets, and in particular smaller operators and in raising private investment for applications beyond telecommunication satellites. These delegations were in favour of continuing the work of the Committee in preparing and finalising the revised preliminary draft Protocol.

Consideration of outstanding issues regarding the revised preliminary draft Protocol (C.G.E./Space Pr./4/W.P. 2 rev., § 6)

12. *The Chairman of the Committee* drew its attention to the outstanding issues which had been specifically identified at the previous session of the Committee as requiring further consideration.

Re: the definition of "controlled" in relation to goods, technology, data or services to which Article XXVII(2) of the revised preliminary draft Protocol applied

13. The co-Chairman of the Drafting Committee introduced the new definition of "controlled" found in the text of Article I(2)(a) of the revised preliminary draft Protocol. No comments were made and the new language was adopted.

Re: the definition of "salvage" in Article I(2)(j)

14. It was agreed that this provision be referred to the Drafting Committee for review, in the light of the discussion of salvage insurance in Article IV(4) and (5), as to its necessity and, if retained, as to whether the term "salvage" should be replaced by the term "salvage interest" (cf. §§ 25-30, 115 and 122, *infra*).

Re: the finding of more suitable language for the words "capable of being independently owned, used or controlled" in Article I(2)(l) of the revised preliminary draft Protocol

15. The co-Chairman of the Drafting Committee introduced the definition of space asset found in the text of Article I(2)(l) of the revised preliminary draft Protocol, noting in particular that the phrase "capable of being independently owned, used or controlled" was intended to prevent the registration of international interests in those components of a space asset which, once assembled or launched, lost their unique identity and became a part of the overall space asset. He further drew attention to the new phrase "without losing its distinct identity, such as a satellite, space station, satellite bus, transponder, module, space vehicle, launch vehicle or space capsule" which was intended further to clarify this point.

16. Several issues and concerns were raised by delegations in the course of the discussion:

- there was concern that the definition should not unduly limit the application of the future Protocol by excluding assets which financiers might find valuable as collateral for secured financing purposes in future;

- the effectiveness of the phrase "capable of being independently owned, used or controlled" in limiting the scope of the definition of "space asset", the obtaining of financing during the pre-launch phase and in the exercising of default remedies;

- which types of asset in the pre-launch phase were intended to be covered by this definition; and

- the relationship between the definition of space asset and the criteria for the identification of a space asset for the purposes of registration in the future International Registry.

17. Several delegations noted the importance of an asset being distinctly identifiable, including in the course of manufacture and after being launched.

18. One observer stated that contracts for the manufacture or launch of a space asset provided for payment at an early stage in the life of a space asset and that the effectiveness of the envisaged Protocol would be greatly reduced if creditors could not register an interest in an asset that was still at the pre-launch stage.

19. It was agreed that the term "capable of being independently owned, used or controlled" should be maintained for the time being and that the delegations of the United Kingdom and the United States of America should develop options to be presented to the Committee when it came further to discuss the definition of "space asset" later in the session (cf. §§ 68, 116 and 145-146, *infra*).

Re: the taking of a decision regarding the words "including any such asset in course of manufacture or assembly" at present included in Article I(2)(l) of the revised preliminary draft Protocol inside square brackets

20. Delegations raised a number of points: some stressed the importance of including those assets in the course of manufacture or assembly in order to permit the securing of financing during the period of time when payment was being made under manufacture and launch contracts, whilst another noted the concerns expressed by some representatives of the international commercial space, financial and insurance communities regarding the addition of another international legal regimen governing assets in the course of manufacture or assembly when such assets were already covered by domestic laws governing the taking of security.

21. It was agreed that the phrase "including any such asset in course of manufacture or assembly" should be left in square brackets and referred to the Drafting Committee following consultation between the delegations of the United Kingdom and the United States of America (cf. §§ 68, 116 and 145-146, *infra*).

Re: the taking of a decision regarding the instruments to be referred to in respect of the location of a space asset

22. One delegation expressed concern over use of the term "from which it is controlled" in Article I(3) and suggested replacing that term with a reference to the location of a mission operation centre. Another delegation pointed out that the principal significance of this provision would be in relation to the provisions of Article 43 of the Convention determining the jurisdiction to grant interim relief and that those provisions did not, in any case, preclude the parties from choosing the State to have jurisdiction. There was some support for this proposal but concern was expressed that this approach might create additional jurisdictional complications.

23. The same delegation expressed concern over the reference in Article I(3) to the 1975 United Nations Convention on Registration of Objects Launched into Outer Space and, instead, suggested a reference to the national registries of objects launched into outer space referred to 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 (hereinafter referred to as the *Outer Space Treaty*). This proposal received general support. However, one delegation favoured a reference to the location of an asset's mission operation centre and the deletion of any reference to other legal instruments.

24. It was agreed that this provision should be left open for additional consideration during the session (§§ 117-120 and 142, *infra*).

Re: application of the Convention on International Interests in Mobile Equipment (hereinafter referred to as the Convention) to salvage insurance under Article IV(4) and (5) of the revised preliminary draft Protocol

25. One delegation noted the serious concerns which had been expressed to it by certain members of the international commercial space and financial communities regarding the treatment of "salvage insurance" under the revised preliminary draft Protocol, notably on the ground that it was felt that such treatment might disturb the priority of international interests in a space asset and create complications for inter-creditor agreements. This delegation expressed concern that the current policy contained in the revised preliminary draft Protocol regarding salvage insurance might have negative effects on the availability of financing for space assets at the outset and would, therefore, defeat the goals of the envisaged Protocol.

26. A few delegations were of the view that, under Article XXIV, insurers already had adequate means to protect their interests in a space asset. One delegation noted, however, that under the Convention, an insurer did not qualify as a creditor and a salvage interest would not qualify as an international interest capable of being registered without the additional language contained in Article IV(4) and (5).

27. An observer representing the international space insurance community illustrated why it thought that additional provisions were needed under the revised preliminary draft Protocol on the issue of salvage insurance.

28. Another observer indicated that insurance was extremely important to the international commercial space sector and that efforts should be made to protect the interests of insurers.

29. One delegation expressed concern at the language employed in Article IV(5), notably in the light of the fact that not all national laws recognised an insurer's right of subrogation. Another delegation indicated that the purpose of Article IV(5) was to provide for an insurer's right of subrogation even in those circumstances where such a right was not recognised by national law. It was agreed that the Drafting Committee should review this provision in order to clarify this point.

30. There was general agreement, subject to one objection, that salvage insurance should, in principle, be retained in the revised preliminary draft Protocol in the light of its unique importance for commercial space finance. It was also agreed that Article IV(4) and (5) should be reviewed by the Drafting Committee, in consultation with the observer representing the international space insurance community, in order to find more appropriate language that would address the views and concerns that had been expressed (cf. § 122, *infra*).

Re: consideration of the issue of choice of law in respect of rights assignments and rights reassignments

31. The proposed additional language in Article VIII(2) was adopted (cf. § 123, *infra*).

Re: default remedies in relation to components

32. It was agreed that the Informal Working Group on default remedies in relation to components, established at the previous session of the Committee (in the composition of France, Germany, Italy, Japan, the United Kingdom and the United States of America, with Ms C. Dubreuil (EADS Astrium), Mr O. Heinrich (BHO Legal), Ms M. Leimbach (Crédit Agricole) and Mr B. Schmidt-Tedd (German Space Agency) participating as observers, on behalf of the international commercial space, financial and insurance communities), should meet again during the session. It was further agreed that meetings of this Informal Working Group should be open to the representatives of all States and interested observers (cf. §§ 145-146, *infra*).

Re: consideration of the priority between an assignee of debtor's rights under a rights assignment and an assignee under an assignment of rights deriving from the space asset but unconnected to an international interest

33. One delegation made a proposal designed to deal with the concern that interests that might be taken in debtor's rights that were not connected to an international interest in a space asset would, therefore, not be able to be recorded in the future International Registry for space assets. It was agreed that those parties favouring the inclusion of such a provision should formulate a provision to be laid before the Committee.

34. The Governments of Japan, Canada and the United Kingdom, accordingly, laid before the Committee a proposed text for a new Article XIII(1) (C.G.E./Space Pr./4/W.P. 7), which is reproduced as

Appendix IV to this report. It was explained that the effect of this proposal would be to ensure the priority of an assignee of debtor's rights attached to an international interest whose interest had been registered in the future International Registry for space assets over the interest of an assignee in the same rights whose interest was not attached to an international interest in the relevant space asset and, therefore, not capable of being registered in the future international registration system, even if the latter had been the first in time to acquire that interest. It was further noted that this provision was intended to provide the certainty and clarity that was considered vital to the integrity of the future International Registry.

35. There was discussion regarding the drafting of both the proposed Article XIII(1) and the definition of "rights assignment". It was agreed that the proposed Article XIII(1) should be adopted subject to consideration by the Drafting Committee of the question as to whether the policy reflected in the new Article was appropriately reflected in the definition of "rights assignment" (cf. §§ 65 and 127, *infra*).

Re: consideration of the policy implications of the duty of co-operation incumbent on the assignor to co-operate with the assignee for the transfer of its licence

36. Some delegations suggested that it would be appropriate to make a reference to the applicable national law governing the transfer of a licence in this provision.

37. One delegation suggested that, because a creditor would probably not be the operator of the asset over which it was exercising its default remedies but would rather assign a third party to operate the asset for it, this provision should allow for the transfer of a licence to a body designated by the creditor rather than the creditor itself.

38. There was discussion regarding a number of proposed changes to the drafting of Article XVI. However, during discussion, the need for this Article was called into question, particularly in the light of regulatory and contractual practices which already existed in the international commercial space field. One delegation suggested that Article XVI should be retained, notably since this provision was narrowly drawn and would ensure that a debtor could not interfere with the issuance of a new licence in favour of a new party whilst, at the same time, not imposing undue obligations on a debtor.

39. It was, however, decided that, since the application of Article XVI was likely to raise more problems than it would solve and the parties who negotiated such transactions were sophisticated and could, therefore, be expected to take care of such matters in their contract, this Article should be deleted (cf. § 99, *infra*).

Re: the question of the modification of the provisions of the Convention regarding default remedies, in particular regarding whether the requirement of commercial reasonableness set forth in Article XVIII(2) of the revised preliminary draft Protocol and the qualification of "reasonable prior notice" laid down in Article XVIII(3) thereof should be subject to a declaration by a Contracting State or be free-standing provisions of the revised preliminary draft Protocol

40. Several delegations expressed the desire to maintain uniformity, wherever possible, among the Protocols to the Convention and concluded that it was, therefore, desirable to delete Article XVIII(1).

41. It was so decided (cf. § 129, *infra*).

Re: consideration, in the light of the potential implications for national laws, of Article XXI(5) of the revised preliminary draft Protocol

42. It was agreed that the square brackets around Article XXI(5) should be removed.

Re: the language inside square brackets in Article XXVII(2) of the revised preliminary draft Protocol

43. Some delegations pointed out that it would be important to remove the square brackets around part of Article XXVII(2) in order to ensure that States would not be able to introduce new restrictions on assets governed by the future Protocol which went beyond the States' own laws and so that creditors would have full knowledge of the applicable regimes which they would have to accommodate.

44. It was, therefore, agreed to remove the square brackets in Article XXVII(2).

Re: limitations on remedies (public service)

45. A number of delegations expressed concern over the inclusion of a public service exemption from the exercise of default remedies under the revised preliminary draft Protocol, noting that such a provision risked interfering with the mechanisms which had already been developed by States to protect those services which were considered to be of a public nature. While some of these delegations favoured the replacing of Article XXVII *bis* by the insertion of a clause in the preamble stating that nothing in the future Protocol was intended to run counter to the rules and regulations of a Contracting State, others favoured extending Article XXVII(2) in such a way as to provide the protection needed by States to ensure the continuity of public services, with support being expressed by some in both these groups of delegations for both possible solutions. Another delegation suggested that, rather than dealing with the problem by extending the scope of Article XXVII(2), there should be a separate Article which would indicate that nothing in the envisaged Protocol would affect national regulations, notably those concerning public service (cf. §§ 131 and 143, *infra*). Yet another delegation suggested that, if any of these approaches were adopted, States should be required to publish information regarding their policies on public service. A further delegation stated that the proposed provisions were of a regulatory nature probably inconsistent with the financing purposes of the proposed Protocol and would probably diminish support for it.

46. One delegation indicated that a reference to the applicable law as a solution would not be appropriate because, in many cases, the applicable law would not necessarily be the law of the State which would be affected by the interruption of the public service in question.

47. A number of other delegations, while signalling their support for the elaboration of a new principle in the preamble dealing with public service (cf. § 60, *infra*), expressed the importance of retaining a substantive provision in the revised preliminary draft Protocol ensuring the continuity of public service. One of these delegations, while recognising the drafting difficulties that would be involved in the finding of an appropriate balance between the interests of States in maintaining a public service and those of creditors in being able to exercise default remedies, suggested the seeking of a less intrusive mechanism than the one found in the proposed Article XXVII *bis*, by, for instance, requiring a creditor seeking to exercise its default remedies over an asset providing a public service first to consult the State that would be affected. Another delegation also expressed support for the proposed Article XXVII *bis* but suggested that paragraph 3 should be amended.

48. Whilst one delegation suggested that use of the term "vital interest" in the proposed Article XXVII *bis* would create confusion if not defined elsewhere, another delegation indicated that this term was commonly used in international treaties and in judgments of the International Court of Justice and made it possible to avoid having to enumerate all those services which could be considered to be of a public nature.

49. One delegation proposed following the system of alternatives employed in the revised preliminary draft Protocol on the subject of remedies under insolvency, whereby States would, by declaration, have the option of either, on the one hand, referring the question of public service to the applicable national law or, on the other, applying a rule such as that set out in Article XXVII *bis*.

50. It was agreed that the issue should be the subject of further consideration by the Informal Working Group on limitations on remedies, set up at the previous session of the Committee, consisting in the delegations of Canada, the People's Republic of China, the Czech Republic, France, Germany, Greece, India, Spain and the United States of America. It was agreed that this Informal Working Group should meet again for this purpose during the session (cf. §§ 136-140, *infra*).

Re: completion of the criteria for identification of space assets that have been launched in Article XXX(2) of the revised preliminary draft Protocol and consideration of the need for further clarification as regards which paragraph of Article XXX should 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

51. Concern was expressed that use of two sets of criteria for identification of space assets for the purposes of registration - one being for the registration of an international interest in an asset prior to launch (Article XXX(1)) and the other for registration of an asset after launch (Article XXX(2)) - might lead to difficulties for those searching the future International Registry, by reason of different criteria being used to search for the same asset, potentially leading to separate registrations being made over the same asset having the same degree of priority. In this connection, it was suggested that it might be more appropriate to have a single set of identification criteria for registration purposes.

52. One delegation suggested the addition to the mandatory criteria for identification of a space asset found in Article XXX(1) of the names of the parties to the agreement under which the international interest was created.

53. It was agreed that additional technical information, in particular concerning the practical feasibility of the employment of particular criteria, should be sought from those observers representing the international commercial space, financial and insurance communities before any further action be taken with a view to informing the Committee's further discussion.

Re: consideration of the question whether provision should be made for the case where a space asset in respect of which an international interest had been registered was never launched

54. Concern was expressed over the term "one year" in Article XXXI(3) and, in particular, whether it would not be appropriate to extend this time-period and/or add to it the term "or the time-period agreed by the parties".

55. In the light of Article 25(2) of the Convention, it was suggested that this provision might not be needed. It was, accordingly, agreed that it be deleted, subject to the Drafting Committee checking whether Article 25(2) did indeed cover all the situations needing to be covered (cf. § 134, *infra*).

Re: consideration, in the context of Article XXXIV of the revised preliminary draft Protocol, of, first, the fact that the concept of "jurisdiction and control" as set forth in Article VIII of the Outer Space Treaty, 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 and, secondly, the question as to whether the United Nations Outer Space Treaties should be specifically enumerated

56. There was general support for the removal of the square brackets surrounding Article XXXIV and for keeping the language of that Article as it was.

57. One delegation expressed concern over what it saw as a possible problem of compatibility between the envisaged Protocol and the instruments listed in this Article. It was suggested that this issue be addressed in the Official Commentary on the future Protocol.

58. It was agreed that the square brackets surrounding Article XXXIV should be removed and that its language remain unchanged (cf. § 135, *infra*).

Consideration of the other provisions of the revised preliminary draft Protocol

Re: title and preamble

59. The Secretariat drew attention to the proposal made regarding the fourth clause of the preamble by the Government of Greece (C.G.E./Space Pr./4/W.P. 4 rev., p. 4). Some delegations, however, expressed their preference for maintaining the language already contained in that clause.

60. It was agreed that it was desirable to postpone further discussion of the preamble pending the outcome of the discussions of the Informal Working Group on limitations on remedies, given the proposals that had been tabled for dealing with the question of public service via the preamble (cf. § 47, *supra*).

Re: Article I(2)(b)

61. It was agreed that the word "all" should be deleted (cf. § 112, *infra*).

Re: Article I(2)(f)

62. It was suggested that the proposed definition of "launch vehicle" was not sufficiently precise and, in the light of the fact that no other category of space asset had been defined in a distinct provision - a task that would, it was suggested, be extremely difficult - that it be deleted.

63. It was agreed, however, that this provision should be placed in square brackets, pending the outcome of the work of the Informal Working Group on default remedies in relation to components (cf. §§ 113 and 145-146, *infra*).

Re: Article I(2)(g)

64. One delegation suggested that the second reference to the term "licence" in this provision be deleted. However, another delegation indicated that reference to the term licence in this context was in conformity with regulatory practice. As a result, it was decided that this definition should be retained, without modification.

Re: Article I(2)(i)

65. It was agreed that this provision be referred to the Drafting Committee for review and possible clarification (cf. § 35, *supra* and § 127, *infra*).

Re: Article I(2)(j)

66. This provision was approved without modification.

Re: Article I(2)(k)

67. One delegation proposed replacing the term "means" by the term "includes" in order to avoid comprehensively defining the term "space". However, there was general agreement that this provision should be retained without change.

Re: Article I(2)(l)

68. It was agreed that it was not appropriate to discuss this provision further for the time being, given that key elements of it had already been discussed in the context of the Committee's consideration of outstanding issues (cf. §§ 15-19 and 20-21, *supra*) and that it would make greater sense to look at it once the work of the Informal Working Group on default remedies in relation to components had been completed (cf. §§ 145-146, *infra*).

Re: Article II

69. This Article was approved, subject to terminological corrections designed to bring it into line with other provisions of the revised preliminary draft Protocol (cf. § 121, *infra*).

Re: Article III

70. This Article was approved without modification.

Re: Article V

71. This Article was approved without modification.

Re: Article VI

72. This Article was approved without modification.

Re: Article VII

73. This Article was approved without modification.

Re: Article VIII

74. One delegation asked why, under Article VIII(1), Contracting States would be required to opt out of this provision, in contrast to the Protocol to the Convention on Matters specific to Aircraft Equipment (hereinafter referred to as the *Aircraft Protocol*) and the Protocol to the Convention on Matters specific to Railway Rolling Stock (hereinafter referred to as the *Luxembourg Protocol*), Contracting States to which were required to opt into the corresponding provision. It was agreed that the Secretariat should conduct a survey of the declarations made under the corresponding provision of the Aircraft Protocol and report back to the Committee so that it might decide whether this Article should follow the same approach as the one contained in the Aircraft Protocol and the Luxembourg Protocol or whether a different approach might be more appropriate.

75. The Secretariat duly informed the Committee that of the 29 States Parties to the Aircraft Protocol 27 had opted into the provisions of Article VIII.

Re: Article IX

76. This Article was approved, subject to a terminological correction designed to bring it into line with other provisions of the revised preliminary draft Protocol (cf. § 124, *infra*).

Re: Article X

77. It was agreed that this Article be referred to the Drafting Committee for review and possible clarification, in particular of the term “grantor” (cf. § 114, *infra*), and insertion of the words “which are” after the words “the debtor’s rights” in paragraph 1 (cf. § 125, *infra*).

Re: Article XI

78. This Article was approved without modification.

Re: Article XII

79. It was agreed that this Article be referred to the Drafting Committee in order to take account of the discussions on salvage insurance (cf. §§ 25-30, *supra*) and in particular to ensure that the intent of this Article was captured by the language employed, especially regarding the entitlement of the person acquiring by subrogation (cf. § 126, *infra*).

Re: Article XIII(2)

80. This provision was approved without modification.

Re: Article XIV

81. It was agreed that this Article be referred to the Drafting Committee for further clarification, if necessary. It was, in particular, agreed that the Drafting Committee should find a more appropriate term than “grantor”, as in Article X (cf. § 77, *supra*), and that the English text should be brought into line with the French text on this subject (cf. § 128, *infra*).

Re: Article XV

82. This Article was approved without modification.

Re: Article XVII

83. This Article was approved without modification.

Re: Article XVIII

84. Paragraphs 1, 2 and 3 had already been approved in the context of the Committee’s consideration of outstanding issues (cf. §§ 40-41, *supra*) and it was agreed that it would not be appropriate to discuss paragraph 4 further, since this was the subject of ongoing consultations within the Informal Working Group on default remedies in relation to components (cf. §§ 145-146, *infra*).

Re: Article XIX

85. This Article was approved without modification.

Re: Article XX

86. One delegation expressed concern regarding whether the term “other data and materials” was sufficiently clear and whether the meaning of “data” should not be defined. In particular, this delegation enquired as to whether the concept of data and materials included intellectual property. It was pointed

out that intellectual property was not intended to be covered by the sphere of application of the revised preliminary draft Protocol.

87. Another delegation wondered whether this Article could not be made clearer by replacing the term "other" with the term "related". It was so decided

Re: Article XXI

88. Paragraph 5 had already been approved in the context of the Committee's consideration of outstanding issues (cf. § 42, *supra*). The rest of this Article was approved without modification.

Re: Article XXII

89. This Article was approved without modification.

Re: Article XXIII

90. One delegation recalled the agreement that, following the decision to remove the square brackets around the words "in accordance with the law of the Contracting State" at the previous session of the Committee (cf. C.G.E./Space Pr./3/Report, § 44), it would be for the Official Commentary on the future Protocol to clarify the fact that this provision was not intended to compel States to take specific action.

91. One delegation indicated that paragraph 2 required additional clarity and proposed that point (iv) be supplemented by an example such as "the State of registration". Another delegation suggested that this be changed to "State[s] of registration", as sometimes there was more than one State of registration.

92. Another delegation also sought clarification in respect of point (ii) under paragraph 2 of this Article and what was meant by the term "controlled".

93. It was agreed that point (iv) of Article XXIII(2) be referred to the Drafting Committee, to find possible language to deal with the concerns expressed in respect of this provision.

Re: Article XXIV

94. This Article was approved without modification.

Re: Article XXV

95. This Article was approved without modification.

Re: Article XXVI

96. This Article was approved without modification.

Re: Article XXVII

97. Paragraph 2 had already been considered in the context of the Committee's consideration of outstanding issues (cf. §§ 43-44, *supra*).

98. One delegation expressed concern regarding the potential impact of paragraph 2 on domestic law, notably in relation to the imposition of unilateral sanctions pursuant to national laws and policies and it was suggested that additional language might be included to prevent such a conflict. It was agreed,

however, that such an approach would not be appropriate within this provision but that the Drafting Committee should consider dealing with this issue in the preamble.

99. One delegation noted that the words at the end of paragraph 2 were similar to those found in the former Article XVI and, in the light of the Committee's decision to delete that Article (cf. § 39, *supra*), proposed that the similar language in this Article should also be deleted. It was noted, however, that there might be reason for these words to be maintained in this Article independently of the deletion of Article XVI and that this language should, therefore, be further discussed when the Committee came to deal with the public service limitation.

Re: Article XXVIII

100. *Mr Stanford* reported the responses the Secretary-General had received from those Organisations that the latter had been asked by the Committee at its previous session to sound as to their interest in acting as Supervisory Authority of the future International Registry for space assets and, if so, the internal steps that such an Organisation would need to complete in order to be in a position to respond, at least in principle, to any invitation that might be addressed to it by the future diplomatic Conference so to act (cf. C.G.E./Space Pr./4/W.P. 5). This information was welcomed by several delegations.

101. The observer representing one of the Organisations in question indicated his Organisation's appreciation at being considered as a potential candidate, noting that the work of the Committee was being monitored closely by the Secretariat of his Organisation. He also reported that discussions were underway within his Organisation, an organ of which acted as Supervisory Authority of the International Registry established pursuant to another Protocol to the Convention, on the question as to whether it would be appropriate for the body acting as Registrar of that Registry to be able to engage in activities other than the operation of that Registry.

Re: Article XXIX

102. This Article was approved without modification.

Re: Article XXX

103. It was noted that the criteria for the identification of space assets for registration purposes contained in this Article had been discussed in the context of the consideration of outstanding issues (cf. §§ 51-53, *supra*).

104. One delegation proposed the inclusion of an URL link between the future International Registry for space assets and the Registry of the United Nations Office for Outer Space Affairs in order to ensure that there were no inconsistencies between the data recorded on the two Registries. Another delegation signalled that this would not be appropriate but, rather, that the Committee might recommend that the UNIDROIT Secretariat and the United Nations Office for Outer Space Affairs co-ordinate and develop a mechanism whereby the data registered on the future International Registry for space assets be provided to the Office for Outer Space Affairs for reference. This same delegation indicated that it would not, however, be appropriate to incorporate data from the United Nations Office for Outer Space Affairs on the future International Registry for space assets, because the data used to register assets in the latter would necessarily need to be more specific and detailed than was required for registration in the United Nations' Registry. It was so agreed.

Re: Article XXXI

105. Having regard to the difficulties experienced in obtaining the initial insurance coverage for the International Registry for aircraft objects, one delegation proposed that paragraph 5 of this Article be

amended to permit the actual market availability of such insurance to be taken into account. That delegation proposed deleting the word "all" in that paragraph before the word "liability" and adding at the end of the paragraph the phrase "as specified by the regulations".

106. This proposal was accepted and referred to the Drafting Committee (cf. § 134, *infra*).

Re: Article XXXII

107. This Article was approved without modification.

Re: Article XXXIII

108. This Article was approved without modification.

Re: proposed additional provisions

109. One delegation proposed two amendments to the revised preliminary draft Protocol designed to reflect the fact that two provisions found in the Convention, namely Articles 50 and 54(1), were not of obvious relevance to space assets and had, therefore, the potential to create difficulties if their application to space assets were not specifically excluded. The delegation in question, therefore, tabled a proposal for a new Article XXXVII *bis* and a new Article XXXVIII *bis*, designed specifically to indicate that Articles 50 and 54(1) of the Convention did not apply to space assets (C.G.E./Space Pr./4/W.P. 11).

110. Several delegations indicated that they would need time to consider the implications of such a proposal. It was, accordingly, agreed to postpone discussion of this proposal for the time being.

Interim Report of the Drafting Committee

111. *The co-Chairman of the Drafting Committee* presented the Interim Report of the Drafting Committee, illustrating the amendments which had been made to the revised preliminary draft Protocol to reflect the conclusions reached by the Committee up to that point (C.G.E./Space Pr./4/W.P. 10). This Interim Report is reproduced in Appendix V to this report.

Re: Article I(2)(b)

112. This provision as modified (cf. § 61, *supra*) was approved.

Re: Article I(2)(f)

113. It was agreed to keep this provision in square brackets pending the outcome of the work of the Informal Working Group on default remedies in relation to components (cf. §§ 62-63, *supra*).

Re: proposed new Article I(2)(g)

114. One delegation proposed adding the phrase "or is to become due" at the end of this proposed new provision (cf. § 77, *supra*). This proposal was accepted and the provision as thus modified was approved.

Re: Article I(2)(jj)

115. It was agreed to postpone discussion of this provision pending further work on the issue of salvage insurance (cf. §§ 25-30, *supra* and § 122, *infra*).

Re: Article I(2)(l)

116. It was agreed to postpone further discussion of this provision pending the outcome of the work of the Informal Working Group on default remedies in relation to components (cf. §§ 15-19, 20-21 and 68, *supra* and §§ 145-146, *infra*).

Re: Article I(3) (cf. §§ 22-24, supra)

117. One delegation reiterated its preference for accommodating multiple jurisdictions through this provision and, therefore, suggested that the term "Contracting State" be replaced by "Contracting State[s]".

118. One delegation indicated that Alternatives A and B of this provision seemed to be in conflict with Article VIII of the Outer Space Treaty and that further consideration should be given to the relationship between Alternatives A and B, on the one hand, and that treaty, on the other. Other delegations, however, considered that there was no conflict between Alternatives A and B and the Outer Space Treaty. Several delegations stated that Alternatives A and B and the Outer Space Treaty dealt with different aspects of the allocation of jurisdiction and were, therefore, not inconsistent.

119. Several delegations wondered whether the concept of "on the territory of which a mission operation centre for the space asset is located" in Alternative A was covered by the term "from the territory of which the space asset may be controlled" in Alternative B and whether these two alternatives might not be usefully combined. These delegations also indicated a preference for a multiplicity of jurisdictions being referred to under this provision.

120. It was agreed that this provision should be the subject of further discussion (cf. § 142, *infra*).

Re: Article II

121. This Article as modified (cf. § 69, *supra*) was approved.

Re: Article IV

122. The amendments made to the heading and paragraphs 2 and 4 (cf. §§ 25-30, *supra*) were approved. It was noted that paragraph 5 would require further consideration by the Drafting Committee.

Re: Article VIII(2)

123. This provision as modified (cf. § 31, *supra*) was approved.

Re: Article IX

124. This Article as modified (cf. § 76, *supra*) was approved.

Re: Article X

125. The changes made to paragraphs 2 and 3 reflected the decisions taken regarding the term "grantor" by the Committee during its consideration of the outstanding issues (cf. §§ 77 and 114, *supra*). The Article as thus modified was approved.

Re: Article XII

126. This Article as modified (cf. § 79, *supra*) was approved.

Re: Article XIII(1)

127. This provision as modified (cf. §§ 34-35, *supra*) was approved.

Re: Article XIV

128. This Article as modified (cf. § 81, *supra*) was approved.

Re: Article XVIII

129. The amendments made to paragraphs 1 and 2 (cf. §§ 40-41, *supra*) were approved. The proposed new paragraph 3 was left in square brackets pending the outcome of the work of the Informal Working Group on default remedies in relation to components (cf. §§ 145-146, *infra*).

Re: Article XX

130. This Article as modified (cf. §§ 86-87, *supra*) was approved.

Re: Article XXVII

131. The amendments to paragraph 2 were approved (cf. §§ 43-44 and 99, *supra*). Paragraph 3 was placed in square brackets pending the outcome of the work of the Informal Working Group on limitations on remedies (cf. § 143, *infra*).

Re: [Article XXVII bis]

132. This Article was not discussed in view of the ongoing work of the Informal Working Group on limitations on remedies (cf. §§ 136-139, *infra*).

133. One delegation requested that a footnote be appended to this Article to clarify the fact that Article XXVII *bis* represented a discussion proposal that had emerged from the Informal Working Group on limitations on remedies during the third session of the Committee.

Re: Article XXXI

134. This Article as modified (cf. §§ 105-106, *supra*) was approved.

Re: Article XXXIV

135. This Article as modified (cf. §§ 56-58, *supra*) was approved.

Report of the Informal Working Group on limitations on remedies

136. *Mr Estrella Faria* introduced the discussion proposal that had emerged from the work accomplished at the session by the Informal Working Group on limitations on remedies (C.G.E./Space Pr./4/W.P. 13) and which is reproduced in Appendix VI to this report. He noted, in particular, that the Informal Working Group had invited the Committee to consider replacing the existing Article XXVII *bis* by the new discussion proposal.

137. Several delegations viewed the new discussion proposal as a positive step toward the goal of finding an acceptable solution on public service and indicated that they would be happy to make it the subject of further consideration by their Governments and consultations with their commercial space sectors. Some of these delegations supported the idea of replacing the existing Article XXVII *bis* by the

new discussion proposal, arguing that to retain that Article as an option under the revised preliminary draft Protocol might lead to many of the concerns regarding public service that had been voiced in comments submitted in the period leading up to the session being repeated. Moreover, some delegations suggested that, even if the existing Article XXVII *bis* were retained, the focus of future negotiations should be the new discussion proposal.

138. However, several other delegations argued for the existing Article XXVII *bis* being retained in the revised preliminary draft Protocol alongside the new discussion proposal, as options for further consideration. Some of these delegations, moreover, took the view that its retention alongside the new discussion proposal need not preclude its amendment.

139. It was agreed that the existing Article XXVII *bis* should be retained alongside the new discussion proposal, as alternatives for consideration at the following session of the Committee.

140. One delegation proposed that the Committee should consider a national security limitation on remedies, in view of the fact that a Government's role in national security and international relations would not be covered by a public service limitation. This proposal was favoured by several delegations. However, several other delegations indicated that they were not in favour of addressing national security within the future Protocol, because of potential complications that would necessarily delay the work of the Committee. It was suggested by one delegation that this issue might be addressed in the preamble.

Report of the Drafting Committee

141. *The co-Chairman of the Drafting Committee* introduced the Report of the Drafting Committee (C.G.E./Space Pr./4/W.P. 14), which reflected the amendments to the revised preliminary draft Protocol that had been made by that Committee by way of implementation of the conclusions reached by the Committee during consideration of the Drafting Committee's Interim Report and which is reproduced as Appendix VII to this report.

142. *A propos* of Article I(3), one delegation noted that the reference to Article 2(2)(n) of the Convention should be a reference to Article 1(2)(n) and that the phrase ", or territorial unit of a Contracting State," should be deleted in each of the three Alternatives, as being redundant in the light of Article XXXVIII of the revised preliminary draft Protocol. It was so agreed.

143. Furthermore, in the light of the decision regarding Article XXVII *bis* taken by the Committee following its consideration of the Report of the Informal Working Group on limitations on remedies, Article XXVII(3) as proposed by the Drafting Committee in its Interim Report and subsequently placed in square brackets pending the outcome of the work of the Informal Working Group on limitations on remedies was deleted as being no longer appropriate.

144. The text of the revised preliminary draft Protocol as it emerged from the session is reproduced in Appendix VIII to this report.

Report of the Informal Working Group on default remedies in relation to components

145. *Mr Estrella Faria* introduced the work that had been accomplished during the session by the Informal Working Group on default remedies in relation to components. He reported that significant progress had been made, though no solution had yet been reached, and indicated his belief that this progress was such as to serve as a firm basis for the finding of an acceptable solution in future. In particular, he pointed out that the Informal Working Group had agreed that, while the future Protocol had to provide legal certainty, it was not desirable for it to become locked into a particular system for the determination of those assets that should qualify for registration in the future International Registry for space assets; in this connection, he noted that the Informal Working Group saw the regulations to be

made or approved by the Supervisory Authority pursuant to the future Protocol as being able to play a part in providing the desirable measure of flexibility regarding the establishment of identification criteria for the purposes of the registration of international interests in assets that might become valuable to creditors in the future. He indicated, in addition, that the Informal Working Group had agreed that for individual components to be registrable in the future Registry, it would be necessary that the sum total of such components should correspond to the entirety of the space asset as a whole and not allow for an inflation of international interests in such assets without value, so as to avoid gaps in the information available in the future Registry to creditors.

146. Several delegations that had served on the Informal Working Group noted their satisfaction at the progress made and indicated that they shared the views expressed by Mr Estrella Faria.

Item No. 5 on the revised draft agenda: future work

147. *The Chairman of the Committee* recognised that, in view of the work outstanding on several issues - in particular limitations on remedies, default remedies in relation to components and the definition of space assets - a fifth session of the Committee would be necessary before the revised preliminary draft Protocol could be considered ready for transmission to a diplomatic Conference of adoption.

148. *Mr Estrella Faria* confirmed this assessment, adding, however, that, in the light of the situation obtaining with regard to resources, it would not be possible for the Secretariat to convene such a fifth session before January 2011. He noted, though, that this did not mean work on the revised preliminary draft Protocol should be put on hold and, accordingly, recommended the holding of intersessional consultations, and in particular that the Informal Working Groups should meet in October 2010.

149. This proposal was endorsed by a number of delegations, which also recorded their appreciation of the work that had been accomplished and suggested that the intersessional work advocated by Mr Estrella Faria include consultations with representatives of the commercial space sector, in particular with a view to building on the progress achieved by the Committee at the session and to ensuring timely completion of the planned Space Protocol.

Item No. 6 on the revised draft agenda: review of the report

150. The Report for the first four days of the session was reviewed with a number of amendments. It was agreed that the report for the fifth and final day, once prepared by the Secretariat, be approved by the Chairman of the Committee, on behalf of the latter.

Item No. 7 on the revised draft agenda: any other business

151. The Committee was seized of a proposal from an observer for the adoption at the diplomatic Conference for adoption of the future draft Space Protocol of a resolution supporting the development of an internationally recognised standard for the design and operation of electronic registries designed to ensure the continued level of integrity that was already found in the International Registry for aircraft objects (C.G.E./Space Pr./4/W.P. 4 rev., pp. 32-33). It was agreed that the Secretariat, together with other interested parties, should undertake consultations with the International Standards Organisation with a view to considering the full implications of this proposal.

Closure of the session

152. No other business being raised, *the Chairman of the Committee* declared the session closed at 4.30 p.m. on 7 May 2010.

APPENDIX I

Revised version of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets

*(as prepared by Professor Sir Roy Goode (United Kingdom) and Mr M. Deschamps (Canada), as Co-chairmen of the Drafting Committee, to reflect the conclusions reached by the Committee of governmental experts during its third session, held in Rome from 7 to 11 December 2009, and as reviewed by the Drafting Committee, as also to incorporate drafting improvements) **

Explanatory memorandum on drafting amendments

(prepared by Professor Sir Roy Goode and Mr Deschamps)

Introduction

1. At the third session of the Committee of governmental experts, held in Rome from 7 to 11 December 2009, it was agreed that future work should be based on the alternative text (technical amendments) which we had presented to the Committee of governmental experts. Various decisions were taken by the Committee of governmental experts affecting the drafting of the text, and the Drafting Committee was authorised to undertake inter-sessional work to reflect those decisions and to make other drafting improvements. The Drafting Committee appointed at the third session consisted of Canada, the People's Republic of China, France, Nigeria, the Russian Federation, Senegal, the United Kingdom and the United States of America. In addition, Ms M. Leimbach participated in all meetings of the Drafting Committee, as an adviser on behalf of the international commercial space, financial and insurance communities.

2. We prepared a revised text which was circulated by the UNIDROIT Secretariat to members of the Drafting Committee on 18 January 2010 for comment. Comments were received from representatives of the People's Republic of China and the Russian Federation to which we have responded and which we have taken into account in the preparation of the revised text set out hereunder. The following paragraphs describe the changes made.

Re: Article I (2) (b)

3. The words "or to become due" have been inserted to cover performances becoming due to the debtor after the making of the rights assignment.

Re: Article I (2) [(jj)]

4. We asked Ms P. Meredith, who represented the salvage insurers at the third session of the Committee of governmental experts, whether she felt a definition of "salvage interest" was required and,

* *Note by the UNIDROIT Secretariat:* this revised version of the preliminary draft Protocol has been prepared by Professor Sir Roy Goode (United Kingdom) and Mr M. Deschamps (Canada), as Co-chairmen of the Drafting Committee, and reviewed by the Drafting Committee, in line with the decision taken by the Committee of governmental experts at its third session (cf. C.G.E./Space Pr./3/Report rev., §§ 71 and 72). It incorporates not only those amendments made to the preliminary draft Protocol during the third session - in the case of additions, these are underlined and, in the case of deletions, struck through - but also language intended to cover those conclusions reached by the Committee of governmental experts but which the Drafting Committee did not have time to implement during that session - these are also either underlined or struck through but appear in bold print too.

if so, whether she could provide this. The new Article I(2)[(jj)], in square brackets, is her draft, which we consider satisfactory but have slightly shortened.

Re: Article I(2)(I)

5. The words “capable of being independently owned, used or controlled” have been placed in square brackets because of concerns that they would enable an international interest to be taken in an unassembled collection of nuts, bolts and screws on the factory floor which, once incorporated, would lose their identity and become unavailable to the creditor anyway. The words in question would thus undermine the effect of the additional words “without losing its distinct identity”, which are designed to ensure that such items are excluded from the definition. The final wording of the definition is a matter for the Committee of governmental experts.

Re: Article I(3)

6. One delegation pointed out at the third session of the Committee of governmental experts that there were other instruments which needed to be added for the sake of completeness. Details are awaited.

Re: Article IV

7. The Committee of governmental experts agreed to the proposal made on behalf of the salvage insurers that provisions should be added to Article IV giving salvage insurers who paid the holder of an international interest in respect of a constructive total loss a right of subrogation to the creditor’s associated rights, related international interest and any recorded rights assignment or rights reassignment. A minor amendment has been suggested by Ms Meredith for consistency with the new definition of salvage interests. We have made some further minor changes of a drafting nature, including changes to reflect the fact that what is recorded is not debtor’s rights but the rights assignment or rights reassignment.

Re: Article VIII(2)

8. We have amended paragraph 2 to cover rights assignments and rights reassignments. The amendments are in square brackets to indicate that it is for the Committee of governmental experts to decide whether the parties’ ability to choose the applicable law should extend to their contractual rights and obligations in respect of rights assignments and rights reassignments.

Re: Article IX

9. This has been amended for greater accuracy.

Re: Article X(1)

10. This reflects a change agreed by the Committee of governmental experts to limit a rights assignment to what is permitted by the applicable law.

Re: Article XII(1)

11. It was agreed that the recording facility should be extended to cover rights acquired by subrogation as well as rights acquired by a rights assignment. So, a salvage insurer paying the amount due to the creditor and acquiring rights of subrogation under Article IV(5) of the revised preliminary draft Protocol could have its interest recorded, as could a surety discharging the debt due to the creditor.

Re: Articles XVI and XIX

12. It was pointed out by the Russian member of the Drafting Committee that a licence might cover space assets other than those to which the debtor's rights relate. Article XVI has been amended to take care of this. In addition the words "assignor" and "assignee" have been changed to "debtor" and "creditor" to avoid confusion with the parties to a rights reassignment. As a consequential amendment, Article XIX(1)(b) has been deleted and in Article XIX(1) the words "by way of security" have been added.

Re: Article XIX(1)

13. Default can arise only in respect of a rights assignment by way of security; so, the words "by way of security" have been added.

Re: Article XXIV

14. This has been amended to address a conflict between what were previously two paragraphs, as noted at the end of paragraph 5.72 of the Official Commentary on the Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters specific to Aircraft Equipment.

Re: Article XXX

15. As drafted, this Article did not fully reflect what was decided at the meeting of the Sub-Committee of the Committee of governmental experts to examine certain aspects of the future international registration system for space assets held in Rome on 26 and 27 October 2009 and approved by the Committee of governmental experts. We have, therefore, amended Article XXX to reflect the decision taken by the Committee of governmental experts that a distinction should be drawn between registration against a space asset still on Earth and registration against a space asset already in space. As to the latter, there may not have been a manufacturer's serial number or it may not be visible. Accordingly paragraph 2 prescribes basic data, leaving these to be supplemented by any additional data that may be proposed by experts and by regulations. Paragraph 1 provides for a creditor who has registered pre-launch to add to the registration particulars post-launch but not so as to affect the validity of the initial registration if no additional particulars are registered or if they are registered but are incorrect.

Roy Goode
Michel Deschamps
13 April 2010.

Revised version of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets

(as prepared by Professor Sir Roy Goode (United Kingdom) and Mr M. Deschamps (Canada), as Co-chairmen of the Drafting Committee, to reflect the conclusions reached by the Committee of governmental experts during its third session, held in Rome from 7 to 11 December 2009, and as reviewed by the Drafting Committee, as also to incorporate drafting improvements)

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 or to become 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;

[(jj) "salvage" means title to, interest in, or funds derived from a space asset to which the insurer is or may be entitled by contract or operation of law upon payment of proceeds following a loss affecting the space asset];¹

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

(l) "space asset" means any man-made uniquely identifiable ~~asset 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,]² ~~in space~~ or intended to be launched ~~in or into space~~ without losing its distinct identity, such as a satellite, space station, satellite bus, transponder, module, space vehicle, launch vehicle or space capsule 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 to its ownership, use or control ~~thereto~~.

¹ This definition was supplied by Ms P. Meredith, on behalf of the salvage insurers, in response to a query from the co-Chairmen of the Drafting Committee. It has been slightly shortened.

² It was agreed by the Committee of governmental experts at its third session that the square brackets placed around the words "capable of being independently owned, used or controlled" did not indicate disagreement with the need for some such language but rather the desirability of more appropriate language being found.

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.

Note: this is to be amended to add reference to other instruments for completeness.

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 **and salvage insurance***

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 with respect to the space asset as if references to the debtor and the creditor were references 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) shall apply to contracts of sale and prospective sales.

4. - For the purposes of Article III [title to or]³ 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.

5. - For the purposes of the Convention, when an insurer makes a payment to a creditor of insurance proceeds for a covered loss of an insured space asset in which the creditor has an international interest, the insurer shall, to the extent of the insurer's salvage interest, have the right of subrogation to the creditor's associated rights and related international interest in the space asset and to any debtor's rights assigned to the creditor under a rights assignment or rights reassignment recorded as part of the registration of that international 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.

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.

³ **Modification suggested by Ms Meredith in order to be consistent with the proposed new definition of "salvage interest."**

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, a rights assignment or rights reassignment 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 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 agreement 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. – ~~Except as otherwise agreed by the parties, a~~ rights assignment made in conformity with Article IX transfers to the creditor ~~all~~ the 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 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 or acquisition by subrogation
as part of registration of international interest*

1. – The holder of an international interest or prospective international interest in a space asset ~~to~~ on whom the debtor has ~~conferred~~ granted 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 ~~assigned~~ 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.

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.

Note: left for consideration at the next session was the priority as between an assignee of debtor's rights under a rights assignment and an assignee under an assignment of rights deriving from the space asset but unconnected to an international interest.

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 ~~debtor assignor~~ as to licences

The ~~debtor assignor~~ under a rights assignment or rights reassignment shall at the request of the ~~creditor assignee~~ take all steps within its power to procure, in relation to the space asset to which those rights relate, the transfer of its licence to the ~~creditor assignee~~ or the termination of its licence and the grant of a new licence to the ~~creditor assignee~~, and shall fully co-operate with the ~~creditor 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].⁴

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

1. – In the event of default by the debtor under a rights assignment **by way of security**, Articles 8, 9 and 11 to 14 of the Convention apply in the relations between the **debtor assignor** and the **creditor 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;~~

(**be**) 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.

⁴ ~~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. An informal working group on default remedies in relation to components was established by the Committee of governmental experts at its third session. The Informal Working Group reported at the conclusion of that session that, whilst it had made considerable progress, time had not permitted the reaching of a definitive conclusion. It was, therefore, 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 of governmental experts.~~

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 subparagraph (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~~**The** 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 previously 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 subparagraph (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 Depositary.]²~~

~~[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 Depositary.]⁵~~

⁵ — ~~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 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.~~

[Article XXVII bis – Limitations on remedies in respect of public service

1. - A State has the right to object to the exercise of default remedies, as provided in Chapter III of the Convention and Articles 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 twenty 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 licensing 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.⁶

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 ninety 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 XVIII to XXIII of this Protocol, in respect of the relevant space asset.⁷

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].]

⁶ 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 licensed in a foreign country or operating through equipment located in a third country

⁷ 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 Article should preclude a filing for insolvency during the ninety-day period by the debtor or by a third party against the debtor.

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. – 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, 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. **After launch of the space asset the creditor may add to its registration data all or any of the additional data specified in paragraph 2 but failure to do so or the addition of incorrect data shall not affect the validity of the registration.**

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

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.

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 PROVISIONS⁸]

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.

⁸ **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. They are based on the Final Provisions contained in the Aircraft and Rail Protocols.**

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 II

LIST OF PARTICIPANTS

MEMBERS *

ALGERIA (PEOPLE'S DEMOCRATIC REPUBLIC OF)	<p>M. Ali HALOUANE Directeur Centre de Réception et d'exploitation de l'imagerie satellitaire <i>Hussein-dey</i></p> <p>Mlle Amel BEHIRI Chef du Département Droit Spatial International Agence Spatiale Algérienne <i>Algiers</i></p> <p>Mme Lamia HADDADI Juriste Service géographique et de télédétection <i>Algiers</i></p> <p>M. Messaoud KERROUM Secrétaire diplomatique Ambassade de la République algérienne démocratique et populaire en Italie <i>Rome</i></p>
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BURKINA FASO	<p>M. Eric ZOUNGRANA Conseiller affaires étrangères Direction générale affaires juridiques et consulaires Ministère des affaires étrangères et de la coopération régionale <i>Ouagadougou</i></p>

* Pursuant to the decision taken by the UNIDROIT Governing Council at its 80th 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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OTHERS

Mr Rob COWAN	Managing Director Aviareto Limited <i>Dublin</i>
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APPENDIX III

AGENDA

1. Adoption of the agenda
2. Organisation of work
3. Consideration of the revised version of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets, prepared by Sir Roy Goode (United Kingdom) and Mr J.M. Deschamps (Canada), as Co-chairmen of the Drafting Committee, to reflect the conclusions reached by the Committee of governmental experts at its third session, held in Rome from 7 to 11 December 2009, and reviewed by the Drafting Committee (C.G.E./Space Pr./4/W.P. 3 rev.), *inter alia* in the light of the comments submitted by Governments, Organisations and representatives of the international commercial space, financial and insurance communities (C.G.E./Space Pr./4/W.P. 4 rev. and W.P. 4 rev. Add. 1).
4. Consideration of the question of the Supervisory Authority of the future international registration system for space assets (C.G.E./Space Pr./4/W.P. 5)
5. Future work
6. Review of report
7. Any other business.

APPENDIX IV

PROPOSAL FOR A NEW ARTICLE XIII(1)

(presented by the delegations of Japan, Canada and the United Kingdom)

Article XIII

1. Subject to paragraph 2, a recorded rights assignment has priority over any other assignment (whether or not a rights assignment) except a rights assignment previously recorded.

APPENDIX V

INTERIM REPORT OF THE DRAFTING COMMITTEE

The Drafting Committee as established by the Committee of governmental experts on 3 May 2010, met on 4 May 2010 from 6 p.m. to 8.15 p.m., and on 5 May 2010 from 6.20 p.m. to 8.45 p.m.

The following delegations were represented on the Drafting Committee: Canada, the People's Republic of China, Nigeria, the Russian Federation, Senegal, the United Kingdom and the United States of America. Ms Martine Leimbach (Crédit Agricole S.A.) and Ms Pamela Meredith (Zuckert Scoutt & Rasenberger L.L.P.) participated as observers.

Sir Roy Goode (United Kingdom) and Mr Michel Deschamps (Canada) acted as co-Chairmen of the Drafting Committee.

The Drafting Committee took document C.G.E./Space Pr./4/W.P. 3 rev. as a basis for its work and agreed to the following amendments:

**TEXT OF THE PROVISIONS OF THE PRELIMINARY DRAFT PROTOCOL
CONSIDERED AND REVISED BY THE DRAFTING COMMITTEE IN THE LIGHT OF THE DECISIONS
OF THE COMMITTEE OF GOVERNMENTAL EXPERTS ON 3, 4 AND 5 MAY 2010**

(revisions highlighted)

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 restrictions;~~

~~(b~~a~~) “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;~~

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

~~(d~~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;~~

~~(e~~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;~~

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

~~(g~~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) “obligor” means a person from whom payment or other performance of debtor’s rights is due or to become due;~~

~~(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;~~

~~[(j~~j~~) “salvage interest” means title to, interest in, or right to funds derived from a space asset to which the insurer is or may be entitled by contract or operation of law upon payment of proceeds following a loss affecting the space asset];~~

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

(1) “space asset” means any man-made uniquely identifiable asset 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 space or intended to be launched in or into space without losing its distinct identity, such as a satellite, space station, satellite bus, transponder, module, space vehicle, launch vehicle or space capsule 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 to its ownership, use or controlthereto.

~~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.~~

[Alternative A

3. - In Articles 2(2)(n), 43 and 54(1) of the Convention and Article XXIII of 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 a Contracting State on the territory of which a mission operation centre for the space asset is located~~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.]~~

[Alternative B

3. - In Articles 2(2)(n), 43 and 54(1) of the Convention and Article XXIII of 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 a Contracting State from the territory of which the space asset may be controlled ~~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.]~~

[Alternative C

3. - In Articles 2(2)(n), 43 and 54(1) of the Convention and Article XXIII of 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 a Contracting State on the registry of which the space asset is carried for the purposes of the Treaty on principles governing the activities of states in the exploration and use of outer space, including the moon and other celestial bodies (1967 Outer Space Treaty).]

It will be for the Committee of governmental experts to decide whether Alternative A, B or C, or a combination of them, should apply.

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

1. – The Convention shall apply in relation to space assets, rights assignments and rights reassignments ~~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)(1)~~ shall not constitute an aircraft object for the purposes of the Convention as applied to aircraft objects, whether ~~the object~~ it 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 and salvage ~~insurance~~ interests

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 a transfer 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 with respect to the space asset as if references to the debtor and the creditor were references 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) shall apply to contracts of sale and prospective sales.
4. – For the purposes of ~~this Protocol~~ ~~Article III~~ ~~], title to or]~~ an interest in a space asset acquired by an ~~satellite~~ insurer as a salvage interest is treated as if deemed to have been acquired by way of sale.
5. – **For the purposes of the Convention, when an insurer makes a payment to a creditor of insurance proceeds for a covered loss of an insured space asset in which the creditor has an international interest, the insurer shall, to the extent of the insurer's salvage interest, have the right of subrogation to the creditor's associated rights and related international interest in the space asset and to any debtor's rights assigned to the creditor under a rights assignment or rights reassignment recorded as part of the registration of that international 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.**

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 a contract of sale~~], a rights assignment or rights reassignment]~~ 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

A ~~transfer or 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 the 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 ~~obligor~~~~grantor of debtor's rights~~ against the creditor.

3. – The ~~obligor~~~~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 or acquisition by subrogation
as part of registration of international interest*

1. – The holder of an international interest or prospective international interest in a space asset ~~who has acquired 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.

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 ~~obligor~~~~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 transfer of debtor's rights ~~rights assignment (whether or not a rights assignment) except a rights assignment previously recorded~~ ~~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~~ Obligor'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~~ obligor is bound by the rights assignment and has a duty to make payment or give other performance to the creditor, if ~~but and~~ only if:

- (a) ~~such person~~ the obligor 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 obligor ~~grantor~~ discharges the obligor ~~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 debtor assignor as to licences

~~— The debtor assignor under a rights assignment or rights reassignment shall at the request of the creditor assignee take all steps within its power to procure, in relation to the space asset to which those rights relate, the transfer of its licence to the creditor assignee or the termination of its licence and the grant of a new licence to the creditor assignee, and shall fully co-operate with the creditor 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) – a~~Any remedy given by the Convention in relation to a space asset shall be exercised in a commercially reasonable manner. A;

~~(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.

~~32. – 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.~~

~~[43. – Insert any provision as regards enforcement against a space asset functionally physically linked to another space asset in which another creditor has an interest].~~

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

1. – In the event of default by the debtor under a rights assignment by way of security, Articles 8, 9 and 11 to 14 of the Convention apply in the relations between the debtor and the creditor (and in relation to 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 object were references to the debtor's rights.

2. – In the event of default by the assignor ~~under 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.

Article XX – Placement of data and materials

The parties to an agreement may specifically agree for the placement of command codes and ~~other related~~ 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 subparagraph (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. – The 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. – The buyer of a space asset under a registered sale acquires its interest in that asset subject to an interest previously registered.

Article XXV – Modification of assignment provisions

Article 33(1) of the Convention applies with the following being added immediately after subparagraph (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-related~~ 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.- Nothing in this Protocol precludes the imposition by a Contracting State of restrictions on the exercise of remedies to secure the provision or maintenance of a service which is in the vital interest of that State if the exercise of those remedies cause interruption in the provision or maintenance of that service.

4. - In this Article, "controlled" means that the transfer of the goods, technology, data or services is subject to governmental restrictions.

[Article XXVII bis – Limitations on remedies in respect of public service

1. - A State has the right to object to the exercise of default remedies, as provided in Chapter III of the Convention and Articles 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 twenty 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 licensing 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.

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 ninety 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 XVIII to XXIII of this Protocol, in respect of the relevant space asset.

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].]

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. – ~~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, 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. **After launch of the space asset the creditor may add to its registration data all or any of the additional data specified in paragraph 2 but failure to do so or the addition of incorrect data shall not affect the validity of the registration.**~~

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

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.

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 ~~the~~^{the} liability of the Registrar to the extent provided by the regulations~~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.]

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 at its second session held two meetings on 5 and 6 May 2010. Representatives of the following States participated in its work: Algeria, Canada, the Czech Republic, the People's Republic of China, France, Germany, Italy, Japan and the United States of America. Ms C. Dubreuil (EADS Astrium), Mr O. Heinrich (BHO Legal Partnership), 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. It was agreed that the discussion proposal set out below, designed to reflect the extensive discussions held by the Informal Working Group, should be laid before the Committee of governmental experts for consideration. It was further agreed that this discussion proposal should be presented in the form of two technical approaches to one concept.

DISCUSSION PROPOSAL

SETTING OUT TWO TECHNICAL APPROACHES TO ONE CONCEPT

CONCEPT

Contractual obligations for the provision of public services should be maintained both where a creditor is exercising its rights under the Convention as applied to space assets and where the ownership of a space asset is being transferred.

TWO TECHNICAL APPROACHES TO ACHIEVE THIS GOAL

1. *Rights approach*

Article ...

1. A lease of a space asset for the provision of public services which is so acknowledged by the parties may be registered by notice in accordance with Article 16 of the Convention.

2. The registration of a notice of a public services lease made within a six-month period after the date of launch of a satellite prevails over other rights previously registered.

3. Any transfer of ownership of a space asset, either through a sale or through the exercise of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol, is subject to the previously registered lease notice. The transferee is bound by the obligations of the lessor under the lease.

4. Any lease registered by notice under paragraph 2 which is in breach of a previously registered financing contract may be struck from the International Registry at the request of the creditor.

2. *Remedies approach*

Article ...

1. The creditor may not exercise the remedies provided in Chapter III of the Convention and Articles XVIII to XXIII of this Protocol in respect of a space asset which is used for the provision or maintenance of a public service, to the extent that this could interfere with the contractual obligations of the debtor concerning the provision or maintenance of the public service.

2. The preceding paragraph shall only apply if a notice is registered in the International Registry recording that the debtor is contractually obliged to provide or maintain public service through that space asset

(a) prior to the registration of the international interest in that space asset by the creditor exercising remedies or

(b) within [six months] from the date of launch of the space asset, even if after the registration of the international interest by the creditor.

Such a notice can be registered by the parties to the contract or by the State to which the public service is provided.

APPENDIX VII

REPORT OF THE DRAFTING COMMITTEE

The Drafting Committee as established by the Committee of governmental experts on 3 May 2010, met on 4 May 2010 from 6 p.m. to 8.15 p.m., on 5 May 2010 from 6.20 p.m. to 8.45 p.m. and on 6 May 2010 from 4.30 p.m. to 6.10 p.m.

The following delegations were represented on the Drafting Committee: Canada, the People's Republic of China, Nigeria, the Russian Federation, Senegal, the United Kingdom and the United States of America. Ms Martine Leimbach (Crédit Agricole S.A.) and Ms Pamela Meredith (Zuckert Scoutt & Rasenberger L.L.P.) participated as observers.

Sir Roy Goode (United Kingdom) and Mr Michel Deschamps (Canada) acted as co-Chairmen of the Drafting Committee.

The Drafting Committee took document C.G.E./Space Pr./4/W.P. 3 rev. as a basis for its work and agreed to the amendments which are highlighted in the revised preliminary draft Protocol which is set out below. Those provisions which have not been reviewed by the Drafting Committee, because they are under discussion either by the informal working Group on default remedies in relation to components or by the informal working Group on limitations on remedies or else, as in the case of Article I(2)(l), are dependent on the work of the former or, as in the case of Article XXX, are subject to technical consultations, are marked by an asterisk.

**TEXT OF THE PROVISIONS OF THE PRELIMINARY DRAFT PROTOCOL
CONSIDERED AND REVISED BY THE DRAFTING COMMITTEE IN THE LIGHT OF THE DECISIONS
OF THE COMMITTEE OF GOVERNMENTAL EXPERTS ON 3, 4, 5 AND 6 MAY 2010**

(revisions highlighted)

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 restrictions;~~

(ba) “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;

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

(dc) “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;

(ed) “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;

~~[(fe) “launch vehicle” means a vehicle used or intended to be used to transport persons or goods to or from space;]~~

(gf) “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) “obligor” means a person from whom payment or other performance of debtor’s rights is due or to become due;

(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;

[(jj) “salvage interest” means title to, interest in, or right to funds derived from a space asset to which the insurer is or may be entitled by contract or operation of law upon payment of proceeds following a loss affecting the space asset];

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

* (l) “space asset” means any man-made uniquely identifiable asset 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 space or intended to be launched in or into space without losing its distinct identity, such as a satellite, space station, satellite bus, transponder, module, space vehicle, launch vehicle or space capsule 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 to its ownership, use or control 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.~~

[Alternative A

3. – In Articles 2(2)(n), 43 and 54(1) of the Convention and Article XXIII of 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 a Contracting State on the territory of which a mission operation centre for the space asset is located ~~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.]~~

[Alternative B

3. – In Articles 2(2)(n), 43 and 54(1) of the Convention and Article XXIII of 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 a Contracting State from the territory of which the space asset may be controlled ~~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.]~~

[Alternative C

3. – In Articles 2(2)(n), 43 and 54(1) of the Convention and Article XXIII of 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 a Contracting State on the registry of which the space asset is carried for the purposes of the Treaty on Principles Governing the Activities of States in the

Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies (1967 Outer Space Treaty).]

It will be for the Committee of governmental experts to decide whether Alternative A, B or C, or a combination of them, should apply.

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

1. - The Convention shall apply in relation to space assets, rights assignments and rights reassignments ~~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)(1)~~ shall not constitute an aircraft object for the purposes of the Convention as applied to aircraft objects, whether ~~the object~~ it 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 and salvage ~~insurance~~ interests

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 a transfer 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 with respect to the space asset as if references to the debtor and the creditor were references 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) shall apply to contracts of sale and prospective sales.

4. - For the purposes of this Protocol ~~Article III~~, title to ~~or~~ an interest in a space asset acquired by an satellite insurer as a salvage interest is treated as if ~~deemed to have been~~ acquired by way of sale.

*5. - For the purposes of the Convention, when an insurer makes a payment to a creditor of insurance proceeds for a covered loss of an insured space asset in which the creditor has an international interest, the insurer shall, to the extent of the insurer's salvage interest, have the right of subrogation to the creditor's associated rights and related international interest in the space asset and to any debtor's rights assigned to the creditor under a rights assignment or rights reassignment recorded as part of the registration of that international 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.

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 a contract of sale~~], a rights assignment or rights reassignment]~~ 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

A ~~transfer n-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 the 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 ~~obligor grantor of debtor's rights~~ against the creditor.

3. – The ~~obligor 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 or acquisition by subrogation as part of registration of international interest

1. – The holder of an international interest or prospective international interest in a space asset ~~who has acquired 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.

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 obligor 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 transfer of debtor's rights ~~rights assignment (whether or not a rights assignment) except a rights assignment previously recorded~~ 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~~ Obligor'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~~ obligor is bound by the rights assignment and has a duty to make payment or give other performance to the creditor, if ~~but and~~ only if:

- (a) ~~such person~~ the obligor 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 obligor grantor discharges the obligor 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 debtor assignor as to licences*~~

~~The debtor assignor under a rights assignment or rights reassignment shall at the request of the creditor assignee take all steps within its power to procure, in relation to the space asset to which those rights relate, the transfer of its licence to the creditor assignee or the termination of its licence and the grant of a new licence to the creditor assignee, and shall fully co-operate with the creditor 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 in relation to a space asset shall be exercised in a commercially reasonable manner. A;~~

~~(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.~~

~~32. – 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.~~

~~[43. – Insert any provision as regards enforcement against a space asset functionally physically linked to another space asset in which another creditor has an interest].~~

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

1. – In the event of default by the debtor under a rights assignment by way of security, Articles 8, 9 and 11 to 14 of the Convention apply in the relations between the debtor and the creditor (and in relation to 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 object were references to the debtor's rights.

2. – In the event of default by the assignor ~~under 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.

Article XX – Placement of data and materials

The parties to an agreement may specifically agree for the placement of command codes and ~~other related~~ 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 subparagraph (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. – The 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. – The buyer of a space asset under a registered sale acquires its interest in that asset subject to an interest previously registered.

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-related~~ 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.- Nothing in this Protocol precludes the imposition by a Contracting State of restrictions on the exercise of remedies to secure the provision or maintenance of a service which is in the vital interest of that State if the exercise of those remedies cause interruption in the provision or maintenance of that service.]

4. - In this Article, "controlled" means that the transfer of the goods, technology, data or services is subject to governmental restrictions.

* [Article XXVII bis – Limitations on remedies in respect of public service

1. - A State has the right to object to the exercise of default remedies, as provided in Chapter III of the Convention and Articles 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 twenty 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 licensing 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.

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 ninety 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 XVIII to XXIII of this Protocol, in respect of the relevant space asset.

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].]

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. – 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, 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. After launch of the space asset the creditor may add to its registration data all or any of the additional data specified in paragraph 2 but failure to do so or the addition of incorrect data shall not affect the validity of the registration.

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

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.

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 ~~the~~^{the} liability of the Registrar to the extent provided by the regulations 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

**TEXT OF THE REVISED PRELIMINARY DRAFT PROTOCOL TO THE CAPE TOWN CONVENTION ON
MATTERS SPECIFIC TO SPACE ASSETS**

*as it emerged from the fourth session of the UNIDROIT Committee of governmental experts for
the preparation of a draft Protocol to the Cape Town Convention on Matters specific to Space
Assets, held in Rome from 3 to 7 May 2010*

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 rights to payment or other performance due or to become 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) "obligor" means a person from whom payment or other performance of debtor's rights is due or to become due;

(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;

[(jj) "salvage interest" means title to, interest in, or right to funds derived from a space asset to which the insurer is or may be entitled by contract or operation of law upon payment of proceeds following a loss affecting the space asset];

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

(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.

[Alternative A

3. - In Articles 1(2)(n), 43 and 54(1) of the Convention and Article XXIII of this Protocol references to 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 a Contracting State on the territory of which a mission operation centre for the space asset is located.]⁹

[Alternative B

3. - In Articles 1(2)(n), 43 and 54(1) of the Convention and Article XXIII of this Protocol references to a Contracting State on the territory of which an object or space asset is located or situated

⁹ It will be for the Committee of governmental experts at its next session to decide whether Alternative A, Alternative B or Alternative C or a combination of them should apply.

shall, as regards a space asset when not on Earth, be treated as references to a Contracting State from the territory of which the space asset may be controlled.]¹⁰

[Alternative C

3. – In Articles 1(2)(n), 43 and 54(1) of the Convention and Article XXIII of this Protocol references to a Contracting State on the territory of which an object or space asset is located or situated shall, as regards a space asset when not on Earth, be treated as references to a Contracting State on the registry of which the space asset is carried for the purposes of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, signed at London, Moscow and Washington, D.C. on 27 January 1967.]¹¹

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

1. – The Convention shall apply in relation to space assets, rights assignments and rights reassignments 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. – A space asset shall not constitute an aircraft object for the purposes of the Convention as applied to aircraft objects, whether it 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 and salvage interests

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 a transfer 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 with respect to the space asset as if references to the debtor and the creditor were references to the seller and the buyer respectively.

¹⁰ It will be for the Committee of governmental experts at its next session to decide whether Alternative A, Alternative B or Alternative C or a combination of them should apply.

¹¹ It will be for the Committee of governmental experts at its next session to decide whether Alternative A, Alternative B or Alternative C or a combination of them should apply.

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) shall apply to contracts of sale and prospective sales.

4. - For the purposes of this Protocol, title to a space asset acquired by an insurer as a salvage interest is treated as if acquired by way of sale.

5. - For the purposes of the Convention, when an insurer makes a payment to a creditor of insurance proceeds for a covered loss of an insured space asset in which the creditor has an international interest, the insurer shall, to the extent of the insurer's salvage interest, have the right of subrogation to the creditor's associated rights and related international interest in the space asset and to any debtor's rights assigned to the creditor under a rights assignment or rights reassignment recorded as part of the registration of that international 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.

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 a contract of sale, a rights assignment or rights reassignment 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

A transfer 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 the 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 obligor against the creditor.

3. – The obligor 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 or acquisition by subrogation
as part of registration of international interest*

1. – The holder of an international interest or prospective international interest in a space asset who has acquired an interest in or over debtor's rights under a rights assignment or 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.

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 obligor.

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 transfer of debtor's rights (whether or not a rights assignment) except a rights assignment previously recorded.

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 – Obligor's duty to creditor

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

- (a) the obligor 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 obligor discharges the obligor 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 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. – Article 8(3) of the Convention shall not apply to space assets. Any remedy given by the Convention in relation to a space asset shall be exercised in a commercially reasonable manner. 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 except where such a provision is manifestly unreasonable.

2. – 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.

[3. – Insert any provision as regards enforcement against a space asset physically linked to another space asset in which another creditor has an interest].

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

1. – In the event of default by the debtor under a rights assignment by way of security, Articles 8, 9 and 11 to 14 of the Convention apply in the relations between the debtor and the creditor (and in

relation to 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 object were references to the debtor's rights.

2. – In the event of default by the assignor under a rights reassignment by way of security, the preceding paragraph applies as if references to the assignment were references to the reassignment.

Article XX – Placement of data and materials

The parties to an agreement may specifically agree for the placement of command codes and related 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 subparagraph (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. – The 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. – The buyer of a space asset under a registered sale acquires its interest in that asset subject to an interest previously registered.

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 related 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.

3. – In this Article, "controlled" means that the transfer of the goods, technology, data or services is subject to governmental restrictions.

[Article XXVII bis – Limitations on remedies in respect of public service

[Alternative A

1. – A State has the right to object to the exercise of default remedies, as provided in Chapter III of the Convention and Articles 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 twenty 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 licensing 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.

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 ninety 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 XVIII to XXIII of this Protocol, in respect of the relevant space asset.

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].¹²

[Alternative B

Concept

Contractual obligations for the provision of public services should be maintained both where a creditor is exercising its rights under the Convention as applied to space assets and where the ownership of a space asset is being transferred.

Two technical approaches to achieve this goal

I. Rights approach

Article ...

1. – A lease of a space asset for the provision of public services which is so acknowledged by the parties may be registered by notice in accordance with Article 16 of the Convention.

2. – The registration of a notice of a public services lease made within a six-month period after the date of launch of a satellite prevails over other rights previously registered.

3. – Any transfer of ownership of a space asset, either through a sale or through the exercise of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol, is subject to the previously registered lease notice. The transferee is bound by the obligations of the lessor under the lease.

4. – Any lease registered by notice under paragraph 2 which is in breach of a previously registered financing contract may be struck from the International Registry at the request of the creditor.

II. Remedies approach

Article ...

1. – The creditor may not exercise the remedies provided in Chapter III of the Convention and Articles XVIII to XXIII of this Protocol in respect of a space asset which is used for the provision or maintenance of a public service, to the extent that this could interfere with the contractual obligations of the debtor concerning the provision or maintenance of the public service.

2. – The preceding paragraph shall only apply if a notice is registered in the International Registry recording that the debtor is contractually obliged to provide or maintain public service through that space asset

¹² Alternative A constitutes a discussion proposal that emerged from the Informal Working Group of the Committee of governmental experts on limitations on remedies at the third session of that Committee, held in Rome from 7 to 11 December 2009.

(a) prior to the registration of the international interest in that space asset by the creditor exercising remedies or

(b) within [six months] from the date of launch of the space asset, even if after the registration of the international interest by the creditor.

Such a notice can be registered by the parties to the contract or by the State to which the public service is provided.]¹³]

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. – 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. After launch of the space asset the creditor may add to its registration data all or any of the additional data specified in paragraph 2 but failure to do so or the addition of incorrect data shall not affect the validity of the registration.

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 [...] 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.

¹³ Alternative B constitutes a discussion proposal that emerged from the Informal Working Group of the Committee of governmental experts on limitations on remedies at the fourth session of that Committee.

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.

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 the liability of the Registrar under the Convention to the extent provided by the regulations.

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 ¹⁴

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.

¹⁴ 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 prejudice that process. They are based on the Final Provisions contained in the Aircraft and Luxembourg Protocols.

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.]