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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

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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

First session (Rome, 15 - 19 December 2003):

REPORT

(prepared by the UNIDROIT Secretariat)

Rome, February 2004

Opening of the session

1. In opening the first session of the UNIDROIT Committee of Governmental Experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (hereinafter referred to as the *Committee*), Mr H. Kronke, Secretary-General of UNIDROIT, extended a warm welcome to all participants. He thanked the Food and Agriculture Organization of the United Nations (F.A.O.) for the hospitality extended to UNIDROIT.

2. Ms C. Gardner, Assistant Director-General, General Affairs and Information Department, welcomed all participants and UNIDROIT on behalf of Mr J. Diouf, Director-General, F.A.O.

3. Mr M.J. Stanford, Principal Research Officer, UNIDROIT, was Secretary to the Committee. Ms L. Peters, Research Officer, UNIDROIT, Ms M. Schneider, Research Officer, UNIDROIT, and Mr B. Poulain, Associate Research Officer, UNIDROIT, acted as Assistant Secretaries.

4. The session was attended by 111 representatives of 39 Governments, four intergovernmental Organisations and six international non-governmental Organisations (see List of participants reproduced in *Appendix I*).

Agenda item No. 1: Election of the Chairman

5. Mr S. Marchisio, Professor of Law in the University of Rome and Director of the Institute of International Legal Studies (Italy), was elected Chairman of the Committee, on a proposal moved by the delegation of Mexico and seconded by the delegations of Australia, China and Nigeria.

6. Upon a proposal moved by the delegation of India and seconded by the delegation of Italy, Mr J. Sanchez Cordero, External Adviser on Private International Law Matters to the Legal Adviser to the Ministry of Foreign Affairs and Member of the UNIDROIT Governing Council (Mexico), was elected First Deputy Chairman and Ms L. Shope-Mafole, Chairperson of the Presidential National Commission on the Information Society and Development (South Africa), was elected Second Deputy Chairperson.

Agenda item No. 2: Adoption of the agenda

7. The draft agenda was adopted as proposed (reproduced in *Appendix II*).

Agenda item No. 3: Organisation of work

8. Mr Stanford introduced the Order of business for 15 December 2003 (UNIDROIT C.G.E./Space Pr./1/O/B-1) and the Order of business proposed by the Secretariat for the session as a whole (UNIDROIT C.G.E./Space Pr./1/O/B-2). With regard to the latter, he drew attention to the fact that, with the exception of Article XVII of the basic working paper before the Committee, the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (as established by a working group organised, at the invitation of the President of UNIDROIT, by Peter D.

Nesgos, Esq., with the assistance of Dara A. Panahy, Esq., and revised, pursuant to a decision taken by the UNIDROIT Governing Council at its 80th session, held in Rome from 17 to 19 September 2001, by a Steering and Revisions Committee, meeting in Rome on 1 February 2002) (UNIDROIT 2003 Study LXXIIJ - Doc 10 rev.) (hereinafter referred to as the *preliminary draft Protocol*) (reproduced in *Appendix III*), it was not contemplated that the registration provisions of the preliminary draft Protocol would be considered by the Committee at its first session. It was rather envisaged that, depending on the outcome of such informal consultations as might be conducted by delegations during the session, the Committee might at its closing meeting consider the case for setting up an informal international registration task force to review the entirety of the registration provisions, in particular against the needs of the future international registration system for space assets to be set up under the preliminary draft Protocol. He indicated that the Secretariat would be carrying out informal consultations with delegations with a view to the establishment of the Drafting Committee. It was the Secretariat's intention to propose as small a Drafting Committee as was consistent with the need to cover the Institute's two working languages and the desirability of ensuring maximum transparency, in particular in relation to the different geographic regions represented at the session, in the interest of enhancing its overall functionality.

9. Following informal consultations, the Drafting Committee was established with the delegations of Canada, China, France, Nigeria, Tunisia, the United Kingdom and the United States of America as members. The Drafting Committee elected Mr B.J. Welch (United Kingdom) and Mr J.M. Deschamps (Canada) as its Co-chairmen.

10. The Committee was informed that informal consultations were underway concerning the needs of the future international registration system for space assets and that an informal meeting would take place to provide important up-to-date information concerning the International Registry for aircraft objects, to which all members of the Preparatory Commission present were invited.

11. Following such informal meeting, which was attended by several representatives of both Government and international Organisations, the Committee was informed of the results of the informal consultations as regards the future International Registry for space assets. It had been pointed out that the work that needed to be done would require voluntary labour. There were many issues to be considered, most of which were technical rather than legal in nature. To a considerable extent, use could be made of what had been done for the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (hereinafter referred to as the *Aircraft Protocol*), although the specific nature of space assets would have to be taken into account in order to accommodate the registration of international interests in space assets. The intention over the months prior to the following session of the Committee was, on an *ad hoc* informal basis, to seek to develop ideas that could be used in the establishment of the future international registration system for space assets.

Agenda item No. 4: Introduction to the Convention on International Interests in Mobile Equipment (C.G.E. Space Pr./1/W.P. 2)

12. Introducing the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*), Mr Kronke reviewed its main provisions and briefly commented on their importance for the financing of high-value mobile equipment.

13. Mr P.D. Nesgos, Co-ordinator of the Space Working Group (S.W.G.), indicated that he and his colleagues on the S.W.G. would be commenting on the provisions of the preliminary draft Protocol as they came up for consideration. He stressed that the expectations of the space sector for the adoption of a clear, efficient, uniform, predictable and speedy regimen for the recognition and enforcement of interests in space assets should be kept in mind.

Agenda item No. 5: Consideration of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (C.G.E. Space Pr./1/W.P.3)

General statements

14. One delegation emphasised the potential of the future Space Protocol to enhance the development of outer space activities in the commercial world. The benefits would extend not only to the manufacturers launching space equipment but to all States acquiring space services. It was not intended to affect the rights and obligations of States under existing space law treaties.

15. Another delegation emphasised that the future Protocol sought to strike a balance between the need to find private financing and the necessity to respect the particular characteristics of space assets and activities as governed by existing space law treaties.

16. Still another delegation stressed the need to solve the special problems that arose from the fact that the assets covered by the preliminary draft Protocol were located in space. Among the questions that needed to be considered was that of whether default remedies were also useful in space. It was moreover necessary to ensure that the right of use of space assets was also covered and that that right did not adversely affect other rights.

Re preamble

17. Some delegations considered that the formulation of the third clause of the Preamble, dealing with the relationship between the preliminary draft Protocol and established principles of space law, should be improved. Other delegations hesitated to change a formulation that had already been adopted in the Aircraft Protocol and stressed the need not to deviate from the instruments that had already been adopted unless there was a specific need to do so. Three different approaches were considered. The first was to maintain the uniformity of the different Protocols, the second to replace the word "mindful" at the beginning of the clause in question with the word "respectful" and to add a provision in Article XXI stating that the provisions of the preliminary draft Protocol should not affect the rights and obligations deriving from the space treaties and the third to introduce a new provision in the relevant

Article of the preliminary draft Protocol stating that, in the event of a conflict between the preliminary draft Protocol and the space treaties, the latter should prevail.

18. No consensus having been reached, it was decided that the question should be reconsidered under Article XXI.

Re Article I

19. One delegation raised the question of the order in which the definitions were set out, suggesting that the most important be placed first. It also drew attention to infelicities in the French version of footnotes 7 and 9.

20. The adviser of the S.W.G. submitted a proposal for the redrafting of the definition of "associated rights" in Article I(2)(a) (see UNIDROIT C.G.E./Space Pr./1/W.P. 8). The proposal split the definition into a definition of "contractual rights" (proposed new Article I(2)(a)) and a definition of "related rights" (proposed new Article I(2)(g)). The definition of "associated rights" employed in the Convention would therefore also apply to the preliminary draft Protocol.

21. One delegation did not feel confident with the meaning of "contractual", which it felt should relate to the contract between the debtor and the creditor. It stressed the difficulty in taking a stand on the proposal without knowing how and where the proposed terms would be used. Other delegations shared this concern.

22. Another delegation suggested that some States would prefer the reference in the English text to the "laws concerned" to read "laws or regulations", as it was debatable whether the term "laws" would also include "regulations".

23. The adviser of the S.W.G., referring to the revised proposal it had submitted for a new Article I(2)(a) (in which the term "contractual rights" had, in particular, been replaced by the term "debtor's rights") and a new Article I(2)(g) (see UNIDROIT C.G.E./Space Pr./1/W.P. 11), indicated two modifications to that proposal: in line four of the proposed new Article I(2)(g) the term "orbital positions" should be replaced by "orbits" and the square brackets in the last two lines of that same paragraph should be deleted, with the words in those square brackets being, however, retained.

24. A working paper proposing new definitions for inclusion in Article I as well as a new Article IV on the application of the Convention to debtor's rights and related rights was tabled by the S.W.G. for consideration by the Committee at its following session (see UNIDROIT C.G.E./Space Pr./1/W.P. 13) (reproduced in *Appendix VII*).

25. It was decided that the definitions of "guarantee contract", "guarantor", "insolvency-related event" and "primary insolvency jurisdiction" in Article I(2)(b)-(e), should be considered under Article XI.

26. The Committee considered whether the definition of "space assets" in Article 1(2)(f) covered only assets that were already in space or whether it also covered space assets that had been manufactured but still had to be launched or were still under construction but were intended to be launched, as well as components, and whether it should also cover the

ground segment and ground facilities to control and command the satellites and assets returned to earth from space, despite the fact that none of these items could be characterised as mobile equipment.

27. One delegation raised the question whether it made any difference if assets that had been returned from space had been returned intentionally or not and whether or not they had been returned under the control of the owner. It also raised the question as to whether reusable launch vehicles were covered and whether they should be considered as aircraft or space vehicles.

28. Another delegation observed that, in this connection, the question of the abandoning of the asset and the position of the insurance contracts and salvage rights had to be considered.

29. One delegation drew attention to the discrepancy between the formulation of Article I(2)(f)(iv) in the English ("expendable") and the French version ("*récuperable*").

30. Another delegation pointed out that the English text of the Convention referred to a "uniquely identifiable object" (see Article 2(2)), whereas the English text of Article I(2)(f)(i)-(iii) of the preliminary draft Protocol used the language "separately identifiable".

31. One delegation, referring to a previous version of the preliminary draft Protocol, enquired why Article I(2)(f)(v) had been deleted.

32. The question of the possible inclusion of components was commented on by several delegations. It was observed that this matter had also been discussed at the diplomatic Conference at which the Convention had been adopted. It had been decided there not to cover the creation of security and leasing rights in components in the Convention but to leave this question to national law and to add a conflicts rule in Article 29(7) of the Convention and Article XIV of the Aircraft Protocol. Any decision to deviate from this decision in the preliminary draft Protocol would require careful consideration.

33. The importance of the financing of pre-launch assets was stressed by some delegations.

34. In response to a query from one delegation, the adviser of the S.W.G., while confirming the significant project financing implications of the type of space financing transaction currently covered by the preliminary draft Protocol - and thus the way in which the preliminary draft Protocol differed from the Aircraft Protocol and the preliminary draft Protocol to the Convention on Matters specific to Railway Rolling Stock (hereinafter referred to as the *preliminary draft Rail Protocol*) - nevertheless insisted on the great potential the preliminary draft Protocol had to make asset-based financing facilities more widely available for commercial space activities. He stressed the particularly challenging nature of pre-launch financing, given its need for money up-front.

35. The issue of environmental protection, including post-mission debris disposal, was raised. It was suggested that this issue would fall within the scope of national regulation.

36. One delegation referred to the sentence in footnote 9 indicating that at the third session of the S.W.G. the issue had been raised as to whether the definition of "space assets" should apply to State-owned assets intended to be commercially financed in whole or in part. It was suggested that this question should be discussed in the context of Article IX.

Re Article II

37. One delegation wondered whether this Article was necessary, considering that, in Article 6, the Convention already had a provision on the relationship between the Convention and Protocols thereto. It was observed that Article II was intended to assist the reader and mirrored similar provisions contained in the Aircraft Protocol and the preliminary draft Rail Protocol.

38. One delegation pointed out that, whilst Article II stated how the Convention and the preliminary draft Protocol were to be referred to, reference was often made to either one or the other. It suggested that the Drafting Committee look into the matter.

Re Article III

39. One delegation raised the question as to whether it was right to state that references to the debtor and the creditor were to be read as references to the seller and the buyer respectively in the application of the provisions listed in this Article. It was confirmed that this was indeed so.

40. One delegation questioned the reference to Article XIV(1), as Article XIV had only one paragraph. It was explained that this was a cross-referencing error and that the reference should be to Article XIII(1).

Re Article IV

41. It was observed that the title of this Article ("Sphere of application") had been taken over from the corresponding Article of the Aircraft Protocol, an Article which, however, also contained other paragraphs. It was suggested that a title that would better reflect the content of this Article would therefore be "Derogation". It was decided that the Drafting Committee should consider this question.

42. It was proposed that the proviso "except Article IX(2)-(3)" be deleted for brevity and clarity. It was suggested that the Drafting Committee should further consider the relationship between Articles IV and IX.

Re Article V

43. One delegation observed that, although Article V dealt with contracts of sale, sub-paragraph 1(b) referred to the "transferor" and not to the "seller". It therefore suggested that the word "transferor" be replaced by "seller". This suggestion was accepted.

Re Article VI

44. It was observed that the inconsistency of wording noted in footnote 11 still existed. It was suggested that a formulation along the lines of that of Article IV of the preliminary draft Rail Protocol replace the current wording. This suggestion was accepted.

Re Article VII

45. Delegations queried the meaning of the words "necessary and sufficient", in particular in cases where some items were not available at the time of registration. Furthermore, doubts were raised concerning some of the criteria indicated in Article VII. It was suggested that there was no need to provide exact criteria in the text and that the Supervisory Authority should provide the criteria in the first regulations to be made by it under Article XVIII of the preliminary draft Protocol.

46. One delegation suggested that misunderstandings might result from the fact that, whereas paragraph vi referred to "regulations" in general, Article XVIII referred only to the first regulations. It suggested that the reference to Article XVIII therefore be deleted or alternatively that Article XVIII be modified. It was suggested that the Drafting Committee consider the wording of Article XVIII.

Re Article VIII

47. It was observed that the Convention and the preliminary draft Protocol made no provision for choice of law and referred this question to the internal law of States. Article VIII was an opt-out provision and applied only if States had made no declaration.

48. It was further observed that formulating the Article as an opt-out provision involved a deviation from the Aircraft Protocol and the question was therefore raised as to whether it should not rather be formulated as an opt-in provision. It was suggested that this was a question that the Committee should decide.

49. The meaning of the words "wholly or in part" was queried. It was observed that the modern trend was for different aspects of a contract to be governed by different national laws and that this was the sense of the words in question.

Re Article IX

50. In introducing this Article, the adviser of the S.W.G. stated that the approach taken in Chapter II was no different from that taken in the Convention and the other Protocols. The unique feature of space assets, namely the difficulty of physically repossessing them, had to be borne in mind. Space assets were high-value assets that provided critical and highly desirable public services. Many of these assets were furthermore very important for the security of States.

51. One delegation proposed that Article XVII(4) be moved to Article IX. It suggested that the provision begin "The parties to an agreement or contract of sale or related guarantee contract may specifically agree for the placement into escrow with the International Registry or any other escrow agent […]". It suggested that the fact that the provision left the

matter of the placement of the access and command codes into escrow with the International Registry or any other escrow agent to the Supervisory Authority was undesirable, as it was a matter for States to decide.

52. It was observed that the escrow mechanism provided additional benefits to facilitate satellite financing. The intention was that this process should be left to the parties' agreement.

53. One delegation suggested that it would be necessary to define what was intended by an escrow agreement.

54. Another delegation wondered whether it was suitable for the International Registry to act as an escrow agent. It also pointed out that, if there was no doubt that an international interest as defined in the Convention could take the form of a possessory security interest, there was no need to have a specific provision on escrow agents. The only remaining issue would relate to regulatory matters and it would be sufficient to deal with this in the Article dealing with regulatory matters.

55. It was decided to set up an informal working group, chaired by the delegation of the Russian Federation, with the delegations of Canada, France, Germany, South Africa, the United Kingdom and the United States of America as additional members, to consider the question as to whether to move Article XVII(4) to Article IX or elsewhere. The S.W.G. was invited to participate as an adviser in the work of the informal working group.

56. The Informal Working Group on Article XVII(4) submitted a proposal for a new Article IX(4) intended to replace Article XVII(4) (see UNIDROIT C.G.E./Space Pr./1/W.P. 15).

57. A number of questions were raised regarding the terminology used in that proposal. One delegation enquired as to the meaning of the term "subordination agreement" and as to whether the word "materials" could include the placement of the ground segment into escrow, as well as the technology required. It was pointed out that Article 29(5) of the Convention provided for the possibility for holders of interests to conclude subordination agreements. The intention behind the word "materials" was to let the parties to an escrow agreement decide what materials and documentation should be deposited with the escrow agent.

58. It was suggested that the term "*dépôt*" used to translate the term "escrow" in the French text be replaced by other language (such as "be placed with a third party"), as the concept of "*dépôt*" had a very specific meaning under French law. It was agreed that the Drafting Committee should consider this matter. It was further decided that the Drafting Committee should consider the possibility of drafting a definition of "escrow".

59. One delegation raised the question as to where the proposed new provision should be placed, as Article IX only applied where a Contracting State had made a declaration to that effect. The effect might be that, where a particular Contracting State had made no such declaration, the parties would be precluded from making such an agreement. It was indicated that in such cases the parties would not be precluded from making an agreement but their agreement would be governed by national law instead of by the preliminary draft Protocol.

60. In the end, the Committee, whilst approving the proposed new provision in principle, decided to ask the Drafting Committee to reformulate it in such a way as to meet the concerns expressed.

61. One delegation raised the problem of possible conflicts between security and leasing rights in the satellite as a whole and similar rights in individual transponders. In particular, this delegation wondered what would happen where a transponder was subject to a separate security agreement from that held over the satellite as a whole and the owner of the satellite became insolvent.

62. The adviser of the S.W.G. replied that it was possible to create security over a transponder where the satellite as a whole was already a secured asset. He added that the question of the satellite owner's insolvency, was a matter that would be addressed by an inter-creditor agreement, failing which the first registrant would have priority.

63. The S.W.G. submitted an additional proposal for a new Article IX(4) regarding the application of the preliminary draft Protocol to components (see UNIDROIT C.G.E./Space Pr./1/W.P. 16), providing that, where two space assets, one of which was a separately identifiable component of the other, were the subject of two separate registered international interests, both interests were to be considered valid and their priority was to be determined on the basis of Article 29 of the Convention, unless otherwise agreed between the holders of the interests in question. The need to deal at the following session of governmental experts with the concern that had been expressed as to how the interests of both parties in the same asset should be balanced should be spelled out in a footnote.

64. It was agreed that this proposal for a new Article IX(4) should be inserted in the text of the preliminary draft Protocol, in square brackets, together with the footnote suggested.

65. One delegation proposed that provisions relating to categories of economic assurances be added either to Article IX or as separate new Articles. The categories concerned were assurances relating to the protection of income, to transparent public service obligations and pricing and other limitations, the assignability of payment rights and currency repatriation and processes for the pre-qualification of back-up operators and other transferees. Other economic assurances worthy of possible coverage concerned Government buy-outs and the assumption of risk. The delegation in question suggested that, following a first exchange of views during the first session of the Committee, a written proposal could be prepared for discussion at a future session.

66. Whilst expressing great interest in the ideas proposed by that delegation, several delegations stated that they would need to see a written proposal before being able to take a stand in relation thereto.

Re Article X

67. The observer from the European Commission noted that Articles X, XI and XII covered subjects dealt with by European Union regulations. He indicated that the Articles concerned raised no specific problems for the Commission, in particular given that they were

opt-in in nature, thus leaving it to the Communities to make the choice that they thought most appropriate.

68. It was decided to remove the square brackets around the last words of paragraph 1.

69. A number of delegations wondered whether paragraph 5 should be retained, as its purpose in the context of the preliminary draft Protocol was not clear. It was proposed that it be deleted.

70. It was recalled that a provision corresponding to paragraph 5 was to be found in the Aircraft Protocol. That provision was intended to deal with situations such as that where a creditor wanted to take possession of an aircraft following default but the airline argued that it was not in default and objected to the creditor taking possession of the aircraft. In similar circumstances in most legal systems the courts would allow interim relief seizure before judgment. The court might however compel the creditor to post a bond in case the claim was not successful and the intent in the Aircraft Protocol was to avoid a situation where the court, at the request of the debtor, opposed the posting of a bond. It had been felt that, if the airline agreed to interim relief without the requirement of a bond being posted, the court should abide by the agreement of the parties.

71. Following the explanations given, the Committee decided to place paragraph 5 in square brackets, as a number of delegations felt it necessary to consider the provision carefully with a view to returning to the question at the following session after internal consultations.

72. It was pointed out that paragraph 6 dealt with questions which were not relevant to space assets and was therefore redundant.

73. One delegation, whilst agreeing that the provision in question appeared to be redundant, nevertheless requested that the substance of sub-paragraph 6(b) be placed in a footnote to permit the question to be reconsidered at a later date, should the need for such a provision arise again in the light of new developments.

74. It was decided that the Drafting Committee should consider paragraph 6 with a view to seeing whether or not it should be deleted.

Re Article XI

75. One delegation drew attention to paragraph 8 of Alternative A which it felt to be superfluous.

76. It was decided that the Drafting Committee should examine paragraph 8 and decide whether or not it should be deleted. One delegation, however, requested that the substance of sub-paragraph 8(b) should be placed in a footnote so as to permit the question to be reconsidered at a later date, should the need for such a provision arise again in the light of new developments

Re Article XII

77. Two delegations, noting that the words "in accordance with the law of the Contracting State" that featured in the corresponding provision of the Aircraft Protocol (Article XII(2)) had been omitted, wondered what the reason for this omission was.

78. There being no specific intention to exclude the application of the rule in Article XII on the basis of the applicable law, the Drafting Committee was requested to reinsert the words in question.

Re Article XIII

79. In relation to Article XIII, one delegation wondered why paragraphs 3 and 4 of the corresponding Article of the Aircraft Protocol (Article XIV) had been omitted.

80. The adviser of the S.W.G. indicated that it had been felt that the two paragraphs were not relevant for space assets.

81. Article XIII was approved without modification.

Re Article XIV

82. One delegation stated that it did not find it reasonable to add the requirement of the debtor's consent unless the purpose was to avoid confusion where the assignor made more than one assignment of the same interest.

83. It was indicated that the provision followed the corresponding provision of the Aircraft Protocol.

Re Article XV

84. No observations were made on Article XV.

Re Article XVI

85. The Committee considered Article XVI before proceeding with its consideration of Articles X-XV.

86. One delegation suggested that it was important to consider limitations on remedies in the context of public services. In this connection, the observations submitted by the delegation of India (see UNIDROIT C.G.E./Space Pr./1/W.P. 12) were of great interest.

87. One delegation proposed that the words "or services" be inserted in the penultimate line of paragraph 2 after the word "data". It was decided that the Drafting Committee should consider this proposal.

88. The need to ensure that public services were not interrupted in cases where the private sector owned or financed public service satellites was stressed by several delegations. One delegation, however, drew attention to the need to permit the setting up of new public

services and the possibility of doing so by obtaining funding under the preliminary draft Protocol.

89. Another delegation observed that there could be no question of industry forcing States to accept the preliminary draft Protocol even in cases of public services. It recalled that the possibility of excluding public services had been discussed in the context of the preliminary draft Rail Protocol and it suggested that Article XXV of that instrument, which had been very carefully drafted, could serve as a model for the preliminary draft Protocol.

90. Two proposals for dealing with the problem of public service were tabled, as a new Article XVI(3), one by the delegations of Argentina, France, Germany and Sweden (see UNIDROIT C.G.E./Space Pr./1/W.P. 17) and the other by the delegation of Mexico (see UNIDROIT C.G.E./Space Pr./1/W.P. 18).

91. It was observed that the concept of "public service" was very broad and that, considering the different meanings given to the concept in different countries, it would be difficult to arrive at a single definition that would be universally acceptable.

92. It was suggested that the words "public service" might be qualified by words such as "mandatory", "emergency" or "essential" but it was noted that the meaning of these words also differed from country to country. It was further noted that the definition of what constituted a public service was traditionally determined by national law.

93. It was decided, first, that both proposals should be included, in square brackets, as alternative versions of Article XVI(3), for further consideration by the Committee at its following session, secondly, to ask the Drafting Committee for advice on the co-ordination of paragraph 1 and the proposed new paragraph 3 and, thirdly, to add a footnote to the latter regarding the overall objective of the preliminary draft Protocol in relation to the limitation of remedies.

94. One delegation suggested deleting the words "in accordance with its laws" in paragraph 2, in order also to cover States that did not have relevant legislation. It recalled that Article XXV of the preliminary draft Rail Protocol had no such requirement. This proposal was opposed by the S.W.G. on the ground that it would leave total discretion to States to restrict or attach conditions to the exercise of remedies.

95. It was decided that the Drafting Committee should examine the question further.

96. It was suggested that the words "in accordance with its laws" in paragraph 2 be modified to read "in accordance with its laws and regulations" and that they be placed in square brackets. This suggestion was accepted.

97. One delegation raised the question as to how the interests of those who had invested in the ground segment and those who had invested in the space segment might be balanced, considering that investors in the ground segment would often transfer their investments to more attractive objects, thereby making the ground segment useless. It wondered whether a provision on the balancing of these conflicting interests should not be inserted in the preliminary draft Protocol.

98. It was objected that the question raised was outside the scope of both the Convention and the preliminary draft Protocol and that inserting a provision dealing with this matter would interfere with well-established national legal regimes.

Re Article XVII

99. Mr Stanford brought the Committee up to date with developments concerning the Supervisory Authority of the future international registration system for space assets. The question of the desirability and feasibility of the United Nations (U.N.) acting as Supervisory Authority was already under discussion within the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space. There were, however, a number of questions that still had to be satisfactorily answered, namely the compatibility of the U.N. acting as Supervisory Authority with the terms of the U.N. Charter and the liability and funding implications of it so acting. Following the 42nd session of the Legal Subcommittee, held in Vienna from 24 March to 4 April 2003, the UNIDROIT Secretariat had therefore decided to explore other possible avenues too. The Secretary-General had sent letters to the International Telecommunication Union (I.T.U.), the International Mobile Satellite Organization (I.M.S.O.), the International Telecommunications Satellite Organization (I.T.S.O.), and the European Space Agency (E.S.A.), enquiring as to the interest of those Organisations in being considered for designation as Supervisory Authority. The Secretary-General had also written to the Government a representative of which at the aforementioned session of the Legal Subcommittee had suggested that another possible solution might be a Government agency or an *ad hoc* body created by Government. E.S.A. had indicated that the matter had been laid before its International Relations Committee. Mr Stanford had illustrated the implications of I.M.S.O. acting as Supervisory Authority at the eighth session of the Advisory Committee of that Organisation, held in London on 14 November 2003. No reply had as yet been received from I.T.S.O. and I.T.U. had indicated that the matter was being studied within the Legal Affairs Unit and that they would be delighted to discuss the matter further with the Secretary-General. No reply had as yet been received from the Government contacted.

100. The observer from E.S.A. added that a decision by the E.S.A. Council on the question of her Organisation serving as Supervisory Authority had been postponed to 2004.

101. The observer from I.M.S.O. explained that a decision could only be taken by the Assembly of Parties of that Organisation and that the next meeting of that body would not take place until October 2004. The I.M.S.O. Advisory Committee had, in the meantime, advised his Organisation to follow developments and continue to participate therein and report to the Assembly of Parties. Once taken, that body's decision would be communicated immediately to the Secretary-General of UNIDROIT.

102. The observer from the United Nations Office for Outer Space Affairs explained that the U.N./COPUOS Legal Subcommittee had been looking not only at the specific question as to the possibility of the U.N. serving as Supervisory Authority under the preliminary draft Protocol but also in general at the relationship between the terms of the preliminary draft Protocol and the rights and obligations of States under the legal regimen applicable to outer space. She confirmed that no decision had as yet been taken on the question of the U.N. acting as Supervisory Authority.

103. One delegation noted that some member States of UNIDROIT were wondering whether UNIDROIT itself might not be able to act as Supervisory Authority. Alternatively, a mechanism similar to that proposed under the preliminary draft Rail Protocol, that of an *ad hoc* Organisation to be created by States Parties with a Secretariat to be provided by an existing international Organisation, might be contemplated.

104. Another delegation stated that, in view of its political role and nature, the U.N. would not be a suitable Supervisory Authority and that it would be preferable if a U.N. agency or a non-governmental Organisation such as the International Chamber of Commerce act as Supervisory Authority.

105. Turning to the text of the Article itself, one delegation suggested that the words "or alternatively a process agreed to for a future designation" be added after "designated" in paragraph 1, in view of the experience gained at the Cape Town diplomatic Conference, where it had not been possible to decide all matters.

106. Furthermore, it suggested that a provision corresponding to Article XVII(2) of the Aircraft Protocol, which had been omitted in the preliminary draft Protocol, be reinstated. It was however pointed out that the drafting of Article XVII had in fact taken account of the wording of Article XVII(2) of the Aircraft Protocol, so that, if it were to be decided to incorporate Article XVII(2) of the Aircraft Protocol in the preliminary draft Protocol, the wording of the text to be added would have to be modified accordingly.

107. Another delegation suggested that the word "entity" in paragraph 2 should read "Organisation or entity"

108. It was decided that the Drafting Committee should consider, first, the proposed addition to paragraph 1, secondly, whether language corresponding to Article XVII(2) of the Aircraft Protocol should be added as a new paragraph 2 and, thirdly, the proposed addition of the words "organisation or entity" to paragraph 2.

109. Paragraph 4 was considered under Article IX.

Re Article XX

110. One delegation stated that it should be made clear that the term "waiver" referred to a waiver by a State or a governmental agency as a party to a particular transaction and that the words "by a party to an agreement or a contract of sale" should therefore be added in paragraph 1 after the word "immunity". It further proposed that the words "space assets" in the same paragraph should read "a space asset".

111. Another delegation objected to the proposed modification to the first line of paragraph 1 on the ground that it was too restrictive, as there were countries in which waivers might be made for classes of transactions.

112. It was decided, first, that the concern relating to the first line of paragraph 1 be reflected in a footnote to Article XX(1), secondly, that the proposed modification to the third line of the same paragraph be accepted and, thirdly, that the Drafting Committee consider the overall formulation of the paragraph in question.

Re Article XXI

113. The relationship between the preliminary draft Protocol and the U.N. Treaties and Principles on Outer Space was examined in a working paper submitted by the delegation of India (see UNIDROIT C.G.E./Space Pr./1/W.P. 20). The paper contained proposed additional language for Article XXII(5) of the preliminary draft Protocol, as well as the addition of a new Article XXIa dealing with the relationship with the aforementioned U.N. Treaties and Principles.

114. Another delegation suggested that a less specific formulation might be preferable, such as "[t]he Convention as applied to space assets does not supersede State Party rights and obligations under the existing United Nations Outer Space Treaties or instruments of the International Telecommunication Union". Some delegations favoured this formulation, although it was suggested that the word "supersede" be replaced by "affect".

115. A number of delegations stressed that the question of the relationship between the preliminary draft Protocol and the U.N. Treaties and Principles had already been extensively discussed and that it had, as a result, been shown that there were no conflicts between the two, considering also that the U.N. Treaties and Principles dealt with public international law issues whereas the preliminary draft Protocol dealt with international private law matters.

116. Other delegations raised the objection that one could not exclude the possibility, even if there were no conflicts between the two at present, of conflicts arising in the future. Furthermore, in view of the increasing inter-relationship between public international law and international private law, it was not possible to separate the two entirely.

117. In the end, the Chairman suggested that the delegations that had submitted proposals for the drafting of such a new provision prepare a joint proposal to submit to the Drafting Committee.

118. In line with this suggestion, the delegations of the United States of America and Germany tabled a proposal for a new Article XXI(2) (see UNIDROIT C.G.E./Space Pr./1/W.P. 23).

119. It was suggested that a decision on whether the Convention as applied to space assets should supersede the 1988 UNIDROIT Convention on International Financial Leasing and the 2001 United Nations Convention on the Assignment of Receivables in International Trade should be deferred.

Re Report by the Drafting Committee (UNIDROIT C.G.E./Space Pr./1/W.P. 21)

120. The Report by the Drafting Committee on the work it had accomplished during the session (reproduced as *Appendix V)* was laid before the Committee at its final meeting. The Report was introduced by Mr Welch, as Co-chairman of the Drafting Committee. He prefaced his report by expressing his keen appreciation not only to his Co-chairman, Mr Deschamps, and all his other colleagues on the Drafting Committee, for sharing with him the burden of giving effect to the decisions taken by the Committee, but also to the UNIDROIT Secretariat, for all the assistance they had given to the Drafting Committee. He

invited participants to look carefully at the Report prior to the following session of the Committee and to send any comments to the UNIDROIT Secretariat.

121. Mr Deschamps, Co-chairman of the Drafting Committee, noted that the latter had overlooked the need to make the same change to Article XI(8), Alternative A as it had made to Article X(6), namely to delete the relevant paragraph and to insert a footnote to remind the Committee to give further consideration to the role of administrative authorities. It was agreed that this amendment had been overlooked and that it should be implemented.

122. One delegation, noting that a great deal of very useful historical information about the Convention that had appeared in footnote 2 to the preamble to the preliminary draft Protocol had disappeared in the new text appended to the Report of the Drafting Committee, suggested that this information should be reinstated and updated, in particular to reflect the fact that, following the deposit of the Government of the Federal Republic of Nigeria's instrument of ratification in respect of the Convention during the session, the date of the Convention's entry into force was known. It was proposed that this task be entrusted to the UNIDROIT Secretariat after the session.

123. The same delegation, recalling that a substantial proposal for new definitions to be added to Article I and a new Article IV had been tabled, suggested that both the scope of this proposal and the number of the working paper concerned should be reflected in a footnote to be added to the text, so that readers might get a clear idea of this important likely future development.

124. That delegation also recalled that it had been decided to insert the words "and regulations" after the word "laws" inside square brackets in Article XVI(2).

125. Another delegation recalled that the Committee had agreed to delete the reference to paragraphs 2 and 3 of Article IX and just to refer to Article IX in Article IV. It was explained that the Drafting Committee had, however, deemed it appropriate to reconsider that decision, in the light of the fact that the language of Article IV on this point was completely in line with that of the corresponding provision of the Aircraft Protocol (Article IV(3)) and was in fact legally accurate, since it would not be open to the parties to derogate from or vary the effect of the right of Contracting States to make a declaration concerning the application of Article IX pursuant to Article IX(1).

126. A further delegation recalled that the Committee had decided to insert the S.W.G.'s proposal for a new Article IX(4) regarding the application of the preliminary draft Protocol to components, inside square brackets, together with the footnote contained in that proposal.

127. Following discussion, the Committee agreed that the second paragraph of footnote 24 to Article XVI(3) should be revised to indicate that, while some delegations had expressed the view that that paragraph should narrowly define the circumstances of a public service nature in which Contracting States should be able to limit the exercise of remedies so as to promote the objectives of the preliminary draft Protocol, other delegations had taken the view that it should broadly define such circumstances, whereas the S.W.G. had indicated that it strongly disagreed with the idea of the preliminary draft Protocol containing any provision on public service.

128. One delegation, recalling that its delegation and that of Germany, had, in response to the invitation addressed by the Chairman to those delegations that had made oral proposals for the drafting of a new provision dealing with the relationship between the preliminary draft Protocol and the U.N. Treaties and Principles on Outer Space to prepare a joint proposal for consideration by the Drafting Committee, indeed presented such a joint proposal for a new Article XXI(2), suggested that the text of this proposal be incorporated in the new text of the preliminary draft Protocol in square brackets. It was further recalled that, while there were differences of opinion on the precise formulation of such a provision, there was no objection to the substance thereof. The adviser of the S.W.G. noted that it would be necessary to give further consideration to the question as to whether it would be sufficient to refer to the U.N. Treaties and Principles on Outer Space in general or rather enumerate them one by one. The Committee agreed that the text of the joint proposal of the delegations of the United States of America and Germany be inserted in the new text of the preliminary draft Protocol in square brackets, on the understanding that its precise formulation, and in particular the point raised by the adviser of the S.W.G., would need to be considered further at the following session of the Committee.

129. It was agreed that the UNIDROIT Secretariat should be entrusted with the task of modifying the text of the preliminary draft Protocol established by the Drafting Committee with a view to implementing these additional amendments. The text of the preliminary draft Protocol as thus further amended is reproduced in *Appendix VI*.

Agenda item No. 6: Future work

130. It was agreed that the second session of the Committee should be held in Rome at a date, to be fixed subsequently, in either the second half of September or during October 2004.

131. Mr Stanford informed the Committee that a companion colloquium to that held in Paris on 5 September 2003 – for representatives of Government and industry from the countries of the Western Hemisphere - was to be held for the countries of Asia and the Asia-Pacific region in Kuala Lumpur, at the kind invitation of the Ms M. Othman, Director-General of the Malaysian National Space Agency, on 22 and 23 April 2004. These dates had been chosen quite carefully in consultation with the International Institute for Space Law, which was organising an international conference on space law with the China Institute of Space Law in Beijing on 26 and 27 April 2004, so as to enable participants at the Kuala Lumpur colloquium also to attend the Beijing conference and vice-versa. He extended UNIDROIT's gratitude to the Government of Malaysia for kindly offering to organise the colloquium.

132. The delegation of Malaysia indicated that its Government considered it an honour to have been invited to host the colloquium and looked forward to welcoming members of the Committee from Asia and the Asia-Pacific region. It was its hope that the colloquium would prove to be as beneficial and fruitful as it had found the first session of the Committee to be.

Agenda item No. 7: Review of Report

133. The Report was reviewed with a number of amendments. It was agreed that, after its finalisation by the UNIDROIT Secretariat, it should be approved, on the Committee's

behalf, by Mr Marchisio. The Report would include seven appendices: Appendix I would reproduce the list of those having participated in the session; Appendix II would reproduce the agenda; Appendix III would reproduce the text of the preliminary draft Protocol as submitted to the session; Appendix IV would reproduce the list of working papers submitted to, and during the session; Appendix V would reproduce the Report by the Drafting Committee; Appendix VI would reproduce the text of the preliminary draft Protocol as amended by the Committee during its first session and Appendix VII would reproduce the proposal by the S.W.G. for new definitions for inclusion in Article I and a new Article IV on the application of the Convention to debtor's rights and related rights.

Agenda item No. 8: Any other business

134. No other business was raised under this item on the agenda.

Closure of the session

135. The delegation of Italy stated that it had been a great honour for its Government to have been able to welcome so many distinguished experts to Italy for the session. It expressed special thanks to the Chairman, the S.W.G. and the UNIDROIT Secretariat for its smooth running of the session.

136. The delegation of Canada congratulated the Chairman for his expert handling of the proceedings.

137. The delegation of India echoed the congratulations of Canada in thanking the Chairman for his guidance and leadership throughout the session. It expressed particular thanks to the Drafting Committee and its Co-chairmen for all their hard work. It echoed the thanks that the delegation of Italy had addressed to the UNIDROIT Secretariat for the excellent arrangements that it had put in place for the session and for the assistance that it had provided throughout. It expressed its gratitude for the expert guidance provided by the S.W.G. and the observers who had attended the session.

138. The delegation of the United States of America seconded the delegation of Canada's vote of thanks to the Chairman. He added special thanks to the interpreters, without whose efforts such sessions would be impossible.

139. In closing the session, the Chairman expressed his keen appreciation to all delegations, the UNIDROIT Secretariat and the Space Working Group for the excellent work done. He addressed a special tribute to Mr Nesgos for the expert manner in which he had responded to the enormous number of enquiries that had been addressed to the S.W.G. He echoed the tribute that had been paid to the interpreters. He considered the session to have been most important, not least in underlining two main objectives of the preliminary draft Protocol, namely, first, that of ensuring a fair standard of protection for those investing in commercial space activities and, secondly, through the expansion of space services that was to be expected to result from adoption of a future Space Protocol to benefit all humankind. He saw it as being essential that these two objectives should always be to the forefront of participants' minds in the further stages of the negotiation of this instrument.

APPENDIX I

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

First session (Rome, 15 - 19 December 2003)

LIST OF PARTICIPANTS

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[*] 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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APPENDIX II

AGENDA

1. Election of the Chairman.

2. Adoption of the agenda.

3. Organisation of work.

4. Introduction to the Convention on International Interests in Mobile Equipment (C.G.E. Space Pr./1/W.P. 2).

5. Consideration of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (C.G.E. Space/1/W.P. 3).

6. Future work.

7. Review of report.

8. Any other business.

APPENDIX III

CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

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

PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC TO SPACE ASSETS

(as established by a working group organised, at the invitation of the President of UNIDROIT, by Peter D. Nesgos, Esq., with the assistance of Dara A. Panahy, Esq., and revised, pursuant to a decision taken by the UNIDROIT Governing Council at its 80th session, held in Rome from 17 to 19 September 2001, by a Steering and Revisions Committee, meeting in Rome on 1 February 2002)

INTRODUCTORY NOTE

(prepared by the UNIDROIT Secretariat)

At its 76th session, held in Rome from 7 to 12 April 1997, the UNIDROIT Governing Council approved a proposal to split the then preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment into a base Convention setting forth general rules universally applicable to all the different categories of equipment falling within its sphere of application and one or more equipment-specific Protocols containing such additional rules as might be necessary to adapt the general rules of the base Convention to the special financing patterns of specific categories of equipment.

Pursuant to this decision, the President of UNIDROIT invited Mr Peter D. Nesgos (Milbank, Tweed, Hadley & McCloy, New York), as expert consultant on international space finance matters to the UNIDROIT Study Group for the preparation of uniform rules on international interests in mobile equipment, to organise and chair a working group to prepare a preliminary draft Protocol on matters specific to space assets (hereinafter referred to as the *Space Working Group*) capable of being submitted to UNIDROIT as early as possible. Behind this decision was the thought that the technical complexities of such a task required the participation of parties familiar with the day-to-day nature and objectives of such transactions the opportunity to indicate the sort of regimen needed to make asset-based financing more accessible to commercial space financing transactions before handing the matter over for finalisation to Governments.

The Space Working Group held five sessions for this purpose, the first held in Los Angeles on 1 July 1997, the second in Rome on 19 and 20 October 2000, the third in Seal Beach, California on 23 and 24 April 2001, the fourth in Evry Courcouronnes, near Paris, on 3 and 4 September 2001 and the fifth in Rome on 30 and 31 January 2002 respectively. Its second session was held in conjunction with a meeting of a restricted informal group of experts, convened by UNIDROIT in Rome on 18 and 19 October 2000, to identify, and engage in a preliminary discussion of the issues which merited consideration in the context of the relationship between the then draft UNIDROIT Convention on International Interests in Mobile Equipment (hereinafter referred to as the *draft Convention*) and the preliminary draft Protocol thereto on Matters specific to Space Assets (hereinafter referred to as the *preliminary draft Protocol*) and the existing body of international space law (hereinafter referred to as the *restricted informal group of experts*). This meeting was organised *inter alia* by way of preparation for the 40th session of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space (U.N./ COPUOS), held in Vienna from 2 to 12 April 2001, at which the draft Convention and the preliminary draft Protocol were down for consideration as a single issue discussion item.

The Space Working Group has brought together representatives of the manufacturers, financiers, insurers and users of space assets as also of the interested international Organisations. It has brought together expertise from Australia, Colombia, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom and the United States of America and from such major players in the world aerospace industry and financial and insurance communities as Alcatel, Alenia Spazio, ANZ Investment Bank, Argent Group, Arianespace, Assicurazioni Generali, Astrium, BNP Paribas, the Boeing Company, Crédit Lyonnais, Deutsche Morgan Grenfell,

DIRECTV, EADS, FiatAvio, GE American Communications, Hughes Electronics Corporation, ING Lease International Equipment Finance, Lockheed Martin Finance Corporation, Lockheed Martin Global Telecommunications, The Long Term Credit Bank of Japan, The Mitsubishi Trust and Banking Corporation, Motorola Satellite Communications Group, PanAmSat Corporation, La Réunion Spatiale, Space Systems/Loral, SpaceVest, TelecomItalia and Telespazio.

It has also brought together representatives of the European Organisation for Safety of Air Navigation (Eurocontrol), the European Space Agency, the International Mobile Satellite Organization, the International Telecommunications Satellite Organization (Intelsat), the United Nations Office for Outer Space Affairs, the European Centre for Space Law of the European Space Agency, the International Bar Association, the International Institute of Space Law, the Aviation Working Group, the French Centre for Space Studies (CNES), the German Space Agency (DLR) and the Russian Aviation and Space Agency.

Mr Vladimir Kopal (Czech Republic) has taken part in the work of the Space Working Group *qua* Chairman of the Legal Subcommittee of U.N./ COPUOS and of the *ad hoc* consultative mechanism of U.N./COPUOS (hereinafter referred to as the *Consultative mechanism*) set up by that Committee at its 44th session, held in Vienna from 6 to 15 June 2001, to review the draft Convention and the preliminary draft Protocol from the point of view of their compatibility with existing international space law.

Observers of the Governments of France, the Russian Federation and the United States of America have also followed its work.

While not actually participating in the Space Working Group's work, the International Telecommunication Union (I.T.U.) has submitted comments on the text of the preliminary draft Protocol considered at its fourth session (cf. Study LXXIIJ/S.W.G. 4th session/W.P.3), indicating that it saw neither overlap nor contradiction between the draft Convention and the preliminary draft Protocol, on the one hand, and the I.T.U. Constitution, Convention and Radio Regulations, on the other.

The text of the preliminary draft Protocol as established by the Space Working Group at the conclusion of its third session was adjudged ready to be communicated to UNIDROIT in accordance with the terms of reference given to Mr Nesgos. The text of the preliminary draft Protocol as revised by Mr Nesgos, with the assistance of Mr Dara A. Panahy (Milbank, Tweed, Hadley & McCloy, Washington, D.C.), following said third session was thus communicated by Mr Nesgos to the President of UNIDROIT on 30 June 2001, in an English-language version.

At its 80th session, held in Rome from 17 to 19 September 2001, the UNIDROIT Governing Council, considering this text, authorised the UNIDROIT Secretariat to transmit the preliminary draft Protocol to member Governments and to convene a UNIDROIT Committee of governmental experts to prepare, on the basis thereof, a draft Protocol capable of being submitted for adoption, at such time as a Steering and Revisions Committee, composed *inter alia* of members of the Governing Council, had had the opportunity to review it, in particular in the light of the texts of the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*) and the Protocol on Matters specific to Aircraft Equipment (hereinafter referred to as the *Aircraft Protocol*) to

be adopted at the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol (hereinafter referred to as the *diplomatic Conference*) to be held in Cape Town from 29 October to 16 November 2001 but also, where appropriate, in the light of the preliminary results of the Consultative mechanism. On that occasion, the Governing Council further authorised the UNIDROIT Secretariat to invite those member States of U.N./COPUOS that were not also member States of UNIDROIT, as well as the United Nations Office for Outer Space Affairs, to participate in the work of such Committee of governmental experts.

The text of the preliminary draft Protocol was brought into line with the changes made to the Convention and the Aircraft Protocol at the diplomatic Conference in the course of the fifth session of the Space Working Group.

The text established by the Space Working Group at the conclusion of that session was reviewed by a Steering and Revisions Committee convened by the President of UNIDROIT in Rome on 1 February 2002. This Steering and Revisions Committee was manned, on behalf of UNIDROIT, by Sir Roy Goode (United Kingdom), Mr Jacques Putzeys (Belgium) and Mr Jorge A. Sánchez Cordero Dávila (Mexico), *qua* members of the Governing Council, and by Ms Sama Payman representing Mr Anthony S. Blunn (Australia), also a member of the Governing Council, on behalf of the United Nations Office for Outer Space Affairs, by Mr Philip R. McDougall and, on behalf of the Space Working Group, by Mr Nesgos and Mr Panahy. The Steering and Revisions Committee, after introducing a certain number of amendments to the text of the preliminary draft Protocol, was able to conclude as to the full compatibility of that text with the Convention, from both the stylistic and terminological points of view, and thus as to its readiness to be transmitted to Governments. It is this text as revised by the Steering and Revisions Committee that is reproduced hereunder.

Following the updating of the Secretariat's introductory note and certain footnotes to the text, where appropriate, the UNIDROIT Governing Council at its 82nd session, held in Rome from 26 to 28 May 2003, gave the President the go-ahead to convene the first session of a 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. This session will be held in Rome from 15 to 19 December 2003. The basic working document of the session will be the text of the preliminary draft Protocol reproduced hereunder. In accordance with the aforementioned decision of the UNIDROIT Governing Council and Resolution No. 3 adopted by the Cape Town diplomatic Conference, UNIDROIT will be inviting to this session not only all UNIDROIT member States and the interested intergovernmental and non-governmental Organisations but also all member States of U.N./COPUOS.

CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

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

PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC TO SPACE ASSETS

(as established by a working group organised, at the invitation of the President of UNIDROIT, by Peter D. Nesgos, Esq., with the assistance of Dara A. Panahy, Esq., and revised, pursuant to a decision taken by the UNIDROIT Governing Council at its 80th session, held in Rome from 17 to 19 September 2001, by a Steering and Revisions Committee, meeting in Rome on 1 February 2002)

PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC TO SPACE ASSETS [1]

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*) [2] 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 established principles of space law, including those contained in the international space treaties under the auspices of the United Nations, [3] [4] [5]

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:

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1 This preliminary draft Protocol follows very closely the Aircraft Protocol.

2 The Convention and the Aircraft Protocol were adopted and opened to signature in Cape Town on 16 November 2001 at the conclusion of a diplomatic Conference organised, under the joint auspices of UNIDROIT and the International Civil Aviation Organization, by the Government of South Africa. This Conference was attended by 68 States and 11 international Organisations. Both the Convention and the Aircraft Protocol have been signed to date by 26 States (Burundi, Chile, China, Congo, Cuba, Ethiopia, France, Germany (with declaration), Ghana, Italy, Jamaica, Jordan, Kenya, Lesotho, Nigeria, Panama, Saudi Arabia, Senegal, South Africa, Sudan, Switzerland (*ad referendum*), Tonga, Turkey, United Kingdom (with declaration), United Republic of Tanzania and United States of America). The Convention is due to enter into force on the first day of the month following the expiration of three months after the date of the deposit of the *third* instrument of ratification, acceptance, approval or accession *but only as regards a category of objects to which a Protocol applies* and as from the time of entry into force of that Protocol, subject to the terms of that Protocol and as between States Parties to the Convention and that Protocol (cf. Article 49 of the Convention). An Official Commentary on the Convention and Aircraft Protocol has been prepared by Professor Sir Roy Goode, Chairman of the Drafting Committee at the diplomatic Conference, pursuant to Resolution No. 5 adopted by the latter, and is available from UNIDROIT, the publisher. An explanatory memorandum on the system of declarations under the Convention and the Aircraft Protocol (DC9/DEP Doc. 1) has been prepared by UNIDROIT, as depositary, and is also available from UNIDROIT.

3 The Space Working Group established a Sub-committee in February 2001 to consider the relationship between the preliminary draft Protocol and the existing international space treaties. A preliminary paper prepared by Professor Paul B. Larsen, Georgetown University Law Center, *qua* Chairman of the Sub-committee, indicates that the Sub-committee did not identify any conflicts between the preliminary draft Protocol and the principles of law established by the international space treaties under the auspices of the United Nations. These conclusions were endorsed by the Space Working Group at its third session and submitted to the United Nations Office for Outer Space Affairs with a view to their consideration by the Consultative mechanism.

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

5 The preliminary draft Protocol is not intended to affect the obligations of States under the United Nations treaties and principles on outer space.

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) "associated rights" [6] means: (i) any permit, licence, authorisation or equivalent instrument that is granted or issued by a national or intergovernmental or other international body or authority to control, use or operate a space asset, relating to the use of orbital positions and the transmission, emission or reception of radio signals to and from a space asset, which may be transferred or assigned, to the extent permissible and assignable under the laws concerned [7]; (ii) all rights to payment or other performance due to a debtor by any person with respect to space assets; and (iii) all contractual rights held by the debtor that are secured by or associated with the space assets;

(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[8];

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

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

(f) "space assets" means [9]:

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6 In so far as the concept of "associated rights" envisaged under the preliminary draft Protocol differs entirely from that reflected in the definition of the same term provided in the Convention, it is suggested that consideration will need to be given to referring to the concept envisaged under the preliminary draft Protocol by a different term, such as "debtor rights", so as adequately to distinguish this concept from that employed in the Convention, and to including in the preliminary draft Protocol a provision specifying that the assignment of an international interest in space assets carries with it not only associated rights but also such debtor rights.

7 This definition is limited to regulatory licences and permits necessary for the operation of space assets.

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

9 During the second, third and fourth sessions of the Space Working Group and the meeting of the restricted informal group of experts, various participants raised the issue of whether assets in manufacture, transport or pre-launch stages should be considered space assets, and considered the relative benefits thereof in the context of asset-based financing, recognising that such characterisation may conflict with applicable domestic laws relating to security interests. Further discussion took place regarding whether permits, licences, approvals and authorisations issued by national or intergovernmental bodies should be defined in the preliminary draft Protocol as "associated rights" or alternatively be included in the definition of "space assets" and be subject to an optional (opt-out) provision. It was also suggested that intellectual property rights, which may be integral to the beneficial use of the space assets, would be otherwise adequately

(i) any separately identifiable [10] asset that is in space or that is intended to be launched and placed in space or has been returned from space;

(ii) any separately identifiable [10] component forming a part of an asset referred to in the preceding clause or attached to or contained within such asset;

(iii) any separately identifiable [10] asset or component assembled or manufactured in space; and

(iv) any launch vehicle that is expendable or can be reused to transport persons or goods to and from space.

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

Article II – Application of the Convention as regards space assets

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

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

Article III – Application of the Convention to sales

The following provisions of the Convention shall apply in relation to a sale and shall do so 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);

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addressed by existing international and domestic law. Also, intangible property rights relating to the ability to command and control orbiting space assets were recognised as important to the effective exercise of remedies of constructive repossession. However, discussion took place as to the appropriateness of such a broad and comprehensive definition of space assets. An alternative approach suggested was the streamlining of the definitions and the broadening of provisions relating to remedies to facilitate the exercise by the creditor of appropriate remedies. In line with further suggestions made at the second session of the Space Working Group and at the meeting of the restricted informal group of experts, the definition of space assets was broadened to include assets on any celestial body. Participants at the third session of the Space Working Group raised the issue whether the definition of "space assets" should apply to State-owned assets intended to be commercially financed in whole or part. Several participants referred to the comment raised by co-operating States of the European Space Agency regarding the use of the term "space property" as opposed to the term "space object" used in the various United Nations treaties on outer space. The Space Working Group took the view that a distinction in terms was both appropriate and necessary for distinguishing the private commercial finance *raison d'être* of the preliminary draft Protocol from the public international law focus of the United Nations instruments. Nevertheless, at the fourth session of the Space Working Group it was agreed that the term "space assets" was preferred to "space property" in response to concerns regarding the implications under civil law jurisdictions of the term "property". It was however agreed that for the purposes of the French-language version of the preliminary draft Protocol the term "biens spatiaux" was acceptable.

[10] The term "identifiable" is intended to be read in the context of Article VII.

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

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

Article IV – Sphere of application

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

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

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

(a) is in writing;

(b) relates to a space asset in respect of which the transferor has power to enter into the agreement; 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 enter into an agreement or a sale, and register an international interest in, or a sale of, a space asset, in an agency, trust or other representative capacity. In such case, that party is entitled to assert rights and interests under the Convention and this Protocol. [11]

[11] This provision may need to be modified in order to bring it into line with certain technical corrections that have been made in respect of the comparable provision, Article IV, of the preliminary draft Protocol to the Convention on Matters specific to Railway Rolling Stock ("A person may, in relation to railway rolling stock, enter into an agreement, 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 on behalf of a creditor or creditors").

Article VII – Identification of space assets

It shall be necessary and sufficient to identify [12] the space asset for the purposes of Articles 7(c) and 32(1)(b) of the Convention and Article V(1)(c) of this Protocol if the description of such space asset: [13] (i) provides the name of the debtor and the creditor; (ii) provides an address for the debtor and for the creditor; (iii) contains a general description of the space asset indicating the name of the manufacturer (or principal manufacturer, if more than one manufacturer exists), its manufacturer's serial number (if one exists) and its model designation (or comparable designation, if a model designation does not exist) and indicating its intended location; (iv) provides the date and location of launch; (v) in the case of a separately identifiable component forming a part of the space asset or attached to or contained within the space asset, provides a description of such separately identifiable component, the space asset of which it forms a part, to which it is attached or within which it is contained and each of the other identification criteria specified in this Article with respect to such space asset; and (vi) such additional identification criteria as may be specified in the regulations referred to in Article XVIII of this Protocol.

Article VIII – Choice of law

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

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

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

13 At the fifth session of the Space Working Group, it was agreed that inclusion of multiple search criteria would increase the reliability of searches in the computerised registration data base contemplated for the International Registry.

CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article IX – Modification of default remedies provisions

1. – This Article applies only where a Contracting State has made a declaration to that effect under Article XXVI(2) [and to the extent stated in such declaration]. [14]

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.

Article X – Modification of provisions regarding relief pending final determination

1. – This Article applies only where a Contracting State has made a declaration to that effect under Article XXVI(3) [and to the extent stated in such declaration]. [15]

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

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

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

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

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[14] A decision regarding the inclusion or otherwise of the bracketed language will hinge on the treatment or consideration of the bracketed language in Article XXVI (2).

[15] A decision regarding the inclusion or otherwise of the bracketed language will hinge on the treatment or consideration of the bracketed language in Article XXVI (3).

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.

6. – With regard to the remedies in Article IX:

(a) they shall be made available by the administrative authorities in a Contracting State no later than five working days after the creditor notifies such authorities that the relief specified in Article IX is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with the Convention; and

(b) the administrative authorities referred to in the preceding sub-paragraph shall expeditiously co-operate with and assist the creditor in the exercise of such remedies.

Article XI – Remedies on insolvency

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

Alternative A

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

(a) the end of the waiting period; and

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

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

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. – With regard to the remedies specified in Article IX:

(a) they shall be made available by the administrative authorities in a Contracting State no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention and this Protocol; and

(b) the administrative authorities referred to in the preceding sub-paragraph shall expeditiously co-operate with and assist the creditor in the exercise of such remedies.

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

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

11. – 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.

12. – 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 the insolvency over registered interests.

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

Alternative B

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

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

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

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

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

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

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

Article XII – Insolvency assistance

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

2. – The courts of a Contracting State: (i) in which the space asset is situated; (ii) from which the space asset may be controlled; (iii) in which the debtor is located; or (iv) otherwise having a close connection with the space asset, shall co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI.[16]

Article XIII – Modification of priority provisions

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

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

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

Article XIV – Modification of assignment provisions

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

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

Article XV – Debtor provisions

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

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

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

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

Article XVI – Limitations on remedies

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

2. – A Contracting State, in accordance with its laws, may restrict or attach conditions to the exercise of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol where the exercise of such remedies would involve or require the transfer of controlled goods, technology or data, or would involve the transfer or assignment of the associated rights referred to in Article I(2)(a)(i).[17]

[17] Several participants at the fifth session of the Space Working Group suggested further consideration of remedies involving the potential transfer of items controlled or restricted for export and the assignment or transfer of regulatory licences or permits granted by domestic or international authorities.

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

Article XVII – 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. [18]

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.

4. – The Supervisory Authority may provide, in the regulations referred to in Article XVIII, for the placement into escrow with the International Registry, or any other agreed escrow agent, at the time of creation of an international interest or at any time thereafter, of access and command codes required to access, command, control and operate space assets. [19]

Article XVIII – First regulations

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

Article XIX – Additional modifications to Registry provisions

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

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[18] The United Nations has been approached as one possible Supervisory Authority. The possibility of the United Nations serving as Supervisory Authority was considered by the Legal Subcommittee of U.N./COPUOS at its 42nd session. Other intergovernmental Organisations have also expressed an interest in serving as Supervisory Authority. The possibility of these Organisations serving as Supervisory Authority and other possible options are under consideration.

[19] Participants at the third session of the Space Working Group believed that the option to place into escrow command codes required to access and control space assets with the International Registry or an agreed escrow agent, via an irrevocable form of escrow agreement, provided a consensual and mechanical process for the expeditious and predictable exercise of remedies while concurrently avoiding any cause for the Registrar to act in a quasi-judicial capacity.

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

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

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

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

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

CHAPTER IV – JURISDICTION

Article XX – 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 space assets 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 [20]

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

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

[CHAPTER VI – FINAL PROVISIONS

Article XXII – Signature, ratification, acceptance, approval or accession

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

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

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

4. – Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary. [21]

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

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

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

Article XXIII – Regional Economic Integration Organisations[22]

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 XXIV – Entry into force

1. – This Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of the [fifth] [23] instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.

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

Article XXV – Territorial units

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

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[22] At its fifth session, the Space Working Group took note of the addition of this Article to the Aircraft Protocol at the diplomatic Conference and noted that further consideration should be given to the applicability of the type and nature of Organisations to be covered by Article XXIII.

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

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 XXVI – Declarations relating to certain provisions

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

(a) that it will not apply Article VIII;

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

2. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article IX [wholly or in part]. [24]

3. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article X [wholly or in part]. [25] If it so declares with respect to Article X(2), it shall specify the time-period required thereby.

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[24] Due consideration should be given to the deletion of the bracketed words in paragraph 2 in order to promote the uniformity of application of declarations made by States.

[25] Due consideration should be given to the deletion of the bracketed words in paragraph 3 in order to promote the uniformity of application of declarations made by States.

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

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

Article XXVII – Declarations under the Convention

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

Article XXVIII – Reservations and declarations

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

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

Article XXIX – Subsequent declarations

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

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

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

Article XXX – Withdrawal of declarations

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

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

Article XXXI – Denunciations

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

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

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

Article XXXII – Review Conferences, amendments and related matters

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

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

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

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

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

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

3. – Any amendment to this Protocol shall be approved by at least a two-thirds majority of State 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] State Parties in accordance with the provisions of Article XXIV relating to its entry into force.

Article XXXIII – Depositary and its functions

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

2. – The Depositary shall:

(a) inform all Contracting States of:

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

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

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

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

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

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

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

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

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APPENDIX IV

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

First session (Rome, 15 - 19 December 2003)

LIST OF WORKING PAPERS

C.G.E. Space Pr./1/W.P. 1	Draft agenda
C.G.E. Space Pr./1/W.P. 2	Convention on International Interests in Mobile Equipment (signed at Cape Town on 16 November 2001)
C.G.E. Space Pr./1/W.P. 3	Preliminary draft Protocol on Matters specific to Space Assets (as established by a working group organised, at the invitation of the President of UNIDROIT, by Peter D. Nesgos, Esq., with the assistance of Dara A. Panahy, Esq., and revised, pursuant to a decision taken by the UNIDROIT Governing Council at its 80th session, held in Rome from 17 to 19 September 2001, by a Steering and Revisions Committee, meeting in Rome on 1 February 2002)
C.G.E. Space Pr./1/W.P. 4	Extract from the Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Aircraft Equipment by Professor Sir Roy Goode, C.B.E., Q.C., Emeritus Professor of Law, University of Oxford
C.G.E. Space Pr./1/W.P. 5	The preliminary draft Protocol on Matters specific to Space Assets: an overview of its objectives and key provisions (by Dara A. Panahy (Associate, Milbank, Tweed, Hadley & McCloy LLP, Washington, D.C., assistant to Mr Peter D. Nesgos, Partner, Milbank, Tweed, Hadley & McCloy LLP, New York, co-ordinator of the Space Working Group))
C.G.E. Space Pr./1/W.P. 5 Corr.	The preliminary draft Protocol on Matters specific to Space Assets: an overview of its objectives and key provisions (by Dara A. Panahy (Associate, Milbank, Tweed, Hadley & McCloy LLP, Washington, D.C., assistant to Mr Peter D. Nesgos, Partner, Milbank, Tweed, Hadley & McCloy LLP, New York, co-ordinator of the Space Working Group)): corrigendum
C.G.E. Space Pr./1/W.P. 6	Basic features of the proposed International Registry contemplated by the Cape Town Convention on International Interests in Mobile Equipment as implemented by the

APPENDIX V

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

First session (Rome, 15 - 19 December 2003)

DRAFTING COMMITTEE

REPORT

1. The Drafting Committee set up by the first Session of the UNIDROIT Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (the *Committee of governmental experts*) in Rome on 15 December 2003 met on three occasions during the Session, on 16th, 17th and 18th December 2003. Representatives of the following States attended these meetings as members: Canada, China, France, Nigeria, Tunisia, United Kingdom and the United States of America. Representatives of the Space Working Group attended as advisers. The Drafting Committee was assisted by the UNIDROIT Secretariat.

2.. The Drafting Committee was co-chaired by Mr B. Welch (United Kingdom) and Mr M. Deschamps (Canada).

3. The business of the Drafting Committee was to give effect to the matters referred to it by the Committee of governmental experts in the light of its first reading of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (UNIDROIT C.G.E./Space Pr./1/W.P. 3) (*the preliminary draft Space Protocol*).

4. The Drafting Committee in the event did not have time to consider the drafting implications of the discussions which took place in Plenary on the last morning.

5. The text of the provisions of the preliminary draft Space Protocol as reviewed by the Drafting Committee is appended hereto in a marked-up version as against the text submitted to the first session of the Committee of governmental experts.

PRELIMINARY DRAFT PROTOCOL
ON MATTERS SPECIFIC TO SPACE ASSETS

(as established by the Drafting Committee of the Committee of governmental experts
which met in Rome on 16th, 17th, and 18th December 2003,
on the basis of the preliminary draft submitted to the Committee of governmental experts
at its first Session held in Rome from 15 to 19 December 2003)

PRELIMINARY DRAFT PROTOCOL
ON MATTERS SPECIFIC TO SPACE ASSETS [1]

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*) [2] 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, [3] [4] [5]

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:

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[1] This preliminary draft Protocol follows very closely the Aircraft Protocol.

[2] The Convention and the Aircraft Protocol were adopted and opened to signature in Cape Town on 16 November 2001 at the conclusion of a diplomatic Conference organised, under the joint auspices of UNIDROIT and the International Civil Aviation Organization, by the Government of South Africa. This Conference was attended by 68 States and 11 international Organisations. Both the Convention and the Aircraft Protocol have been signed to date by 26 States (Burundi, Chile, China, Congo, Cuba, Ethiopia, France, Germany (with declaration), Ghana, Italy, Jamaica, Jordan, Kenya, Lesotho, Nigeria, Panama, Saudi Arabia, Senegal, South Africa, Sudan, Switzerland (*ad referendum*), Tonga, Turkey, United Kingdom (with declaration), United Republic of Tanzania and United States of America). The Convention is due to enter into force on the first day of the month following the expiration of three months after the date of the deposit of the *third* instrument of ratification, acceptance, approval or accession *but only as regards a category of objects to which a Protocol applies* and as from the time of entry into force of that Protocol, subject to the terms of that Protocol and as between States Parties to the Convention and that Protocol (cf. Article 49 of the Convention). An Official Commentary on the Convention and Aircraft Protocol has been prepared by Professor Sir Roy Goode, Chairman of the Drafting Committee at the diplomatic Conference, pursuant to Resolution No. 5 adopted by the latter, and is available from UNIDROIT, the publisher. An explanatory memorandum on the system of declarations under the Convention and the Aircraft Protocol (DC9/DEP Doc. 1) has been prepared by UNIDROIT, as depositary, and is also available from UNIDROIT.

[3] The Space Working Group established a Sub-committee in February 2001 to consider the relationship between the preliminary draft Protocol and the existing international space treaties. A preliminary paper prepared by Professor Paul B. Larsen, Georgetown University Law Center, *qua* Chairman of the Sub-committee, indicates that the Sub-committee did not identify any conflicts between the preliminary draft Protocol and the principles of law established by the international space treaties under the auspices of the United Nations. These conclusions were endorsed by the Space Working Group at its third session and submitted to the United Nations Office for Outer Space Affairs with a view to their consideration by the Consultative mechanism.

[4] Cf. the corresponding clause of the preamble to the Aircraft Protocol ("Mindful of the principles and objectives of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944").

[5] The preliminary draft Protocol is not intended to affect the obligations of States under the United Nations treaties and principles on outer space.

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 ~~associated~~ rights" [6] means~~: (i) any permit, licence, authorisation or equivalent instrument that is granted or issued by a national or intergovernmental or other international body or authority to control, use or operate a space asset, relating to the use of orbital positions and the transmission, emission or reception of radio signals to and from a space asset, which may be transferred or assigned, to the extent permissible and assignable under the laws concerned [7]; (ii)~~ all rights to performance or payment ~~or other performance~~ due to a debtor by any person with respect to a space asset~~s; and (iii) all contractual rights held by the debtor that are secured by or associated with the space assets~~;

(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[8];

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

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

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[6] ~~In so far as the concept of "associated rights" envisaged under the preliminary draft Protocol differs entirely from that reflected in the definition of the same term provided in the Convention, it is suggested that consideration will need to be given to referring to the concept envisaged under the preliminary draft Protocol by a different term, such as "debtor rights", so as adequately to distinguish this concept from that employed in the Convention, and to including in the preliminary draft Protocol a provision specifying that the assignment of an international interest in space assets carries with it not only associated rights but also such debtor rights.~~ The definition of "associated rights" remains as it is in the Convention. At the first session of the Committee of governmental experts, the Space Working Group issued a proposal introducing the new terms of "debtor's rights" and "related rights", but it is suggested that further work is needed to determine how the Convention and this Protocol will apply to those two new terms.

[7] ~~This definition is limited to regulatory licences and permits necessary for the operation of space assets.~~

[8] Further consideration is required of the inclusion in the definition of demand guarantees, standby letters of credit and credit insurance to better understand the consequences thereof.

(f) "related rights" means ~~(a)(i)~~ any permit, licence, authorisation, concession or equivalent instrument that is granted or issued by, or pursuant to the authority of, a national or intergovernmental or other international body or authority to manufacture, launch, control, use or operate a space asset, relating to the use of orbits~~al~~ positions and the transmission, emission or reception of ~~radio~~ electromagnetic signals to and from a space asset~~, which may be transferred or assigned, to the extent permissible and assignable under the laws concerned~~;[9]

(~~f~~g) "space assets" means [10]:

(i) any ~~separately~~ identifiable [11] asset that ~~is in space or that~~ is intended to be launched and placed in space or that is in ~~has been returned from~~ space;

(ii~~i~~) any ~~separately~~ identifiable [10] asset ~~or component~~ assembled or manufactured in space; ~~and~~

(iii~~v~~) any identifiable launch vehicle that is expendable or can be reused to transport persons or goods to and from space~~.~~; and

(iv~~i~~) any separately identifiable [10] component forming a part of an asset referred to in the preceding ~~clause~~ sub-paragraphs or attached to or contained within such asset.~~;~~

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

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

[10] It was agreed that assets in manufacture, transport or pre-launch stages may qualify as space assets. ~~During the second, third and fourth sessions of the Space Working Group and the meeting of the restricted informal group of experts, various participants raised the issue of whether assets in manufacture, transport or pre-launch stages should be considered space assets, and considered the relative benefits thereof in the context of asset-based financing, recognising that such characterisation may conflict with applicable domestic laws relating to security interests. Further discussion took place regarding whether permits, licences, approvals and authorisations issued by national or intergovernmental bodies should be defined in the preliminary draft Protocol as "associated rights" or alternatively be included in the definition of "space assets" and be subject to an optional (opt-out) provision. It was also suggested that intellectual property rights, which may be integral to the beneficial use of the space assets, would be otherwise adequately addressed by existing international and domestic law. Also, intangible property rights relating to the ability to command and control orbiting space assets were recognised as important to the effective exercise of remedies of constructive repossession. However, discussion took place as to the appropriateness of such a broad and comprehensive definition of space assets. An alternative approach suggested was the streamlining of the definitions and the broadening of provisions relating to remedies to facilitate the exercise by the creditor of appropriate remedies. In line with further suggestions made at the second session of the Space Working Group and at the meeting of the restricted informal group of experts, the definition of space assets was broadened to include assets on any celestial body. Participants at the third session of the Space Working Group raised the issue whether the definition of "space assets" should apply to State-owned assets intended to be commercially financed in whole or part. Several participants referred to the comment raised by co-operating States of the European Space Agency regarding the use of the term "space property" as opposed to the term "space object" used in the various United Nations treaties on outer space. The Space Working Group took the view that a distinction in terms was both appropriate and necessary for distinguishing the private commercial finance *raison d'être* of the preliminary draft Protocol from the public international law focus of the United Nations instruments. Nevertheless, at the fourth session of the Space Working Group it was agreed that the term "space assets" was preferred to "space property" in response to concerns regarding the implications under civil law jurisdictions of the term "property". It was however agreed that for the purposes of the French-language version of the preliminary draft Protocol the term "biens spatiaux" was acceptable.~~

[11] The term "identifiable" is intended to be read in the context of Article VII.

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

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

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

3~~2~~. – The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to space assets.

Article III – Application of the Convention to sales

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

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

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

*Article III*bis *– Sphere of application*

The return [12] of a space asset from space does not affect an international interest in that asset.

Article IV – Derogation ~~Sphere of application~~

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

[12] The Drafting Committee considered that the word "return" covered both intentional and non intentional return. The Committee suggested that the Commentary should mention this interpretation.

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 ~~in respect~~ of which the seller ~~transferor~~ has power to dispose ~~enter into an agreement~~; 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, ~~and~~ effect a registration as defined by Article 16(3) of the Convention and assert rights and interests under the Convention ~~an international interest in, or a sale of, a space asset~~, in an agency, trust or ~~other~~ representative capacity. ~~In such case, that party is entitled to assert rights and interests under the Convention and this Protocol~~. [13]

Article VII – Identification of space assets

~~It shall be necessary and sufficient to identify [14] the space asset for the purposes of Articles 7(c) and 32(1)(b) of the Convention and Article V(1)(c) of this Protocol if the description of such space asset: [15] (i) provides the name of the debtor and the creditor; (ii) provides an address for the debtor and for the creditor; (iii) contains a general description of the space asset indicating the name of the manufacturer (or principal manufacturer, if more than one manufacturer exists), its manufacturer's serial number (if one exists) and its model designation (or comparable designation, if a model designation does not exist) and indicating its intended location; (iv) provides the date and location of launch; (v) in the case of a separately identifiable~~

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[13] Following the decision taken by the Plenary, the Drafting Committee brought this provision in line with ~~This provision may need to be modified in order to bring it into line with certain technical corrections that have been made in respect of~~ the comparable provision, Article IV, of the preliminary draft Protocol to the Convention on Matters specific to Railway Rolling Stock except the last words ("on behalf of a creditor or creditors") because it felt that this limitation was not appropriate for the Space Protocol.

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

[15] ~~At the fifth session of the Space Working Group, it was agreed that inclusion of multiple search criteria would increase the reliability of searches in the computerised registration data base contemplated for the International Registry.~~

~~component forming a part of the space asset or attached to or contained within the space asset, provides a description of such separately identifiable component, the space asset of which it forms a part, to which it is attached or within which it is contained and each of the other identification criteria specified in this Article with respect to such space asset; and (vi) such additional identification criteria as may be specified in the regulations referred to in Article XVIII of this Protocol.~~

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

Article VIII – Choice of law

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

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

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

CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article IX – Modification of default remedies provisions

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

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;

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

[17] A decision regarding the inclusion or otherwise of the bracketed language will hinge on the treatment or consideration of the bracketed language in Article XXVI (2).

(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.

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

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

Article X – Modification of provisions regarding relief pending final determination

1. – This Article applies only where a Contracting State has made a declaration to that effect under Article XXVI(3) [and to the extent stated in such declaration]. [18]

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

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

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

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

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

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

~~6. – With regard to the remedies in Article IX:~~

~~(a) they shall be made available by the administrative authorities in a Contracting State no later than five working days after the creditor notifies such authorities that the relief~~

[18] ~~A decision regarding the inclusion or otherwise of the bracketed language will hinge on the treatment or consideration of the bracketed language in Article XXVI (3).~~

~~specified in Article IX is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with the Convention; and~~

~~(b) the administrative authorities referred to in the preceding sub-paragraph shall expeditiously co-operate with and assist the creditor in the exercise of such remedies.~~ [19]

Article XI – Remedies on insolvency

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

Alternative A

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

(a) the end of the waiting period; and

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

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

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.

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[19] It was suggested that further consideration be given to the role of administrative authorities.

8. – With regard to the remedies specified in Article IX:

(a) they shall be made available by the administrative authorities in a Contracting State no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention and this Protocol; and

(b) the administrative authorities referred to in the preceding sub-paragraph shall expeditiously co-operate with and assist the creditor in the exercise of such remedies.

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

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

11. – 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.

12. – 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 ~~the~~ insolvency proceedings over registered interests.

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

Alternative B

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

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

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

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

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

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

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

Article XII – Insolvency assistance

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

2. – The courts of a Contracting State: (i) in which the space asset is situated; (ii) from which the space asset may be controlled; (iii) in which the debtor is located; or (iv) otherwise having a close connection with the space asset, shall, in accordance with the law of the Contracting State, [20] co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI.[21]

Article XIII – Modification of priority provisions

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

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

Article XIV – Modification of assignment provisions

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

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

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[20] One delegation suggested that these words should not be added in this provision.

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

Article XV – Debtor provisions

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

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

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

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

Article XVI – Limitations on remedies

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

2. – A Contracting State [, in accordance with its laws,] [22] may restrict or attach conditions to the exercise of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol, including the placement of data and materials pursuant to Article IX*bis*, where the exercise of such remedies would involve or require the transfer of controlled goods, technology, ~~or~~ data or services, or would involve the transfer or assignment of ~~the~~ related ~~associated~~ rights ~~referred to in Article I(2)(a)(i)~~.[23]

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

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[22] If the phrase "in accordance with its laws" is deleted in Article XVI(2), further consideration should be given to the rights of Contracting States to place restrictions or limitations on the placement of data and materials with another person as contemplated in Article IX*bis* given such restrictions or limitations would no longer be applied in accordance with relevant domestic laws of a Contracting State.

[23] ~~Several participants at the fifth session of the Space Working Group suggested further consideration of remedies involving the potential transfer of items controlled or restricted for export and the assignment or transfer of regulatory licences or permits granted by domestic or international authorities.~~

[24] It was agreed by the Plenary that both texts should be inserted for further consideration before the next meeting of the Committee of governmental experts.

There was general agreement that Contracting States should be able to limit the exercise of remedies under certain circumstances relating to public services and specified in a declaration. The view was also expressed that this additional paragraph 3 should narrowly define those circumstances in order to promote the objectives of the Protocol.

It should be considered at a later stage whether this paragraph 3 is subject to the opt-in declaration set out in paragraph 1.

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

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

Article XVII – 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. [25]

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.

~~4. – The Supervisory Authority may provide, in the regulations referred to in Article XVIII, for the placement into escrow with the International Registry, or any other agreed escrow agent, at the time of creation of an international interest or at any time thereafter, of access and command codes required to access, command, control and operate space assets.~~ [26]

Article XVIII – First regulations

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

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[25] The United Nations has been approached as one possible Supervisory Authority. The possibility of the United Nations serving as Supervisory Authority was considered by the Legal Subcommittee of U.N./COPUOS at its 42nd session. Other intergovernmental Organisations have also expressed an interest in serving as Supervisory Authority. The possibility of these Organisations serving as Supervisory Authority and other possible options are under consideration.

[26] ~~Participants at the third session of the Space Working Group believed that the option to place into escrow command codes required to access and control space assets with the International Registry or an agreed escrow agent, via an irrevocable form of escrow agreement, provided a consensual and mechanical process for the expeditious and predictable exercise of remedies while concurrently avoiding any cause for the Registrar to act in a quasi judicial capacity.~~

Article XIX – Additional modifications to Registry provisions

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

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

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

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

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

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

CHAPTER IV – JURISDICTION

Article XX – 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 space assets 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 [27]

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

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

[CHAPTER VI – FINAL PROVISIONS

Article XXII – Signature, ratification, acceptance, approval or accession

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

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

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

4. – Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary. [28]

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

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

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

Article XXIII – Regional Economic Integration Organisations[29]

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 XXIV – Entry into force

1. – This Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of the [fifth] [30] instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.

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

Article XXV – Territorial units

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

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[29] At its fifth session, the Space Working Group took note of the addition of this Article to the Aircraft Protocol at the diplomatic Conference and noted that further consideration should be given to the applicability of the type and nature of Organisations to be covered by Article XXIII.

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

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 XXVI – Declarations relating to certain provisions

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

(a) that it will not apply Article VIII;

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

2. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article IX [wholly or in part]. [31]

3. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article X ~~[~~wholly or in part~~]~~. [32] If it so declares with respect to Article X(2), it shall specify the time-period required thereby.

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[31] Due consideration should be given to the deletion of the bracketed words in paragraph 2 in order to promote the uniformity of application of declarations made by States.

[32] ~~Due consideration should be given to~~ ~~t~~The deletion of the bracket~~s~~ed words in paragraph 3 is a consequence of the deletion of the brackets in Article X(1). ~~in order to promote the uniformity of application of declarations made by States.~~

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

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

Article XXVII – Declarations under the Convention

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

Article XXVIII – Reservations and declarations

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

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

Article XXIX – Subsequent declarations

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

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

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

Article XXX – Withdrawal of declarations

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

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

Article XXXI – Denunciations

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

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

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

Article XXXII – Review Conferences, amendments and related matters

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

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

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

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

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

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

3. – Any amendment to this Protocol shall be approved by at least a two-thirds majority of State 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] State Parties in accordance with the provisions of Article XXIV relating to its entry into force.

Article XXXIII – Depositary and its functions

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

2. – The Depositary shall:

(a) inform all Contracting States of:

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

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

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

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

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

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

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

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

APPENDIX VI

CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

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

PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC TO SPACE ASSETS

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

CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

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

CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT:

PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC TO SPACE ASSETS [1] [2]

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*) [3] 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,

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

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

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

MINDFUL of the 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, [4] [5]

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" [6] means all rights to performance or payment due to a debtor by any person with respect to a space asset; [7]

(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; [8]

(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

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[4] Cf. the corresponding clause of the preamble to the Aircraft Protocol ("Mindful of the principles and objectives of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944").

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

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

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

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

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

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

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

(g) "space assets" means [11]:

(i) any identifiable [12] asset that is intended to be launched and placed in space or that is in space;

(ii) any identifiable [12] asset assembled or manufactured in space;

(iii) any identifiable [12] launch vehicle that is expendable or can be reused to transport persons or goods to and from space; and

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

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

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

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

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

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

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

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

[11] It was agreed that assets in manufacture, transport or pre-launch stages may qualify as space assets.

[12] The term "identifiable" is intended to be read in the context of Article VII.

Article III – Application of the Convention to sales

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

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

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

Article III bis – *Sphere of application*

The return [14] of a space asset from space does not affect an international interest in that asset.

Article IV – Derogation

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

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

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

(a) is in writing;

(b) relates to a space asset of which the seller has power to dispose; and

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

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

(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. [15]

Article VII – Identification of space assets

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

Article VIII – Choice of law

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

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

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.

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

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

CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article IX – Modification of default remedies provisions

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

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

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

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

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

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

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

Article IX bis – *Placement of data and materials*

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

Article X – Modification of provisions regarding relief pending final determination

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

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[17] A decision regarding the inclusion or otherwise of the bracketed language will hinge on the treatment or consideration of the bracketed language in Article XXVI(2).

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

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

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

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

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

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

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

Article XI – Remedies on insolvency

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

Alternative A

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

(a) the end of the waiting period; and

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

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

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:

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

(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.[20]

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

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

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

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

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

Alternative B

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

(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.

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

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

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

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

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

Article XII – Insolvency assistance

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

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

Article XIII – Modification of priority provisions

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

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

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[21] One delegation did not agree with the addition of the words in square brackets.

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

Article XIV – Modification of assignment provisions

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

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

Article XV – Debtor provisions

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

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

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

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

Article XVI – Limitations on remedies

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

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

[3. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare whether and to which extent the remedies provided in Chapter III of the Convention and in Articles IX to XII of this Protocol shall be exercisable for space assets as

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

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.] [24]

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

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

Article XVII – The Supervisory Authority

1. – The Supervisory Authority shall be designated [25] 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. [26] [27]

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

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

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

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

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

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

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

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

Article XVIII – First regulations

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

Article XIX – Additional modifications to Registry provisions

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

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

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

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

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

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

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

CHAPTER IV – JURISDICTION

Article XX – Waiver of sovereign immunity

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

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

CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS

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

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

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

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.] [31]

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

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

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

[CHAPTER VI – FINAL PROVISIONS [32]

Article XXII – Signature, ratification, acceptance, approval or accession

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

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

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

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

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

Article XXIII – Regional Economic Integration Organisations [34]

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

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

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

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

Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

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

Article XXIV – Entry into force

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

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

Article XXV – Territorial units

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

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

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

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

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

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

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. [36]

Article XXVI – Declarations relating to certain provisions

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

(a) that it will not apply Article VIII;

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

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

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

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

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

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[36] But see footnotes 19 and 20, *supra*.

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

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

Article XXVII – Declarations under the Convention

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

Article XXVIII – Reservations and declarations

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

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

Article XXIX – Subsequent declarations

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

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

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

Article XXX – Withdrawal of declarations

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

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

Article XXXI – Denunciations

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

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

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

Article XXXII – Review Conferences, amendments and related matters

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

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

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

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

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

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

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

Article XXXIII – Depositary and its functions

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

2. – The Depositary shall:

(a) inform all Contracting States of:

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

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

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

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

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

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

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

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

APPENDIX VII

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

First session (Rome, 15 - 19 December 2003)

PROPOSAL FOR THE APPLICATION OF THE CONVENTION AND THE SPACE ASSETS PROTOCOL TO DEBTOR'S RIGHTS AND RELATED RIGHTS

(*by the Space Working Group)*

1. New definitions:

"debtor's rights" means all rights to performance or payment due to the debtor by any person with respect to a space asset; *

"related rights" means any permit, licence, authorisation, concession or equivalent instrument that is granted or issued by, or pursuant to the authority of, a national or intergovernmental or other international body or authority to manufacture, launch, control, use or operate a space asset, relating to the use of orbits and the transmission, emission or reception of electromagnetic signals to and from a space asset; *

"rights assignment" means a contract which, by way of security, transfers to the assignee the chargee's interest in debtor's rights or related rights;

"rights security agreement" means an [agreement] [Ref. Art. 1(ii)] by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over debtor's rights or related rights to secure the performance of any existing or future obligation of the chargor or a third person;

2. New provisions:

Article IV – Application of the Convention to Debtor's Rights and Related Rights

IV. 1. As provided by the terms of this Protocol, the Convention provides for the constitution and effects of international interests in debtor's rights and related rights, provided such rights are related to a space asset. [Ref. Art. 2]

* The definitions of "debtor's rights" and "related rights" are included here as proposed by the Drafting Committee.

IV. 2. For purposes of this Protocol, an international interest in debtor's rights or related rights is an interest in debtor's rights or related rights granted by the chargor under a rights security agreement and constituted under paragraph 3 [Ref. Art. 2(2)]

IV. 3. An interest in debtor's rights or related rights is constituted as an international interest under this Protocol where the rights security agreement creating or providing for the interest:

(a) is in writing;

(b) relates to a space asset;

(c) enables the debtor's rights or related rights and the space asset to which it relates, to be identified in conformity with Article VII; and

(d) enables the obligations secured by the interest created or provided for by the rights security agreement to be determined, but without the need to state a sum or maximum sum secured. [Ref. Art. 7]

IV. 4. Registration of international interest in debtor's rights and related rights

(1) An international interest in debtor's rights and related rights may be registered [in the International Registry] by either party with the consent in writing of the other, but only if and no earlier than an international interest or prospective international interest in the space asset to which it relates is registered in favour of the same chargee. [Ref. New and Art. 20(1)]

(2) Any international interest registered pursuant to paragraph (1) may be amended or extended prior to its expiry by either party with the consent in writing of the other. [Ref. Art. 20(1)]

(3) The subordination of an international interest to another international interest may be registered by or with the consent in writing at any time of the person whose interest has been subordinated. [Ref. Art. 20(2)]

(4) A registration may be discharged by or with the consent in writing of the party in whose favour it was made. [Ref. Art. 20(3)]

(5) The acquisition of an international interest by legal or contractual subrogation may be registered by the subrogee. [Ref. Art. 20(4)]

IV. 5. The following provisions of the Convention shall apply in relation to debtor's rights and related rights:

Articles 29 and 30 [Ref. Arts. 29 and 30] [To be further reviewed]

IV. 6. Effects of rights assignment

A rights assignment made in conformity with paragraph 7 also transfers to the assignee:

(a) all the interests and priorities of the assignor under the Convention; and

(b) the international interest in the related space asset. [Ref. Art. 31(1)]

IV. 7. Formal requirements of rights assignment

(1) A rights assignment transfers the international interest in the debtor's rights and related rights only if it:

(a) is in writing; and

(b) enables the debtor's rights or related rights to be identified.

(2) The Convention does not apply to a rights assignment that is not effective to transfer the international interest in the related space asset and associated rights [Ref. Art. 32(1) and (3)].

IV. 8. Default remedies in respect of international interests in debtor's rights and related rights

In the event of default by the chargor under a rights security agreement constituting an international interest in debtor's rights or related rights and the international interest in the related space asset, Articles 8, 9 and 11 to 14 of the Convention apply in the relations between the chargor and the chargee as if references:

(a) to the secured obligation were references to the obligation secured by the rights security agreement;

(b) to the security interest were references to the interest created by that rights security agreement;

(c) to the creditor and debtor were references to the chargee and chargor; and

(d) to the object were references to debtor's rights or related rights and the related international interest. [Ref. Art. 34]

IV. 9. Relationship with the United Nations Convention on the Assignment of Receivables in International Trade

The Convention shall prevail over the United Nations Convention on the Assignment of Receivables in International Trade, open for signature in New York on 12 December 2001, as it relates to rights assignments. [Ref. Art. 45 bis]

Figure 1.

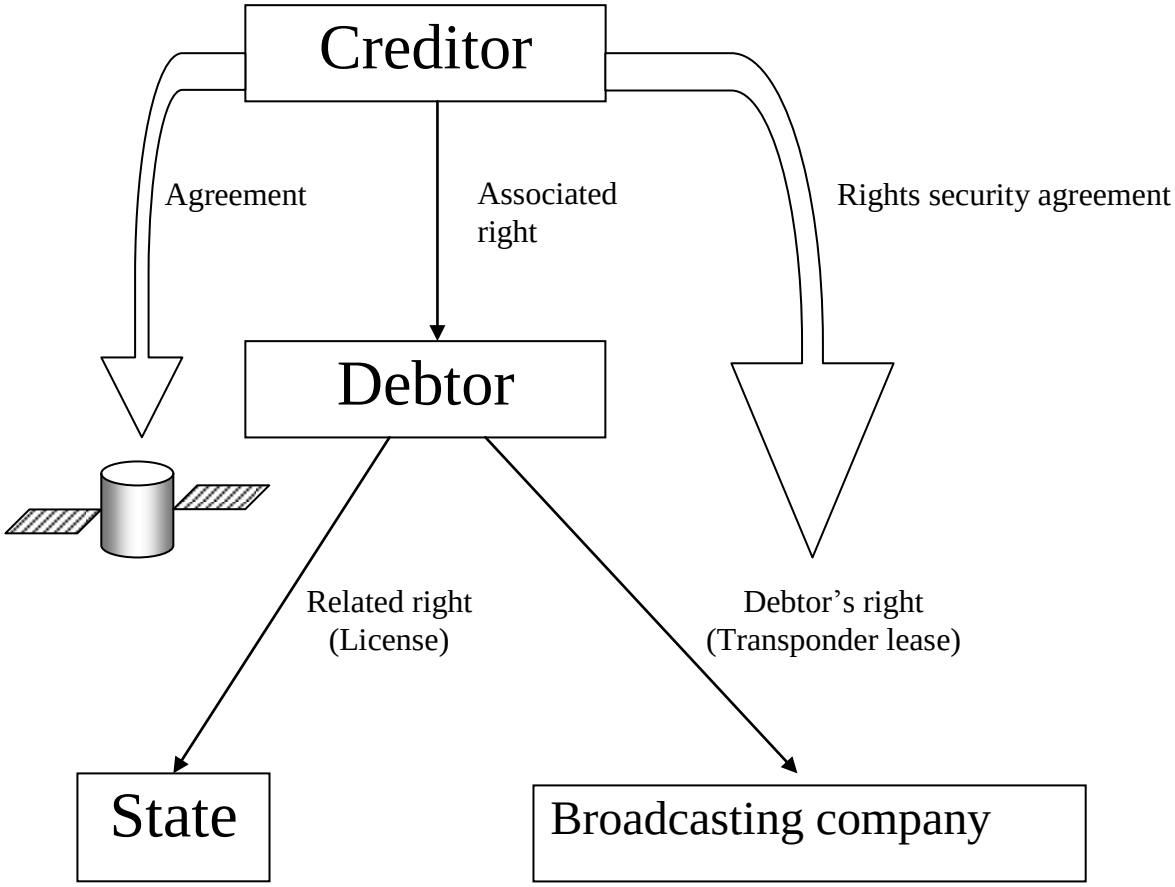
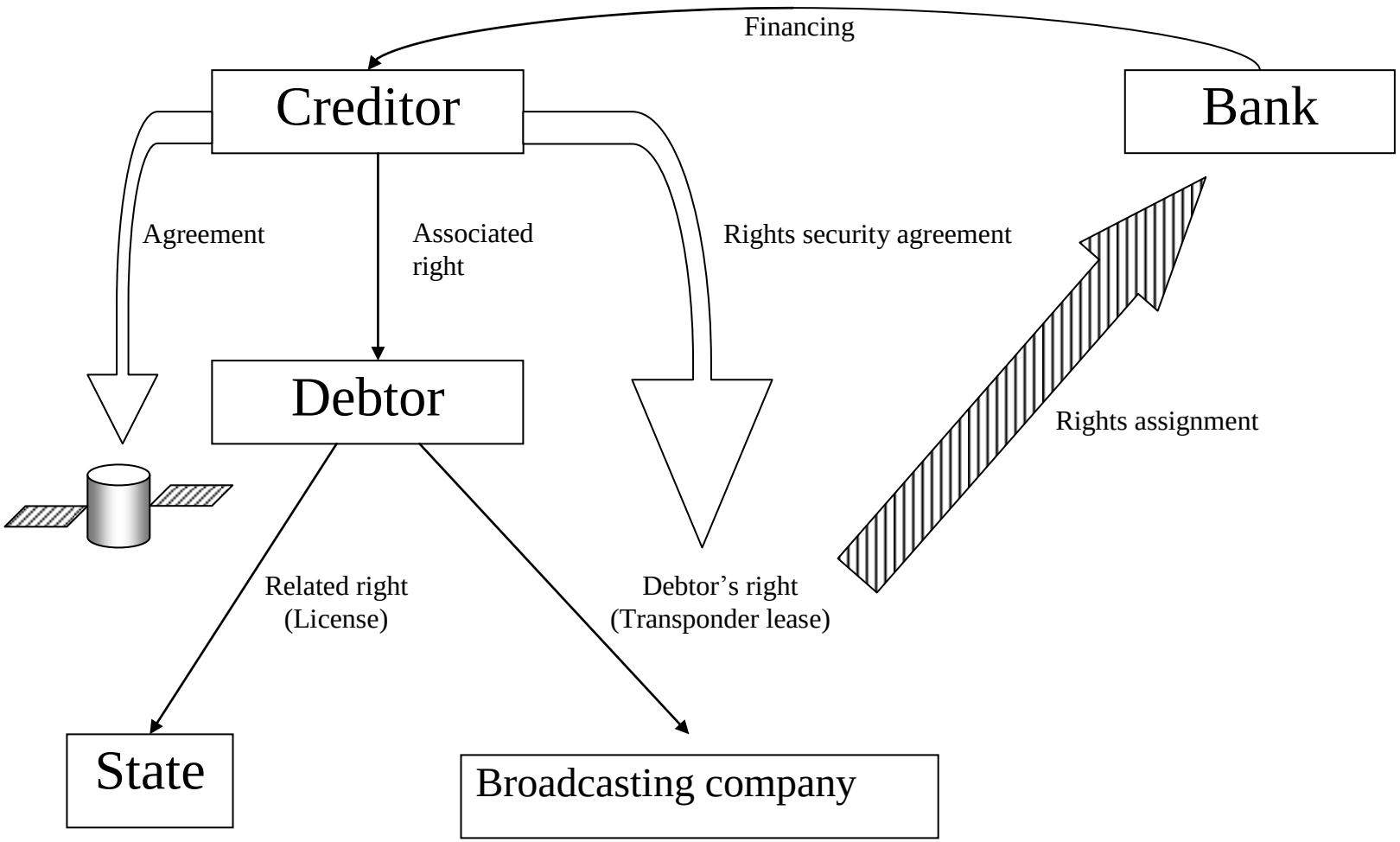

Creditor
Agreement
Associated right
Rights security agreement
Debtor
Related right (License)
Debtor's right (Transponder lease)
State
Broadcasting company

Figure 2.


Financing
Creditor
Bank
Agreement
Associated right
Rights security agreement
Debtor
Rights assignment
Related right (License)
Debtor's right (Transponder lease)
State
Broadcasting company