



**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
Fifth session
Rome, 21/25 February 2011**

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REPORT

(prepared by the UNIDROIT Secretariat)

Opening of the session

1. *Mr J.A. Estrella Faria, Secretary-General of UNIDROIT*, opened the fifth session of the Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (hereinafter referred to as the *Committee*) at the Headquarters of the Food and Agriculture Organization of the United Nations in Rome on 21 February 2011 at 9.40 a.m. He drew attention to the intensive work that had been conducted since the previous session of the Committee, notably at the three intersessional meetings held in October 2010. He noted that the session was to be the final session and that the text of the revised preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets to come out of the session would be submitted to the UNIDROIT Governing Council, at its 90th session, to be held in Rome from 9 to 11 May 2011, for consideration as to its readiness for transmission to a diplomatic Conference for adoption.

2. *Mr S. Marchisio (Italy)* was confirmed as Chairman of the Committee. He noted that the revised preliminary draft Protocol as it had emerged from the fourth session of the Committee, held in Rome from 3 to 7 May 2010, and as annotated by the Secretariat to reflect the conclusions reached at the October 2010 meetings of the Informal Working Group on default remedies in relation to components (hereinafter referred to as the *Informal Working Group on components*) and the Informal Working Group on limitations on remedies on the definition of "space asset" and on public service respectively (hereinafter referred to as the *revised preliminary draft Protocol*) (C.G.E./Space Pr./5/W.P. 3) constituted the basic working document of the session. The revised preliminary draft Protocol is reproduced in Appendix I to this Report.

3. Mr M.J. Stanford, Deputy Secretary-General of UNIDROIT, was Secretary to the Committee. Ms F. Mestre, Senior Officer, UNIDROIT, Ms M.M. Schneider, Senior Officer, UNIDROIT, Mr J.B. Atwood, Senior Officer, UNIDROIT, and Mr D.A. Porras, Associate Officer, UNIDROIT, acted as Assistant Secretaries.

4. The session was attended by 92 representatives of 32 Governments, three intergovernmental Organisations and five international non-governmental Organisations, as well as seven representatives of the international commercial space, financial and insurance communities and one other person (see List of participants reproduced in Appendix II to this Report).

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

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

Item No. 2 on the Agenda: organisation of work

6. *Mr Stanford* explained the working arrangements for the session and recalled that the membership of the Drafting Committee had been settled at the third session of the Committee in the following composition: Canada, the People's Republic of China, France, Nigeria, the Russian Federation, Senegal, the United Kingdom and the United States of America, with Canada and the United Kingdom as co-Chairmen.

Item No. 3 on the Agenda: consideration of the revised preliminary draft Protocol as it had emerged from the fourth session of the Committee (C.G.E./Space Pr./5/W.P. 3)

Reports on the intersessional meetings

- (i) Intersessional consultations with representatives of the international commercial space and financial communities (Rome, 18 October 2010) (C.G.E./Space Pr./5/W.P. 4)

7. *Ms A. Veneziano (Italy)* reported, in her capacity of co-moderator of the consultations, on the considerable progress that had been made, in particular on the definition of "space asset", default remedies in relation to components and limitations on remedies.

- (ii) Meeting of the Informal Working Group on components (Rome, 19 / 21 October 2010) (C.G.E./Space Pr./5/W.P. 5)

8. *Mr Estrella Faria*, in his capacity of moderator of the Informal Working Group on components, reported on the conclusions that it had reached on the two issues before it.

9. On the question of the definition of the term "space asset", he noted that a new definition of "space asset" had emerged at that meeting which commanded strong support. He reported that it had been agreed by that Informal Working Group on components that the proposed new definition of "space asset" be included in a footnote of the text of Article I(2)(l) of the revised preliminary draft Protocol and that it be recommended to the Committee that this proposed new definition be taken as the basis for the Committee's further deliberations on this issue (cf. §§ 17-21 and 91, *infra*).

10. On the specific issue of default remedies in relation to components, *Mr Estrella Faria* recalled the two prevailing positions on this issue, namely whether there should be a default rule in the revised preliminary draft Protocol on the conflict of interests that might arise from the exercising of default remedies by a creditor over a space asset that was physically linked to another asset that belonged to a non-defaulting third-party, potentially impacting negatively on the third party, or whether this issue should rather be left to inter-creditor agreements.

11. *Mr Estrella Faria* noted that, in the light of the continuing division of opinion on this issue, it was agreed that the proposal of one Government should be laid before the Committee as the

tentative recommendation of the Informal Working Group on components for a proposed new Article XVIII(3) and (4), albeit within a series of square brackets and not in a footnote to the text of the revised preliminary draft Protocol, to denote the lack of consensus on the issue (cf. §§ 39-46 and 116-121 *infra*).

- (iii) Meeting of the Informal Working Group on limitations on remedies (Rome, 20 / 21 October 2010) (C.G.E./Space Pr./5/W.P. 6)

12. Reporting, in his capacity of moderator of the Informal Working Group on limitations on remedies, on the progress made by the latter, *Mr Estrella Faria* highlighted the proposed new Alternative C that had emerged from the meeting, noting that this alternative had been considered by that Informal Working Group as a whole to be preferable to both Alternatives A and B and had, therefore, been recommended to the Committee as the basis of its further deliberations on this issue (C.G.E./Space Pr./5/W.P. 6, § 21).

13. There had been general consensus within the Informal Working Group on limitations on remedies that, if a public service provision were to be included in the revised preliminary draft Protocol, any further discussions should, subject to drafting refinements, be based on the proposed new Alternative C (cf. §§ 62-66, 84-87, 98-102 and 110-115, *infra*).

Consideration of outstanding and new issues regarding the revised preliminary draft Protocol (C.G.E./Space Pr./5/W.P. 2, pp. 3-7 and C.G.E./Space Pr./5/W.P. 7, W.P. 7 Add. 1, W.P. 8-12, W.P. 14 and W.P. 17)

- (i) Definition of "launch vehicle" (Article I(2)(e))

14. It was agreed to delete Article I(2)(e), notably because no other category of "space asset" was defined in the revised preliminary draft Protocol.

- (ii) Definition of "licence" (Article I(2)(f))

15. One delegation proposed a new definition of "licence" (C.G.E./Space Pr./5/W.P. 11, also reproduced as Appendix IV to this Report). This proposal was supported by other delegations, subject to the deletion of the words "that could be so recognised". It was so agreed (cf. §§ 89 and 104, *infra*).

- (iii) Definition of "space asset" (Article I(2)(l))

16. The observer representing the International Registry for aircraft objects presented that Registry with a view to facilitating discussions on the proposed new definition of "space asset", updating the Committee on the status of the Registry, providing an overview of how registrations were made and noting how the developments in the software of the International Registry that would be implemented in October 2011 could assist the creation of the future International Registry for space assets through facilitating the making of multiple registrations simultaneously in respect of multiple space assets.

17. The Committee endorsed the new definition of "space asset" proposed by the Informal Working Group on components (cf. § 9, *supra*), in particular because it would exclude those objects that were not yet considered to be bankable by the international commercial space and financial communities while still providing the flexibility necessary for future objects to be covered by the future Protocol. There were, however, a few points which the Committee felt should be clarified before the proposed new definition was adopted (cf. also § 91, *infra*).

18. First, some delegations suggested that it would be appropriate for the phrase "in respect of which a separate registration may be effected in accordance with regulations from time to time made by the Supervisory Authority", which appeared in sub-sub-paragraphs (ii) and (iii), also to be included in sub-sub-paragraph (i). However, some other delegations did not agree, noting that sub-sub-paragraph (i) was sufficiently clear and did not require further elaboration from the Supervisory Authority. It was agreed that the language in question should be placed in square brackets for further consideration (cf. § 92, *infra*).

19. Secondly, in respect of sub-sub-paragraph (iii), some delegations suggested that the phrase "capable of independent use" which appeared in square brackets should be deleted because the assets described in that sub-sub-paragraph would already be defined by the regulations of the future International Registry for space assets. However, some other delegations felt that this language should be retained, because it would provide guidance to the future Supervisory Authority as to what types of asset were intended to be covered by the regulations, namely those of high value. It was decided that the language in question should be deleted but that guidance for the Supervisory Authority could be provided in a draft Resolution to be adopted at the future diplomatic Conference for the adoption of the future draft Protocol.

20. One delegation queried the need for the phrase "from time to time" in sub-sub-paragraph (ii). The same delegation also wondered whether the term "space vehicle" in sub-sub-paragraph (i) should not be deleted, in its language the terms "space craft" and "space vehicle" being interchangeable.

21. It was agreed that the proposed new definition of "space asset" should be submitted to the Drafting Committee for further drafting revisions (cf. §§ 91-93, *infra*).

(iv) Location or situation of a space asset (Article I(3))

22. One delegation introduced its Government's proposal to combine Alternatives A and C of Article I(3) (C.G.E./Space Pr./5/W.P. 7, p. 5), noting in particular that the purpose of this Article was to ensure that interim remedies would be capable of being enforced in as many jurisdictions as possible. This delegation indicated that it could not, however, accept any reference in Article I(3) to United Nations General Assembly Resolution 1721(XVI)B of 20 December 1961 (although cf. § 105, *infra*). At the same time, it indicated that it would not object to the State of the licensing Authority also being considered as an appropriate connecting factor.

23. Another delegation introduced its proposal (C.G.E./Space Pr./5/W.P. 7 Add. 1, pp. 1-2), which also sought to combine elements of the Alternatives found in Article I(3), while not seeking to replace any of those other alternatives. This proposal combined references to United Nations Treaties and Resolutions and the *de facto* criteria found in Alternatives A and B.

24. Some delegations felt that the connecting factors to be proposed in Article I(3) might be distinguished, with a different connecting factor being employed in respect of, on the one hand, Articles 1(n) and 54 of the Convention and, on the other, Article 43 thereof and Article XXIII of the revised preliminary draft Protocol.

25. It was suggested by one observer that reference might also be made to the State of registry under the Space Master Register of the International Telecommunication Union (I.T.U.).

26. It was agreed that this matter should be referred to the Drafting Committee for its advice (cf. §§ 94 and 105-106, *infra*).

(v) Application of the Convention as regards space assets and debtor's rights (Article II(3))

27. An observer suggested that Article II(3), dealing with the revised preliminary draft Protocol's relationship to the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (hereinafter referred to as the *Aircraft Protocol*), should be reviewed. He suggested that any potential overlap between the two Protocols would be limited to the case of aircraft that had an ability to enter outer space and that it would be appropriate for international interests created in relation to such aircraft to be governed by the Aircraft Protocol. The observer proposed that Article II(3) be amended to provide either that, in the event of conflict between the two Protocols, the provisions of the Aircraft Protocol should prevail or that an object that was an aircraft object pursuant to the Aircraft Protocol should not be capable of being a space asset pursuant to the revised preliminary draft Protocol.

28. One delegation indicated that Article II(3) had been intended to address the quite different question as to whether a space asset that had not yet been launched into outer space could be considered to be an aircraft under the Aircraft Protocol. Another delegation indicated a preference for the second formulation proposed by the observer. Yet another delegation indicated that the observer's proposal raised a broader question as to whether the revised preliminary draft Protocol might inadvertently amend the Aircraft Protocol.

29. The Committee agreed to adopt the observer's proposal by adding language that would ensure that an object that was an aircraft object pursuant to the Aircraft Protocol would not be capable of being a space asset pursuant to the future Protocol, subject to drafting refinements by the Drafting Committee (cf. §§ 95 and 107, *infra*).

(vi) Application of the Convention to title and salvage interests (Article IV(5))

30. One of the co-Chairmen of the Drafting Committee reported on the extraordinary meeting of the Drafting Committee held on 20 February 2011 to finalise the work that it had not been able to complete during the Committee's fourth session, namely to complete its work on Article IV(5). In illustrating the report on that meeting of the Drafting Committee (C.G.E./Space Pr./5/W.P. 10), he indicated that, while no change was proposed in the treatment of title salvage (although cf. § 96, *infra*), the Drafting Committee had recommended, in particular, that revenue salvage should not be included in the revised preliminary draft Protocol as a registrable interest but that the right of insurers to revenue salvage should be safeguarded in relation to subsequently registering creditors under the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*) and the future Protocol. It was also suggested that further clarification could be provided through the future Official Commentary.

31. One delegation suggested that the term "constructive total loss" should be defined for those legal traditions that were not familiar with such a term.

32. The recommendations of the Drafting Committee were endorsed by the Committee, subject to the need for the Drafting Committee to consider the language employed, and in particular to consider the full implications of the square brackets around the words "without prejudice to Article 9(5) of the Convention (cf. §§ 108-109, *infra*).

(vii) Formal requirements for rights assignment (Article IX(2))

33. One delegation proposed a new Article IX(2) (C.G.E./Space Pr./5/W.P. 12, also reproduced as Appendix V to this Report), noting that the issues of rights assignments and the protection of national strategic areas were very important to its Government. Although one delegation supported

the proposal, other delegations indicated that the issue would be covered by Article XXVII(2), which was itself the subject of a proposal submitted by another delegation. It was decided that further consideration of the proposal should, therefore, be deferred until after the Committee had considered Article XXVII(2) (cf. § 52, *infra*).

(viii) Economic realisation of interests / step-in operators (proposed new Article XVI)

34. One delegation provided an overview of its proposal (C.G.E./Space Pr./5/W.P. 8) for a new Article XVI and indicated that the proposal was designed to deal with an existing barrier to the enforcement by creditors of their rights, namely the difficulties associated with arranging for a step-in operator to take the place of the debtor, by providing for pre-approval of step-in operators. Some delegations indicated that they would require further information and explanation of the proposal in order fully to understand and consider it.

35. Some delegations indicated qualified support for the second paragraph of the proposal, although questions were raised about its drafting, potential inconsistencies with other provisions of the revised preliminary draft Protocol, including Articles XVIII, XXVII(2) and XXIX, and the appropriateness of the revised preliminary draft Protocol including a provision that essentially invited a Contracting State to amend its own law.

36. Some delegations raised questions about the first paragraph of the proposal, including the uncertainty that could potentially be created through the inclusion of concepts such as "in a discriminatory manner" and "policies of the Convention and of this Protocol" and its relationship with other limits on the exercise of remedies contained in other provisions of the revised preliminary draft Protocol. One delegation indicated that the proposal could be reformulated to provide for a Contracting State to collaborate with creditors in relation to the exercise of remedies.

37. Noting that the proposal had been controversial, *the Chairman* invited the delegation that had tabled this proposal to redraft it to take account of the comments that had been made by delegations with a view to presenting a revised proposal to the Committee.

38. The delegation having proposed the new Article XVI subsequently announced the withdrawal of its proposal to enable the undertaking of additional consultations.

(ix) Default remedies in relation to components (Article XVIII(3))

39. Some delegations reiterated their position that the international commercial space and financial communities were highly sophisticated parties who would naturally conclude inter-creditor agreements on such an issue and that the inclusion of such a broad provision would undermine the certainty a creditor would be entitled to expect in respect of the priority of its international interest in a space asset and would, as a result, increase the cost of space financing (cf. § 10, *supra*).

40. Some other delegations, whilst agreeing that most parties would reach inter-creditor agreements, noted, however, that in cases where no agreement could be reached or the agreement reached was found to be void, a default rule would be needed. It was added that one proposed solution to the divergence of opinion advanced by the Informal Working Group on components had been to make the proposed default rule subject to any inter-creditor agreement that the parties might have made (cf. §§ 10-11, *supra*).

41. One adviser feared lest such a default rule would not be acceptable to financiers.

42. One observer suggested that the problem might be dealt with by a default rule under which one should first look to see whether there was an inter-creditor agreement to regulate the

enforcement of international interests and, failing any such agreement, the matter should be dealt with by the applicable law.

43. Some delegations took the view that the ideal solution would be to have no provision on default remedies in relation to components but that, should it be decided to have a provision on the matter, it would be better that such a provision should, in the first place, be subject to existing inter-creditor agreements and, where there was no such agreement, refer the matter to the applicable law, as had previously been suggested by an observer.

44. One delegation suggested a four-tier approach whereby, first, inter-creditor agreements would prevail in questions concerning the exercise of default remedies over physically-linked assets, secondly, in the absence of an inter-creditor agreement, parties would be required to negotiate for the conclusion of an inter-creditor agreement, thirdly, if the parties could not reach such an agreement, the proposed Article XVIII(3) and (4) would be applied and, fourthly, in the event that a creditor still sought to exercise a default remedy as a result of which a non-defaulting third party was adversely affected, then compensation would be required. Another delegation supported this approach.

45. One adviser suggested that a solution could be, in the context of space assets performing docking and rendezvous manoeuvres, for language to be inserted into Article III providing that such manoeuvres should not affect the ownership or interests previously acquired in such assets (cf. C.G.E./Space Pr./5/W.P. 17, also reproduced as Appendix VI to this Report; cf. also § 120, *infra*).

46. It was agreed to refer the matter, and in particular the two new proposals tabled, to the Informal Working Group on components, as constituted at the third session of the Committee, in the composition of the Governments of Canada, the People's Republic of China, France, Germany, Italy, Japan, the Russian Federation, the United Kingdom and the United States of America, with the advisers from BHO Legal, the Groupe Crédit Agricole and the German Space Agency as observers (cf. §§ 116-121, *infra*).

(x) Remedies on insolvency (Alternative A of Article XXII)

47. One delegation proposed a new Alternative A to Article XXII (C.G.E./Space Pr./5/W.P. 9, also reproduced as Appendix VII to this Report) that would, first, extend those protections provided for in paragraph 2 for physical assets to debtor's rights and rights assignments and, secondly, make a reference to Article XXVII(2) for additional clarity. This delegation noted that its proposal reflected the equivalent provisions of the Aircraft Protocol (cf. also § 77, *infra*).

48. One delegation indicated that care would need to be taken to ensure that such a proposal did not lead to the creation of two different forms of treatment, one for physical assets and another for debtor's rights and rights assignments, rather than having both categories treated in the same way. It noted however, that this concern could be looked at by the Drafting Committee.

49. It was agreed that this proposal should, subject to refinement by the Drafting Committee, be adopted (cf. § 97, *infra*).

(xi) Limitations on remedies (Article XXVII(2))

50. One delegation queried whether it was necessary to include the words "or would involve the transfer or assignment of a licence, or the grant of a new licence", particularly in the light of the decision by the Committee at its previous session to delete Article XVI (Duty of debtors as to licences) (cf. C.G.E./Space Pr./4/Report, § 39).

51. However, there was general agreement that the removal of such language would weaken the revised preliminary draft Protocol and it was, therefore, agreed to keep the language in question in the text.

52. One delegation proposed a new Article XXVII(2) (C.G.E./Space Pr./5/W.P. 14, also reproduced as Appendix VIII to this Report) designed to extend the application of this Article, under the proposed new sub-paragraph 2(a), to the creation of an international interest as well as the enforcement of default remedies. This delegation noted that its proposal was not meant to interfere with current State practices by requiring that new regulations should be adopted by States that would restrict or attach conditions to the creation of an international interest where such a practice did not already exist but, rather, simply to permit States wishing to restrict or attach conditions to the creation of an international interest to do so if they found such a practice to be desirable. This delegation also noted that its proposal had been drafted in such a way as to take account of the proposal made by another delegation for a new Article IX(2) (Formal requirements for rights assignments) (cf. § 33, *supra*).

53. One delegation suggested that, if such a proposal were to be adopted, then reference would need to be inserted to the placement of command codes and related data and materials in order to bring this proposal for a new Article XXVII(2) into line with Article XX. Another delegation suggested that it might also be appropriate to broaden the proposed new Article XXVII(2) to cover assignments of international interests. Yet another delegation wondered whether, after extending Article XXVII(2) to cover the creation of an international interest, it would still be appropriate to include this provision under the heading "Limitations on remedies".

54. One delegation, noting its support for the basic concept behind the proposed new Article XXVII(2), however, noted that this proposal raised complex issues and that further consideration should be given to it before the Committee decided whether or not to adopt it.

55. It was agreed that, in the light of, on the one hand, the general support shown, subject to the suggested amendments, for the proposed new Article XXVII(2), and, on the other, the desire to consider this proposal further, notably as regards sub-paragraph 2(a), this proposal should be reserved for discussion later in the session so that delegations could, in the meantime, make the necessary consultations needed for the reaching of a decision.

56. Following the time allowed for such consultations, one delegation noted that the proposal required careful consideration but pointed out that, in the time available, it had not been able to complete its own domestic consultations so that it was still not able to provide its view on the proposal. It suggested that it would, however, have no objection to the proposal being included in square brackets in the text of the revised preliminary draft Protocol, adding that it might ultimately be in a position to suggest a combination of the existing text with aspects of the proposal and, therefore, invited the Secretariat to explore opportunities for States and representatives of the commercial space sector to engage in a dialogue on the proposal in the period leading up to the future diplomatic Conference.

57. The delegation that had tabled the proposal recommended that the existing text of Article XXVI(2) should be deleted and that the text contained in its proposal should, owing to the broad support that it had received by the Committee, be included, in square brackets, in the text of the revised preliminary draft Protocol. Some delegations supported this approach, on the understanding that the proposal would be amended to incorporate the changes agreed upon by the Committee.

58. Other delegations indicated that they were against either deleting the existing text of Article XXVI(2) or placing it in square brackets, adding that, in view of the commercial focus of the revised preliminary draft Protocol, they believed that the concerns voiced regarding the references

in the proposal to concepts such as international peace and security required very careful consideration.

59. *The Chairman*, accordingly, invited interested delegations to undertake consultations with a view to identifying a recommended approach and, in the absence of such an approach being identified and agreed to by the Committee, indicated that he would recommend to the Committee that the proposal be included, in square brackets, in the text of the revised preliminary draft Protocol.

60. Following these further consultations, the delegation having tabled the proposed new Article XXVII(2) indicated that it could accept as a solution that the text of its proposal, as revised to take account of the suggestions for its amendment tabled during the Committee's earlier discussion of the matter (C.G.E./Space Pr./5/W.P. 14 rev., also reproduced as Appendix IX to this Report), be included, in square brackets, in the text of the revised preliminary draft Protocol, with the Report on the session making it clear that some delegations had considered that both the text of Article XXVII(2) set forth in the revised preliminary draft Protocol and the text of that provision as proposed in its revised proposal should be considered to have the same weight, so that both texts would be discussed on an equal footing at the future diplomatic Conference. In response to one delegation indicating its strong opposition to sub-paragraph 2(a) of the proposal being retained, *the Chairman* indicated that, as the text of the entire proposal was to be included in square brackets and would be clearly designated an "alternative text", it would be clear that the question as to whether or not to include sub-paragraph 2(a) was still pending.

61. Subject to the need, pointed out by one delegation, for the heading of Article XXVII(2) on that basis to be reviewed, it was so agreed.

- (xii) Limitations on remedies in respect of public service (Article XXVII *bis*) (cf. §§ 12-13, *supra*)

62. One delegation suggested that those delegations which had difficulty in accepting a rule on public service might be more inclined to accept such a rule if it were made subject to an opt-in provision, whereby States would have to avail themselves of the protections of a public service rule by opting into such a provision by declaration. This proposal received general support from those delegations that still felt that no provision on this issue was the best solution.

63. One delegation suggested that the language employed in sub-paragraph 4(a) of Alternative C was too broad and should be recast along the lines of sub-paragraph 3(a) of Alternative A.

64. One delegation noted that paragraphs 5 and 6 had been placed in square brackets but were crucial to the overall public service rule proposed in Alternative C and that the square brackets should, therefore, be removed. Some delegations, however, expressed concern that the effect of these paragraphs would be to render the public service rule useless; in particular, it was suggested *a propos* of paragraph 6 that a creditor would always be in a position to register an interest in a particular space asset through its involvement in the financing of the space asset from the outset of the space asset's life, before a Government would be able to register a notice in the future International Registry for space assets stating that the space asset was providing or intended to provide a public service. Another delegation noted, however, that, in current practice, Governments were often involved during the creation of the business plan behind a space asset and would, therefore, have ample opportunity to register such a notice of public service, making Alternative C a useful form of protection.

65. One delegation wondered whether, under paragraph 1 of Alternative C, it should, in some circumstances, be left to private parties to determine whether a contracted service was a public

service. In this connection, the delegation in question proposed that a mechanism should be incorporated that would enable a Contracting State to participate in defining whether a service was of a public nature that would fall under the protection of Alternative C. It was suggested by another delegation that a Contracting State, through its relevant licensing Authorities, could oblige a debtor seeking to provide a service that that Contracting State considered to be of a public nature to refer to the service as such in the debtor's negotiations with its potential creditors, putting those creditors on notice that the relevant asset might be subject to public service limitations on remedies.

66. It was agreed that, subject to the amendments suggested during the Committee's discussions on the issue, Alternative C should replace the other Alternatives found in Article XXVII *bis* and be referred to the Informal Working Group on limitations on remedies, as constituted at the third session of the Committee, in the composition of the Governments of Algeria, Canada, the People's Republic of China, the Czech Republic, France, Germany, Greece, India, Japan, the Russian Federation, Spain and the United States of America, with the advisers from the Groupe Crédit Agricole and the German Space Agency as observers (cf. §§ 84-87, 98-102 and 110-115, *infra*).

(xiii) Identification of space assets for registration purposes (Article XXX)

67. Some delegations expressed their support for Article XXX, notably in the light of the new definition of "space asset". One delegation suggested that paragraph 1 was appropriate for the purpose of providing the necessary and sufficient criteria for the unique identification of a space asset for the purposes of registration and that paragraph 2 might, therefore, be deleted. It was suggested by another delegation that, if the Committee considered paragraph 1 to provide necessary and sufficient criteria on its own, the first phrase and last sentence of paragraph 1 could also be deleted.

68. It was suggested by another delegation that, even if the criteria in paragraph 1 were considered to be necessary and sufficient, paragraph 2 could still be useful in setting forth additional information, such as the date of launch, that might help parties searching the future International Registry to identify or track a specific space asset, even if this information might not be considered necessary and sufficient for registration purposes and failure to register it would not result in the incurring of sanctions. Some delegations supported this proposal.

69. There was general consensus to adopt this approach and the text was referred to the Drafting Committee for the necessary drafting refinements.

Consideration of the other provisions of the revised preliminary draft Protocol

(i) Title and preamble

70. One delegation suggested that the fourth clause of the preamble should incorporate a reference to I.T.U. instruments. Some delegations supported this proposal, with some noting that similar language was included in Article XXXIV of the revised preliminary draft Protocol. For that reason, one delegation questioned whether the fourth clause of the preamble was necessary. In response to a question from one delegation, it was noted that the word "instruments" was commonly used to describe treaty-level documents produced under the auspices of I.T.U. The Drafting Committee was, accordingly, invited to review the fourth clause in order to add an appropriate reference to I.T.U. instruments.

71. One delegation suggested that, while the reference in the proposed new Article XXVII(2) under consideration by the Committee to concepts such as "international peace and security" might be considered inappropriate for inclusion in an operative provision of a commercial law treaty such

as the revised preliminary draft Protocol, a reference to such concepts might perhaps be included in the preamble. Another delegation suggested that it would not be inappropriate for Article XXVII(2) to include a reference to concepts such as "international peace and security". It was, however, agreed that this issue was best left to be resolved in the context of the proposed new Article XXVII(2) (cf. §§ 52-61, *supra*).

(ii) Article I(1) (Defined terms)

72. One delegation suggested that it might be useful for the Drafting Committee to compile a list of those terms the context of which might compel a meaning different from that set out in the Convention with a view to those terms then being further examined by the Committee. The same delegation noted that it had not yet found any such terms but argued that it might be useful to keep this avenue open for future consideration.

(iii) Article VI (Representative capacities)

73. It was suggested that the Drafting Committee look at the desirability of inserting a reference to "the ability to record a rights assignment" among functions listed in this Article.

(iv) Article VIII (Choice of law)

74. One delegation drew attention to the comma that was missing between the word "agreement" and the words "a contract" in the first line of paragraph 2 of this Article.

(v) Article XII (Recording of rights assignment or acquisition by subrogation as part of registration of international interest)

75. One delegation wondered whether it might not be appropriate to insert a reference to Article 30 of the Convention in paragraph 2 of this Article. The same delegation wondered whether it was still appropriate to have references to Articles 31 and 32 of the Convention in paragraph 4.

(vi) Article XVII (Derogation)

76. One delegation suggested that it be made clear in the Official Commentary *a propos* of Article XVII that some provisions, such as those dealing with treaty matters, could not be varied by agreement between the parties.

(vii) Article XXII (Remedies on insolvency)

77. One delegation announced that, in view of the overwhelming preference shown to date by States Parties to the Aircraft Protocol for either the provision parallel to Alternative A of this Article or for the making of no declaration under the provision parallel to this Article, it would at a future date be recommending that Alternative B be deleted from this Article (cf. § 47, *supra*).

(viii) Article XXVIII (Supervisory Authority) (cf. also §§ 122-128, *infra*)

78. Recalling what had happened at the diplomatic Conference for the adoption of the Aircraft Protocol regarding the designation of the Supervisory Authority of the International Registry for aircraft objects, one delegation suggested that paragraph 1 of this Article be amended to allow for the possibility that it might not be possible to appoint the Supervisory Authority of the future International Registry for space assets at the diplomatic Conference for adoption of the future draft Space Protocol and that it might, therefore, be necessary for a Resolution to be passed there authorising the designation of the Supervisory Authority at a later time (cf. § 124, *infra*).

79. The same delegation suggested replacing the phrase "from among persons nominated by Signatory and Contracting States" in paragraph 3 by "that have participated in the negotiation of the Protocol", in view of the technical expertise that would be needed by such a commission of experts (cf. § 128, *infra*).

(ix) Chapter VI (Final provisions)

80. It was decided that, whereas it was UNIDROIT practice to leave the preparation of draft final provisions until the run-up to the diplomatic Conference, some of the final clauses at present featuring in square brackets at the end of the revised preliminary draft Protocol might affect the application of the future Protocol and that it would, therefore, be useful for the Committee to take a look at Articles XXXVIII (and, in particular, Article XXXVIII(5)), XXXIX, XL, XLIII and XLIV, however without prejudice to the future diplomatic Conference's consideration of the final provisions of the future draft Protocol as a whole.

(a) Article XXXVII (Entry into force)

81. One delegation indicated that Article XXXVII(1)(b) was an important and necessary provision, because it was important that the future Protocol contain a provision, which could possibly be supplemented by a Resolution of the future diplomatic Conference, leaving no room for doubt as to the steps that would need to be completed in order to bring the future Protocol into force. Another delegation indicated its view that it would not be appropriate for this issue to be dealt with in a Resolution of the diplomatic Conference and that the revised preliminary draft Protocol could reflect the language used in the equivalent provision of the Protocol to the Convention on Matters specific to Railway Rolling Stock.

(β) Article XXXVIII (Territorial units)

82. One delegation noted the need to consider Article XXXVIII(5)(b) in any future discussion of Article I(3). That delegation pointed out that all declarations capable of being made pursuant to the future Protocol should, in its view, be able to be made by a Contracting State at any time, with the exception of the declaration pursuant to Article XXXVIII(3) relating to territorial units, which should only be able to be made at the time of a Contracting State's ratification of, or accession to the future Protocol. Another delegation indicated that it was undertaking consultations on Article XXXVIII and would expect to be able to provide comments on that Article at a future date.

83. *The Chairman* invited the Secretariat to ensure that all comments relating to the final provisions were referred for consideration by the future diplomatic Conference.

Presentation and review of the Report of the Informal Working Group on limitations on remedies (C.G.E./Space Pr./5/W.P. 16)

84. *Mr Estrella Faria*, in his role of moderator of the Informal Working Group on limitations on remedies, presented the report on the work accomplished by that Group during the session, notably the text of a proposed new Article XXVII *bis* (cf. § 66, *supra*). This text received broad support from the Committee. The report is reproduced as Appendix X to this Report.

85. One delegation asked whether the proposal to make this Article subject to an opt-in provision (cf. § 62, *supra*) was to be discussed at a later time or whether this Article was not intended to be subject to such a provision. Another delegation noted that it had assumed that the proposed new Article XXVII *bis* was not intended to be subject to any opt-in/opt-out mechanism.

86. Another delegation wondered whether the Drafting Committee might not find a term, carrying more the connotation of the providing of information, to replace the word "notify" in

paragraph 3, noting that this word carried significant legal implications for the future Registrar (cf. § 101, *infra*).

87. Subject to drafting refinements, the Committee expressed its overall support for, and, accordingly, adopted the proposed new Article XXVII *bis* (cf. §§ 98-102 and 110-115, *infra*).

Review of the proposals of the Drafting Committee (C.G.E./Space Pr./5/W.P. 20)

88. On behalf also of his co-Chairman, *one of the co-Chairmen of the Drafting Committee* introduced the proposals of the Drafting Committee, illustrating the progress that the Drafting Committee had made over its first four meetings in implementing the decisions taken by the Committee. These proposals are reproduced in Appendix XI to this Report.

(i) Article I(2)(e) (Defined terms - "licence")

89. One delegation asked for time to be allowed so that the new formulation of this provision (cf. § 15, *supra*) could be considered carefully (cf. § 104, *infra*).

(ii) Article I(2)(h) (Defined terms - "revenue salvage")

90. It was agreed that the final words of this provision should read "following a constructive total loss of the space asset".

(iii) Article I(2)(l) (Defined terms - "space asset")

91. One delegation recalling that, at the October 2010 meeting of the Informal Working Group on components, a proposal had been made to replace the phrase "intended to be launched into space" in the chapeau of this sub-paragraph by "designed for use in space" but that the question had been left open for decision by the Committee at its fifth session (C.G.E./Space Pr./5/W.P. 5, § 26), it was decided that the word "intended" should indeed be replaced by the word "designed".

92. It was asked whether the square brackets around the phrase "in respect of which a registration may be effected in accordance with the regulations" in sub-sub-paragraph 2(l)(i) could be removed (cf. § 18, *supra*). One delegation indicated its preference for maintaining the square brackets in question for the time being, as, whilst it was hopeful that it would ultimately prove possible to delete the words inside the square brackets, it still had some concerns regarding the words in square brackets.

93. It was agreed that these and all remaining square brackets in Article I should be left in place for the time being.

(iv) Article I(3)(a) (Defined terms)

94. One delegation suggested that this provision (cf. §§ 22-24, *supra*) should be amended to read "a Contracting State which registers the space asset for the purposes of"

(v) Article II(3) (Application of the Convention as regards space assets ...)

95. One delegation indicated that, whilst it appreciated the drafting changes made to Article II(3) (cf. §§ 27-29, *supra*), it was not certain that these dealt sufficiently with the question of a single object that might have dual uses, as both an aircraft and a space asset, and accordingly proposed that consideration be given to a rule applying the revised preliminary draft Protocol in accordance with the manner in which the asset was used. Another delegation noted that it would

be very important for parties to an agreement to be able to understand which Protocol would apply prior to the closing of their transaction and that the proposed amendment would make this very difficult, particularly in relation to an asset which might be used in different ways from time to time (cf. § 107, *infra*).

(vi) Article IV(4) (Application of the Convention to ... salvage interests)

96. In the light of the new definition of "title salvage", one delegation suggested that the operative part of this provision be reformulated along the lines "... the acquisition of title salvage is treated as a sale".

(vii) Article XXI (Remedies on insolvency)

97. One delegation pointed out that the references to paragraph 7 in paragraphs 2 and 3 of Alternative A should rather be to paragraph 8 (cf. §§ 47-49, *supra*).

(viii) Article XXVII(3) (Limitations on remedies in respect of public service)

98. One delegation suggested that the drafting of this paragraph be reviewed to deal with a grammatical issue. One of the co-Chairmen of the Drafting Committee indicated that the issue could be dealt with by deleting the last comma in the paragraph.

99. *Mr Estrella Faria* recalled that one of the remedies available to a creditor under Article 8(1)(c) of the Convention was the collection or receipt of income or profits and suggested that the Committee might, therefore, wish to reflect on the issue whether it was intended that the creditor should be precluded from exercising its Article 8(1)(c) remedy even if the exercise of that remedy would not interrupt the asset's continuing availability for the provision of the relevant public service.

100. One delegation was of the view that the issue raised by *Mr Estrella Faria* warranted further consideration. Another delegation stated that Article XXVII (3) should not preclude a creditor from collecting income or profits and that, whilst it agreed with another delegation's observation that it could be argued that an amendment to the paragraph would not be necessary in order to achieve that result, it was important that the revised preliminary draft Protocol left no room for doubt as to the extent of the creditor's rights (cf. also §§ 110 and 112, *infra*).

(ix) Article XXVII(4) (*idem*)

101. One delegation recalled that the Committee had agreed to refer to the Drafting Committee the need to eliminate from this provision any connotation that it placed the Registrar under a duty to make notifications, either by simply deleting the paragraph in question or by limiting the scope of any such duty to that of those duties to notify to be imposed on the Registrar under the future regulations (cf. § 86, *supra*). Some delegations agreed that care should be taken in relation to any extension of the Registrar's duties that might involve additional potential liability and insurance costs. Other delegations pointed out that it would be important that the creditor, the debtor and the public service provider were informed of the registration of a notice by the creditor.

102. One delegation suggested that this objective would be achieved if the paragraph were amended to provide that the creditor should have a duty to notify the debtor and the public service provider of the registration of a notice by the creditor, with such notification to be provided on the same day as the registration. The Committee supported this proposal (cf. § 113, *infra*).

Review of the Report of the Drafting Committee (C.G.E./Space Pr./5/W.P. 21 and W.P. 21 Add.)

103. On behalf also of his co-Chairman, *one of the co-Chairmen of the Drafting Committee* introduced the proposals of the Drafting Committee (C.G.E./Space Pr./5/W.P. 20) as revised by him and his co-Chairmen to take account of the suggestions and comments that had been made in the course of the Committee's review of those proposals. These revised proposals constituted the Report of the Drafting Committee and are reproduced as such in Appendix XII to this Report.

(i) Article I(2)(e) (Defined terms - "licence") (cf. §§ 15 and 89, *supra*)

104. One delegation expressed some concern over the use in this sub-paragraph of the term "applicable law", given that elsewhere in the revised preliminary draft Protocol this term referred to the law applied by foreign courts in the context of litigation, and, therefore, wondered whether use of this term was appropriate in this provision. It was, accordingly, suggested that the square brackets around this provision be left in place so as to allow more time for consideration. It was so agreed.

(ii) Article I(3) (Defined terms)

105. The delegation which had previously raised concern over the reference to United Nations General Assembly Resolution 1721(XVI)B of 20 December 1961 in sub-sub-paragraph 3(a)(iii) (cf. § 22, *supra*) withdrew that concern and, on the understanding that it might raise its concern again on a future occasion, should it feel it to be necessary, agreed that the square brackets around this reference could be removed. It was so agreed.

106. Another delegation noted that it still had some reservations about the reference to Article 1(n) of the Convention in Article I(3) (cf. § 24, *supra*) and asked that the square brackets around that reference be, therefore, left in place whilst it and any other interested delegations consulted on the appropriate treatment of Article 1(n) in this context. It was so agreed.

(iii) Article II(3) (Application of the Convention as regards space assets ...)

107. One delegation expressed some concern at the formulation of this paragraph, particularly for those manufacturers who were developing hybrid vehicles that would be able to operate in both outer space and air space (cf. §§ 27-29 and 95, *supra*). It further noted that the classification of an asset should be as clear as possible, so as not to create additional regulatory obstacles for those manufacturers wishing to develop such hybrid vehicles. It, therefore, suggested that Article II(3) be amended to read something along the lines of "[v]ehicles which are manufactured for the purpose of being used in space will not constitute an aircraft object under the Aircraft Protocol" and that the square brackets around this provision be maintained to permit further careful consideration. It was so agreed.

(iv) Article IV(5) (Application of the Convention to ... salvage interests)

108. One adviser indicated that, following consultations with satellite insurers on this paragraph as it had developed during the session, the satellite insurance industry had come to the conclusion that the revised preliminary draft Protocol would prejudice their interests and, accordingly, requested that the text as it had developed over the session be withdrawn.

109. One delegation proposed, in view of the concerns existing in the satellite insurance industry and with a view to identifying a possible future solution on this issue, that all Article IV(5) be placed in square brackets, with the language from the beginning of that paragraph down to the phrase "applicable law to revenue salvage" being inserted in a further set of square brackets, a full stop being inserted after the phrase "applicable law to revenue salvage" and the remainder of the

language in Article IV(5) being inserted in yet another set of square brackets. This delegation indicated that it would be undertaking further consultations on this provision with the insurance sector and other relevant interests. This proposal was accepted, as also the consequential proposal that the definition of "revenue salvage" in Article I(2)(h), the definition of "title salvage" in Article I(2)(m) and Article IV(4) be also placed in square brackets, so as to permit the checking of the language employed in these three provisions once a decision was taken on the text of Article IV(5).

(v) Article XXVII (Limitations on remedies in respect of public service)

110. One delegation indicated that further consideration would need to be given to the question as to whether the notice requirements under paragraphs 2 and 3 of this Article were consistent with the basic notice filing function of the International Registry (cf. §§ 86 and 101-102, *supra*). The Committee agreed that this issue would need to be considered further.

111. One delegation indicated that the definition of "public service notice" in paragraph 2 should also require that the notice identify the relevant space asset. The Committee agreed that this issue would need to be considered further.

112. Some delegations proposed that either paragraph 4 should require the notification to be made by the creditor immediately or without delay or it should provide that the six-month time-period be calculated only from the later of the date of registration of the public service notice and the date of notification of that notice to the debtor. The Committee agreed that this paragraph should be amended to require the notification by the creditor to be made promptly.

113. One delegation questioned whether it would be necessary under paragraph 4 for a copy of the notice to be provided with the notification to the debtor. The Committee agreed that the second sentence of that paragraph should be deleted.

114. One delegation suggested that sub-paragraph 5(b) should be amended so as to make it clear that the proceedings referred to in that sub-paragraph were proceedings concerning the appointment of another operator. The Committee agreed that this issue would need to be considered further.

115. One delegation pointed out that the cross-reference in paragraph 6 to paragraph 2 should be to paragraph 3.

Presentation and review of the Report of the Informal Working Group on components (C.G.E./Space Pr./5/W.P. 23)

116. *Mr Estrella Faria*, in his role of moderator of the Informal Working Group on components, presented the report on the work accomplished by that Group during the session (cf. § 46, *supra*), notably the three options for dealing with the problem of limitations on remedies for physically linked space assets, which the Group had agreed should all be laid before the Committee for further consideration.

117. One delegation indicated its continuing concern that discussion of the issue under consideration by the Informal Working Group on components was unlikely to be productive, that the issues being considered by the Group did not involve matters that currently raised problems for space financing and that those issues were adequately handled by inter-creditor agreements. That said, it saw a possible future solution lying in the relevant Article providing opt-in options, indicating that of the three options presented by the Group it would have a preference for Option No. 1, followed by Option No. 2, but that it would not be able to support Option No. 3, the inclusion

of which in the revised preliminary draft Protocol would directly diminish support in the space finance community for the future Protocol.

118. Another delegation indicated that it supported Option No. 3, as it saw the issues being considered by the Informal Working Group as potential sources of problems in the future - as asset-based financing of space assets became more common - that should, therefore, be dealt with in the revised preliminary draft Protocol. It added that, whilst it expected inter-creditor agreements to continue to provide the principal solution to these issues, Option No. 3 was intended as a general rule reflecting the basic principles of property law, which would operate in practice to promote finance.

119. *The Chairman* having noted that the Committee had not reached consensus on the options presented by the Informal Working Group, it was decided that all three options presented in the Report of the Informal Working Group should be included, inside square brackets, as Article XVII(3) of the revised preliminary draft Protocol.

120. One delegation endorsed the proposal tabled earlier in the session by an adviser, to the effect that Article III of the revised preliminary draft Protocol be amended to reflect the discussions that had taken place during the October 2010 meeting of the Informal Working Group on components regarding the effects of rendezvous, docking and the return of space assets (C.G.E./Space Pr./5/W.P. 17) (cf. § 45, *supra*). Some delegations supported this proposal and it was, accordingly, agreed that it should be inserted into Article III, as a new paragraph 2.

121. One delegation proposed that the revised preliminary draft Protocol be further amended to include a provision dealing with the effect of the installation of components modelled on Article XIV(3) of the Aircraft Protocol. It was, as a result, agreed to add to Article III a new paragraph 3, worded as follows: “[o]wnership of or another right or interest in a space asset shall not be affected by its installation on or removal from another space asset”.

Item No. 4 on the Agenda: consideration of the question of the Supervisory Authority of the future international registration system for space assets (C.G.E./Space Pr./5/W.P. 2, pp. 4/5)

122. *Mr Stanford* recalled that the possibility of either I.T.U. or the International Civil Aviation Organization (ICAO) being designated as the Supervisory Authority of the future International Registry for space assets had been discussed at the previous session of the Committee (cf. C.G.E./Space Pr./4/Report, §§ 100-101).

123. He pointed out that in a communication from the Head of the I.T.U. Legal Affairs Unit, Mr A. Guillot, I.T.U. had manifested its continuing keen interest in the project and noted that the question of I.T.U. acting as Supervisory Authority was still very interesting for his Organisation. Mr Guillot had added that it would be important for the new Director of the I.T.U.’s Radiocommunication Bureau to be in support of such a proposal but, given that the new Director had only just taken office, it would take time for him to be advised on the status of this issue before further consideration could be given to the proposal.

124. This was confirmed by the observer from I.T.U., who added that his Organisation was particularly grateful for the decision taken at the session permitting the designation of the future Supervisory Authority to take place after, and not necessarily at the future diplomatic Conference.

125. *Mr Stanford* further recalled that, at the previous session of the Committee, the observer from ICAO had indicated that Organisation’s appreciation at being considered a potential candidate for the role of Supervisory Authority and that the Committee’s work was being closely monitored by his Organisation. He had indicated that discussions were underway within ICAO regarding this

possibility and, in view of the fact that the ICAO Council was already acting as Supervisory Authority under the Aircraft Protocol, one issue being considered was whether it would also be appropriate for the body acting as Registrar of the International Registry for aircraft objects, Aviareto, to be able to engage in activities other than the operation of that Registry.

126. *Mr Stanford* added that, in a communication from Mr D. Wibaux, Director of the ICAO Legal Bureau, the latter had indicated that he was not able to add anything to what he had said at the previous session of the Committee, explaining that the ICAO Secretariat was neither for nor against ICAO being assigned the functions of Supervisory Authority but that, if it were to be asked to do so, it would be for the ICAO Council to make such a decision, bearing in mind, in particular, that the functions being exercised by the ICAO Council in respect of the International Registry for aircraft objects were carried out on a cost-recovery basis.

127. *Mr Stanford*, accordingly, suggested that, if the Committee did indeed wish ICAO to be considered as a potential candidate for the role of Supervisory Authority, then it would be for the representatives of States serving on the Committee to consult the experts responsible in their countries for matters pertaining to the International Registry for aircraft objects with a view to such experts, if they judged it appropriate, then taking the matter up with those involved in the ICAO Council's exercise of the role of Supervisory Authority it had been given under the Aircraft Protocol.

128. One delegation pointed out that the cost-recovery system adopted by ICAO had not, in practice, involved substantial cost for the normal operation of the Supervisory Authority's functions. It noted that ICAO as Supervisory Authority was assisted by an Advisory Board of State representatives and a commission of industry and technology experts, which enabled ICAO to find expedient solutions to the evolving issues regarding the International Registry for aircraft objects (cf. § 79, *supra*).

Item No. 5 on the Agenda: future work

129. *Mr Estrella Faria* indicated that the Secretariat would, after the session, be preparing a new text of the revised preliminary draft Protocol, to reflect all the amendments that had been agreed during the session, and in particular those agreed during the Committee's review of the Report of the Drafting Committee (cf. §§ 112-113 and 115, *supra*) and its review of the Report of the Informal Working Group on components (cf. §§ 119-121, *supra*). This new text would be transmitted to all those having participated in the session, with the present Report. It would then be submitted to the Governing Council at its 90th session for advice and consent as to whether the revised preliminary draft Protocol should be submitted, at that stage, as a draft Protocol, to a diplomatic Conference, for adoption. This new text, approved by the co-Chairmen of the Drafting Committee, appears as Appendix XV to this Report.

130. He also indicated that the Secretariat was conducting consultations in relation to the identification of a host State for the possible future diplomatic Conference, in the hope that these consultations might be completed by the time of the Governing Council's 90th session. With a view to maintaining the momentum created during the session, he added that, should the Governing Council decide in favour of the convening of a diplomatic Conference, it would be his preference that it be held early in 2012.

131. He further indicated that, once the host State of the diplomatic Conference had been identified and the date for such a Conference settled upon, the Secretariat would be sending out invitations to States, Organisations and representatives of the international commercial space sector. These invitations would be accompanied by the text of the draft Protocol and he pointed out that thereafter all proposals for amendment of the draft Protocol would need to be made in writing.

132. He finally indicated that it would be useful for the negotiating States to continue their discussions with each other during the period leading up to the diplomatic Conference, noting that the Secretariat would be happy to facilitate such consultations.

Item No. 6 on the Agenda: review of report

133. The Reports for the first four and a half days of the session (C.G.E./Space Pr./5/W.P. 13, W.P. 15, W.P. 19, W.P. 22 and W.P. 24) were reviewed with a number of amendments. It was agreed that the report for the second half of the fifth and final day, once prepared by the Secretariat, should be approved by the Chairman of the Committee, on behalf of the latter.

Item No. 7 on the Agenda: any other business

134. No other business being raised, *the Chairman*, indicating that he was pleased to be able, on behalf of the Committee, to recommend to the Governing Council that it authorise the transmission of the revised preliminary draft Protocol to a diplomatic Conference, for adoption, declared the session closed at 4.43 p.m. on 25 February 2011.

APPENDIX I

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

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

THE STATES PARTIES TO THIS PROTOCOL,

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

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

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

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

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

HAVE AGREED upon the following provisions relating to space assets:

CHAPTER I – SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I – Defined terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) "space asset" means any man-made uniquely identifiable asset [capable of being independently owned, used or controlled,] in space or intended to be launched into space without losing its distinct identity, such as a satellite, space station, satellite bus, transponder, module, space vehicle, launch vehicle or space capsule [including any such asset in course of manufacture or assembly], together with all installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating to its ownership, use or control. ¹

¹ **At the conclusion of its intersessional meeting, held in Rome from 19 to 21 October 2010, the Informal Working Group on default remedies in relation to components recommended the following proposed new definition of "space asset":**

" 'Space asset' means any man-made uniquely identifiable asset in space or intended to be launched into space, and comprising

[Alternative A

3. – In Articles 1(2)(n), 43 and 54(1) of the Convention and Article XXIII of this Protocol references to a Contracting State on the territory of which an object or space asset is located or situated or from which it is controlled shall, as regards a space asset when not on Earth, be treated as references to a Contracting State on the territory of which a mission operation centre for the space asset is located.]²

[Alternative B

3. – In Articles 1(2)(n), 43 and 54(1) of the Convention and Article XXIII of this Protocol references to a Contracting State on the territory of which an object or space asset is located or situated shall, as regards a space asset when not on Earth, be treated as references to a Contracting State from the territory of which the space asset may be controlled.]³

[Alternative C

3. – In Articles 1(2)(n), 43 and 54(1) of the Convention and Article XXIII of this Protocol references to a Contracting State on the territory of which an object or space asset is located or situated shall, as regards a space asset when not on Earth, be treated as references to a Contracting State on the registry of which the space asset is carried for the purposes of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, signed at London, Moscow and Washington, D.C. on 27 January 1967.]⁴

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

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

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

3. – A space asset shall not constitute an aircraft object for the purposes of the Convention as applied to aircraft objects, whether it is on Earth or in air or space.

(i) any spacecraft, that is any satellite, space station, space module, space capsule, space vehicle or other vehicle designed to operate in space, or a reusable launch vehicle, whether or not including a space asset falling within (ii) or (iii) below;

(ii) any payload (whether telecommunications, navigation, observation, scientific or otherwise) in respect of which a separate registration may be effected in accordance with regulations from time to time made by the Supervisory Authority; or

(iii) any part of a spacecraft or payload such as a transponder [capable of independent use], in respect of which a separate registration may be effected as in (ii) above,

together with all installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto."

It is recommended that this proposed new definition be taken by the Committee of governmental experts as the basis of its deliberations on this subject at its next session.

² It will be for the Committee of governmental experts at its next session to decide whether Alternative A, Alternative B or Alternative C or a combination of them should apply.

³ It will be for the Committee of governmental experts at its next session to decide whether Alternative A, Alternative B or Alternative C or a combination of them should apply.

⁴ It will be for the Committee of governmental experts at its next session to decide whether Alternative A, Alternative B or Alternative C or a combination of them should apply.

Article III – Return of a space asset

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

Article IV – Application of the Convention to sales and salvage interests

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

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

2. - The provisions of this Protocol applicable to rights assignments also apply to a transfer to the buyer of a space asset of rights to payment or other performance due or to become due to the seller by any person with respect to the space asset as if references to the debtor and the creditor were references to the seller and the buyer respectively.

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

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

5. - For the purposes of the Convention, when an insurer makes a payment to a creditor of insurance proceeds for a covered loss of an insured space asset in which the creditor has an international interest, the insurer shall, to the extent of the insurer's salvage interest, have the right of subrogation to the creditor's associated rights and related international interest in the space asset and to any debtor's rights assigned to the creditor under a rights assignment or rights reassignment recorded as part of the registration of that international interest. This right of subrogation shall be in addition to and shall not affect any right of subrogation the insurer may have under national law or the insurance policy.

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

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

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

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

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

Article VI – Representative capacities

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

Article VII – Identification of space assets

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

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

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

Article VIII – Choice of law

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

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

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

Article IX – Formal requirements for rights assignment

A transfer of debtor's rights is constituted as a rights assignment where it is in writing and enables:

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

Article X – Effects of rights assignment

1. – A rights assignment made in conformity with Article IX transfers to the creditor the debtor's rights the subject of the rights assignment to the extent permitted by the applicable law.

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

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

Article XI – Assignment of future rights

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

*Article XII – Recording of rights assignment or acquisition by subrogation
as part of registration of international interest*

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

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

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

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

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

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

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

Article XIII – Priority of recorded rights assignment

1. – Subject to paragraph 2, a recorded rights assignment has priority over any other transfer of debtor's rights (whether or not a rights assignment) except a rights assignment previously recorded.

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

Article XIV – Obligor's duty to creditor

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

(a) the obligor has been given notice of the rights assignment in writing by or with the authority of the debtor; and

(b) the notice identifies the debtor's rights.

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

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

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

Article XV – Rights reassignment

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

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

Article XVII – Derogation

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

CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

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

1. – Article 8(3) of the Convention shall not apply to space assets. Any remedy given by the Convention in relation to a space asset shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.

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

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

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

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

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

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

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

Article XX – Placement of data and materials

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

Article XXI – Modification of provisions regarding relief pending final determination

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

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

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

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

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

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

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

Article XXII – Remedies on insolvency

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

Alternative A

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

(a) the end of the waiting period; and

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

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

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

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

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

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

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

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

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

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

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

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

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

Alternative B

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

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

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

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

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

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

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

Article XXIII – Insolvency assistance

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

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

Article XXIV – Modification of priority provisions

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

2. – The buyer of a space asset under a registered sale acquires its interest in that asset subject to an interest previously registered.

Article XXV – Modification of assignment provisions

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

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

Article XXVI – Debtor provisions

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

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

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

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

Article XXVII – Limitations on remedies

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

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

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

[Article XXVII bis – Limitations on remedies in respect of public service ⁵

⁵ **At the conclusion of its intersessional meeting, held in Rome on 20 and 21 October 2010, the Informal Working Group on limitations on remedies recommended the following proposed new Alternative C:**

“[Alternative C (*)

1. An entity of a Contracting State that enters into a contract with the debtor or an entity controlled () by the debtor for the provision of a service acknowledged by the parties as being a public service in that Contracting State and involving access to or the use of a space asset in respect of which the debtor has entered into an agreement with a creditor governed by this Protocol may register a notice in the International Registry, in accordance with Article 16 of the Convention, stating that the space asset is providing or intended to provide a public service. (***) (****)**

2. A creditor holding an international interest in a space asset of a kind that is the subject of a notice registered in accordance with the preceding paragraph may not exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol in respect of that space asset that would result in the interruption of the public service covered by that notice prior to the expiration of six months after its registration of a notice in the International Registry, in accordance with Article 16 of the Convention, of its intention to exercise any such remedies, if the debtor does not cure its default within that period. (**)**

3. The Registrar shall notify the State entity of the date of expiry of the six-month period referred to in the preceding paragraph. (***)**

4. During the period referred to in the preceding paragraph:

(a) the creditor, the debtor and the State entity shall co-operate in good faith with a view to finding a commercially reasonable solution permitting the continuation of the public service; and

(b) the State entity may participate in any proceedings of the regulatory authority of the licensing State in which the debtor may participate, subject to the approval of the regulatory authority of that State if it is not a Contracting State.

[5. Notwithstanding paragraphs 2 and 3, the creditor is free to exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol if, at any time during the period referred to in paragraph 2, the State entity fails to perform its duties under the contract referred to in paragraph 1.]

[6. The limitation on the remedies of the creditor provided for in paragraph 2 shall not apply in respect of an international interest registered prior to the notice referred to in paragraph 1.]”

Footnotes:

*** It was proposed by the Informal Working Group that this or any other rule on the subject that might be included in the planned Protocol should be subject, on the one hand, to the possibility for States, via the lodging of a declaration, to opt into the rule and, on the other, to the possibility for the parties to the agreement providing for the public service to contract out.]**

**** Concern was expressed by one of the Co-chairmen of the Drafting Committee as to the uncertainty that use of the concept of “control” might engender.**

***** It is suggested by the Co-chairmen of the Drafting Committee that, in so far as the notice provided for under this paragraph would need to identify a specific space asset, a requirement of identifiability will need to be incorporated in this paragraph, in accordance with the requirements of the envisaged International Registry for space assets.**

****** It is noted by the Co-chairmen of the Drafting Committee that, in so far as the notice envisaged by this paragraph does not fall within one of the categories listed under Article 16 of the Convention, the preliminary draft Protocol will need to amend Article 16 on this point.**

******* It is suggested by the Co-chairmen of the Drafting Committee that consideration should be given to it being required that the creditor also inform the State entity of any notice that it might be intending to give to the International Registry under paragraph 2.**

The Informal Working Group believed the proposed new Alternative C to be preferable to Alternatives A and B and recommended that it should, therefore, be taken as the basis of the Committee’s further deliberations on this question.

[Alternative A

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

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

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

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

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

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

5. – A State may only invoke the right to object to the exercise of default remedies in accordance with this Article if it has registered in the International Registry a notice recording that the space asset is used for providing a public service in the vital interest of that State prior to the registration of an international interest in that space asset by a creditor [or if it has registered such notice within six months of the launch of a space object, even if after the registration of an international interest by the creditor].⁶

[Alternative B

Concept

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

⁶ Alternative A constitutes a discussion proposal that emerged from the Informal Working Group of the Committee of governmental experts on limitations on remedies at the third session of that Committee, held in Rome from 7 to 11 December 2009.

Two technical approaches to achieve this goal

I. Rights approach

Article ...

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

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

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

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

II. Remedies approach

Article ...

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

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

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

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

Such a notice can be registered by the parties to the contract or by the State to which the public service is provided.]⁷]

⁷ Alternative B constitutes a discussion proposal that emerged from the Informal Working Group of the Committee of governmental experts on limitations on remedies at the fourth session of that Committee.

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

Article XXVIII – The Supervisory Authority

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

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

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

Article XXIX – First regulations

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

Article XXX – Identification of space assets for registration purposes

1. – With respect to a space asset that has not been launched, a description of the space asset that contains the name of its manufacturer, its manufacturer's serial number, and its model designation, and satisfies such other requirements as may be established in the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry. After launch of the space asset the creditor may add to its registration data all or any of the additional data specified in paragraph 2 but failure to do so or the addition of incorrect data shall not affect the validity of the registration.

2. – With respect to a space asset that has been launched, a description of the space asset that contains the date and time of its launch, its launch site, the name of its launch provider and [...] and satisfies such other requirements as may be established in the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry.

Article XXXI – Additional modifications to Registry provisions

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

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

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

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

5. - The insurance or financial guarantee referred to in Article 28(4) shall cover the liability of the Registrar under the Convention to the extent provided by the regulations.

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

CHAPTER IV – JURISDICTION

Article XXXII – Waiver of sovereign immunity

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

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

CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS

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

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

Article XXXIV – Relationship with the United Nations Outer Space Treaties and instruments of the International Telecommunication Union

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

[CHAPTER VI – FINAL PROVISIONS ⁸*Article XXXV – Signature, ratification, acceptance, approval or accession*

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

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

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

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

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

Article XXXVI – Regional Economic Integration Organisations

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

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

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

Article XXXVII – Entry into force

1. – This Protocol enters into force between the States which have deposited instruments referred to in sub-paragraph (a) on the later of:

⁸ It is envisaged that, in line with practice, draft Final Provisions will be prepared for the diplomatic Conference at such time as the Committee of governmental experts has completed its work. The draft Final Provisions set out in Chapter VI are in no way intended to prejudge that process. They are based on the Final Provisions contained in the Aircraft and Luxembourg Protocols.

(a) the first day of the month following the expiration of three months after the date of the deposit of the [fifth] instrument of ratification, acceptance, approval or accession, and

(b) the date of the deposit by [the Secretariat] with the Depositary of a certificate confirming that the International Registry is fully operational.

2. – For other States this Protocol enters into force on the first day of the month following the later of:

(a) the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession; and

(b) the date referred to in sub-paragraph (b) of the preceding paragraph.

Article XXXVIII – Territorial units

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

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

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

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

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

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

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

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

Article XXXIX – Transitional provisions

In relation to space assets Article 60 of the Convention shall be modified as follows:

(a) in paragraph 2(a), after "situated" insert "at the time the right or interest is created or arises";

(b) replace paragraph 3 with the following:

“3. – A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when Articles 29, 35 and 36 of the Convention as modified or supplemented by the Protocol will become applicable, to the extent and in the manner specified in the declaration, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in that State. Any priority of the right or interest under the law of that State, so far as applicable, shall continue if the right or interest is registered in the International Registry before the expiration of the period specified in the declaration, whether or not any other right or interest has previously been registered.”

Article XL – Declarations relating to certain provisions

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

- (a) that it will not apply Article VIII;
- (b) that it will apply either or both of Articles XXIII and XXVII.

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

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

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

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

Article XLI – Declarations under the Convention

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

Article XLII – Reservations and declarations

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

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

Article XLIII – Subsequent declarations

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

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

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

Article XLIV – Withdrawal of declarations

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

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

Article XLV – Denunciations

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

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

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

Article XLVI – Review Conferences, amendments and related matters

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

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

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

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

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

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

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

Article XLVII – Depositary and its functions

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

2. – The Depositary shall:

(a) inform all Contracting States of:

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

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

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

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

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

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

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

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

APPENDIX II

LIST OF PARTICIPANTS

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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 was open not only to member States of UNIDROIT but also to member States of the Committee on the Peaceful Uses of Outer Space of the United Nations (U.N./COPUOS).

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APPENDIX III

AGENDA

1. Adoption of the agenda
2. Organisation of work
3. Consideration of the revised preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets as it emerged from the fourth session of the UNIDROIT Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (hereinafter referred to as the *Committee*), held in Rome from 3 to 7 May 2010 (C.G.E./Space Pr./5/W.P. 3), *inter alia* in the light of:
 - (a) the intersessional consultations with representatives of the international commercial space and financial communities held in Rome on 18 October 2010 (C.G.E./Space Pr./5/W.P. 4);
 - (b) the intersessional meeting of the Informal Working Group of the Committee on default remedies in relation to components held in Rome from 19 to 21 October 2010 (C.G.E./Space Pr./5/W.P. 5);
 - (c) the intersessional meeting of the Informal Working Group of the Committee on limitations on remedies held in Rome on 20 and 21 October 2010 (C.G.E./Space Pr./5/W.P. 6) and
 - (d) comments and proposals submitted by Governments, Organisations and representatives of the international commercial space, financial and insurance communities (C.G.E./Space Pr./5/W.P. 7, W.P. 7 Add. 1, W.P. 7 Add. 2 and W.P. 7 Add. 3)
4. Consideration of the question of the Supervisory Authority of the future international registration system for space assets
5. Future work
6. Review of report
7. Any other business.

APPENDIX IV

PROPOSAL FOR A NEW ARTICLE I(2)(f)

(presented by the delegation of Mexico)¹

Article I(2)(f)

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

¹ _____ The amendments proposed are highlighted in bold print.

APPENDIX V

PROPOSAL FOR A NEW ARTICLE IX(2)

(presented by the delegation of Mexico)

It is proposed that the current text of Article IX become paragraph 1 and that a new paragraph 2 be adopted, worded as follows:

“Each transfer of debtor’s rights shall respect the strategic areas and national security of the Contracting States involved and shall, therefore, be realised in conformity with the relevant national regulations”.

APPENDIX VI

PROPOSAL FOR A NEW ARTICLE III

(presented by the observer of the German Space Agency)

Article III – Docking and return of a space asset

The docking of one space asset with another in outer space does not affect ownership, rights or an international interest in those assets. The international interest and rights in a space asset are neither affected by the return of a space object from outer space.

APPENDIX VII

PROPOSAL FOR A NEW ALTERNATIVE A OF ARTICLE XXII: ALTERNATIVE TO
THE APPLICATION OF NATIONAL LAW

(presented by the delegation of the United States of America)

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7 and to Article XXVII(2) of this Protocol, give possession and control 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 over the space asset if this Article did not apply.

3. (a) Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7 and to Article XXVII(2) of this Protocol, give possession and control over the debtor's rights covered by a rights assignment to the creditor, no later than the earlier of:

(i) the end of the waiting period; and

(ii) the date on which the creditor would be entitled to possession of or control over the debtor's rights covered by the registered rights assignment.

(b) On or after the earlier of the aforesaid dates, the creditor may exercise its remedies provided for in Chapter III of the Convention and Chapter II of this Protocol under the rights assignment.

4. 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.

5. References in this Article to the "insolvency administrator" shall be to that person in its official, not its personal, capacity.

6. Unless and until the applicable creditor is given possession of and control over the space asset under paragraph 2 or the debtor's rights under paragraph 3:

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

7. 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.

8. The insolvency administrator or the debtor, as applicable, may retain possession of and control over the space asset or the debtor's rights covered by a rights assignment where by the time specified in paragraph 2 or paragraph 3 it has cured all defaults other than the default constituted by the opening of the insolvency proceedings and has agreed to perform all future

obligations under the applicable agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2 or paragraph 3.

10. No obligations of the debtor under the agreement or under the contract(s) providing for the debtor's rights covered by the rights assignment 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 or the contracts(s) providing for the debtor's rights covered by the rights assignment.

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 insolvency proceedings over registered interests. This provision shall not be interpreted to derogate from the provisions of Article XXVII(2) of this Protocol.

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

APPENDIX VIII

PROPOSAL FOR A NEW ARTICLE XXVII(2)

(presented by the delegation of Canada)

Article XXVII(2)

Nothing in this Convention and this Protocol limits the ability of a Contracting State, in accordance with its laws and regulations, to restrict or attach conditions:

(a) to the creation of an international interest for reasons of national security, international peace and security, or in order to regulate controlled goods, and

(b) to the exercise of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol, for reasons of national security, international peace and security or where the exercise of such remedies would involve or require the transfer of controlled goods, technology, data or services, or would involve the transfer or assignment of a license, or the grant of a new license.

APPENDIX IX

PROPOSAL FOR A NEW ARTICLE XXVI(2)

(presented by the delegation of Canada as revised to reflect the amendments ¹ agreed by the Committee to be necessary)

Article XXVI(2)

[Nothing in the Convention and this Protocol limits the ability of a Contracting State, in accordance with its laws and regulations, to restrict or attach conditions:

(a) to the constitution of an international interest or a rights assignment, for reasons of national security, international peace and security, or in order to regulate controlled goods, and

(b) to the exercise of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol, including to the placement of command codes and related data and materials pursuant to Article XIX, for reasons of national security, international peace and security or where the exercise of such remedies would involve or require the transfer of controlled goods, technology, data or services, or would involve the transfer or assignment of a licence, or the grant of a new licence.]

¹ With the amendments being highlighted: deletion by the words in question being struck through and additions by the use of underlining.

APPENDIX X

PROPOSAL BY THE INFORMAL WORKING GROUP ON LIMITATIONS ON REMEDIES

The Informal Working Group on limitations on remedies met on 22 February 2011 to implement the conclusions reached by the Committee of governmental experts earlier that day in its consideration of Article XXVII *bis*. The meeting was attended by representatives of the Governments of Canada, the People's Republic of China, the Czech Republic, Germany, India, Japan, the Russian Federation and the United States of America, with Ms M. Leimbach (Groupe Crédit Agricole) and Mr B. Schmidt-Tedd (German Space Agency) as observers. Mr J.A. Estrella Faria, Secretary-General of UNIDROIT, acted as moderator.

The Informal Working Group agreed to propose to the Committee of governmental experts that a new definition of "public services provider" be inserted in Article I, paragraph 2, worded as follows:

" 'public services provider' means an entity of a Contracting State, another entity situated in that Contracting State and designated by the Contracting State as a provider of a public service or an entity recognised as a provider of a public service under the laws of a Contracting State"

and that Alternative C of Article XXVII *bis* be reworded as follows (with the amendments proposed to the text of Alternative C appearing in footnote 5 of C.G.E./Space Pr./5/W.P. 3 highlighted (with deletions indicated by the relevant language being crossed out and additions indicated by the relevant language being underlined) ¹:

¹ The clean text of the revised Alternative C would be worded as follows:

1. Where the debtor or an entity controlled by the debtor and a public services provider enter into a contract that provides for the use of a space asset to provide services that are needed for the provision of a public service in a Contracting State, the parties and the Contracting State may agree that the public services provider may register a notice in the International Registry, in accordance with Article 16 of the Convention, stating that the space assets designated in such notice is providing or intended to provide a service under that contract (specifying the applicable portions thereof) that is needed to support the provision of a public service recognised as such under the laws of the relevant Contracting State.

2. A creditor holding an international interest in a space asset that is the subject of a notice registered in accordance with the preceding paragraph may not, in the event of default, exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol in respect of that space asset that would result in the interruption of the public service covered by that notice prior to the expiration of six months after its registration of a notice in the International Registry, in accordance with Article 16 of the Convention, of its intention to exercise any such remedies, if the debtor does not cure its default within that period.

3. The Registrar shall notify the creditor, the debtor and the public services provider of the date of registration of the notice referred to in the preceding paragraph and of the date of expiry of the six-month period referred to therein.

4. During the period referred to in the preceding paragraph:

(a) the creditor, the debtor and the public services provider shall co-operate in good faith with a view to finding a commercially reasonable solution permitting the continuation of the public service; and, as appropriate,

(b) the regulatory authority of a Contracting State that issued a licence required by the debtor to operate the space asset that is the subject of a notice registered in accordance with paragraph 1 shall give the public services provider the opportunity to participate in any proceedings in which the debtor may participate in that Contracting State,

1. ~~An entity of a Contracting State that enters into a contract with~~Where the debtor or an entity controlled by the debtor and a public services provider enter into a contract that provides for the use of a space asset to provide services that are needed for the provision of a public service~~acknowledged by in a Contracting State, the parties as being a public service in that and the Contracting State and involving access to or the use of a space asset in respect of which the debtor has entered into an agreement with a creditor governed by this Protocol~~may agree that the public services provider may register a notice in the International Registry, in accordance with Article 16 of the Convention, stating that the space asset designated in such notice is providing or intended to provide a service under that contract (specifying the applicable portions thereof) that is needed to support the provision of a public service— recognised as such under the laws of the relevant Contracting State.

2._ A creditor holding an international interest in a space asset ~~of a kind that is the subject of a notice registered in accordance with the preceding paragraph may not, in the event of default,~~ exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol in respect of that space asset that would result in the interruption of the public service covered by that notice prior to the expiration of six months after its registration of a notice in the International Registry, in accordance with Article 16 of the Convention, of its intention to exercise any such remedies, if the debtor does not cure its default within that period.

3._ The Registrar shall notify the ~~State entity~~creditor, the debtor and the public services provider of the date of registration of the notice referred to in the preceding paragraph and of the date of expiry of the six-month period referred to in the preceding paragraph. therein.

4._ During the period referred to in the preceding paragraph:

(a)_ ~~the creditor, the debtor and the State entity~~public services provider shall co-operate in good faith with a view to finding a commercially reasonable solution permitting the continuation of the public service; and, as appropriate,

(b)_ ~~the regulatory authority of a Contracting State entity may that issued a licence required by the debtor to operate the space asset that is the subject of a notice registered in accordance with paragraph 1 shall give the public services provider the opportunity to participate in any proceedings of the regulatory authority of the licensing State in which the debtor may participate, subject in that Contracting State, with a view to the approval~~appointment of the another operator under a new licence to be issued by that regulatory authority—of that State if it is not a Contracting State.

with a view to the appointment of another operator under a new licence to be issued by that regulatory authority.

5. Notwithstanding paragraphs 2 and 3, the creditor is free to exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol if, at any time during the period referred to in paragraph 2, the public services provider fails to perform its duties under the contract referred to in paragraph 1.

6. The limitation on the remedies of the creditor provided for in paragraph 2 shall not apply in respect of an international interest registered prior to the notice referred to in paragraph 1, unless otherwise agreed by the parties.

{_5._ Notwithstanding paragraphs 2 and 3, the creditor is free to exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol if, at any time during the period referred to in paragraph 2, the ~~State entity~~public services provider fails to perform its duties under the contract referred to in paragraph 1-}.
.

{_6._ The limitation on the remedies of the creditor provided for in paragraph 2 shall not apply in respect of an international interest registered prior to the notice referred to in paragraph 1-} , unless otherwise agreed by the parties.

APPENDIX XI

PROPOSALS BY THE DRAFTING COMMITTEE *

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

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

THE STATES PARTIES TO THIS PROTOCOL,

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

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

MINDFUL of the benefits to all States from expanded space-based services and financing 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 and the instruments of the International Telecommunication Union,

MINDFUL of the continuing development of the international commercial space industry and recognising the need for a uniform and predictable regimen governing interests in the taking of security over space assets and in related rights 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.

* These proposals reflect the progress made by the Drafting Committee, over its first four meetings, in implementing the decisions taken by the Committee of governmental experts at its current session.

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

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

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

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

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

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

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

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

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

(h) “revenue salvage” means an interest in debtor’s rights which has become vested in the insurer of the related space asset by contract or operation of law upon payment of proceeds following a constructive total loss [of] [affecting] the space asset;

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

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

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

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

(l) ‘Space asset’ means any man-made uniquely identifiable asset in space or intended to be launched into space, and comprising

(i) ~~any spacecraft, such as that is any satellite, space station, space module, space capsule, space vehicle, or other vehicle designed to operate in space, or a reusable launch vehicle, [in respect of which a registration may be effected in accordance with the regulations],~~ whether or not including a space asset falling within (ii) or (iii) below;

(ii) ~~any~~ payload (whether telecommunications, navigation, observation, scientific or otherwise) in respect of which a separate registration may be effected in accordance with the regulations from time to time made by the Supervisory Authority; or

(iii) ~~any~~ part of a spacecraft or payload such as a transponder ~~[capable of independent use],~~ in respect of which a separate registration may be effected in accordance with the regulations as in (ii) above,

together with all installed, incorporated or attached accessories, parts and equipment and all data, manuals ~~are and~~ records relating thereto.”

~~“space asset” means any man-made uniquely identifiable asset [capable of being independently owned, used or controlled,] in space or intended to be launched into space without losing its distinct identity, such as a satellite, space station, satellite bus, transponder, module, space vehicle, launch vehicle or space capsule [including any such asset in course of manufacture or assembly], together with all installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating to its ownership, use or control.~~

(m) “title salvage” means title to a space asset which has become vested in the insurer of the space asset by contract or operation of law upon payment of proceeds following a constructive total loss [of] [affecting] the space asset.

3. – In Article[s] [1(n) and] 43(1) of the Convention and Article XXIII of this Protocol, references to a Contracting State on the territory of which an object or space asset is located or situated shall, as regards a space asset when not on Earth, be treated as references to any of the following:

(a) a Contracting State on the registry of which the space asset is carried for the purposes of:

(i) the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, signed at London, Moscow and Washington, D.C. on 27 January 1967; [or]

(ii) the Convention on Registration of Objects Launched into Outer Space, signed at New York on 14 January 1975; [or]

(iii) United Nations General Assembly Resolution 1721 (XVI) B of 20 December 1961;]

(b) the Contracting State which is the State granting a licence to operate the space asset; or

(c) the Contracting State on the territory of which a mission operation centre for the space asset is located.

~~[Alternative A~~

~~3. — In Articles 1(2)(n), 43 and 54(1) of the Convention and Article XXIII of this Protocol references to a Contracting State on the territory of which an object or space asset is located or situated or from which it is controlled shall, as regards a space asset when not on Earth, be treated as references to a Contracting State on the territory of which a mission operation centre for the space asset is located.]~~

[Alternative B

~~3. — In Articles 1(2)(n), 43 and 54(1) of the Convention and Article XXIII of this Protocol references to a Contracting State on the territory of which an object or space asset is located or situated shall, as regards a space asset when not on Earth, be treated as references to a Contracting State from the territory of which the space asset may be controlled.]~~

[Alternative C

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

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

1. – The Convention shall apply in relation to space assets, rights assignments and rights reassignments as provided by the terms of this Protocol.
2. – The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to space assets.
3. – ~~[A space asset shall not constitute an~~ An aircraft object for the purposes of the Convention as applied to aircraft objects shall not constitute a space asset ~~whether it is on Earth or in air or space.]~~ *

Article III – Return of a space asset

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

Article IV – Application of the Convention to sales and salvage interests

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

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

* The Drafting Committee draws attention to the possible risk of inhibiting development of space vehicle financing through the inappropriate application of the Aircraft Protocol. In addition, there is the risk that engines installed on a spacecraft could possibly also fall within the definition of an aircraft engine.

2. – The provisions of this Protocol applicable to rights assignments also apply to a transfer to the buyer of a space asset of rights to payment or other performance due or to become due to the seller by any person with respect to the space asset as if references to the debtor and the creditor were references to the seller and the buyer respectively.

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

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

5. – Nothing in the Convention or this Protocol affects any rights of an insurer under the applicable law to revenue salvage as against the holder of an interest registered or a rights assignment recorded after the time when the salvage vests in the insurer under the applicable law. This paragraph does not affect the application of Article 9(5) of the Convention in relation to ownership or any other interest derived from or passing to a chargee whose interest was registered or an assignee whose interest was recorded prior to the time of such vesting.

~~5. – For the purposes of the Convention, when an insurer makes a payment to a creditor of insurance proceeds for a covered loss of an insured space asset in which the creditor has an international interest, the insurer shall, to the extent of the insurer's salvage interest, have the right of subrogation to the creditor's associated rights and related international interest in the space asset and to any debtor's rights assigned to the creditor under a rights assignment or rights reassignment recorded as part of the registration of that international interest. This right of subrogation shall be in addition to and shall not affect any right of subrogation the insurer may have under national law or the insurance policy.~~

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

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

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

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

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

Article VI – Representative capacities

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

Article VII – Identification of space assets

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

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

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

Article VIII – Choice of law

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

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

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

Article IX – Formal requirements for rights assignment

A transfer of debtor's rights is constituted as a rights assignment where it is in writing and enables:

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

Article X – Effects of rights assignment

1. – A rights assignment made in conformity with Article IX transfers to the creditor the debtor's rights the subject of the rights assignment to the extent permitted by the applicable law.

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

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

Article XI – Assignment of future rights

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

Article XII – Recording of rights assignment or acquisition by subrogation as part of registration of international interest

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

2. – Articles 18, 19, 20(1) – (4), ~~and~~ 25(1), (2) and (4) and 30 of the Convention apply in relation to a record made in accordance with the preceding paragraph as if:

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

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

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

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

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

Article XIII – Priority of recorded rights assignment

1. – Subject to paragraph 2, a recorded rights assignment has priority over any other transfer of debtor's rights (whether or not a rights assignment) except a rights assignment previously recorded.

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

Article XIV – Obligor's duty to creditor

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

(a) the obligor has been given notice of the rights assignment in writing by or with the authority of the debtor; and

(b) the notice identifies the debtor's rights.

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

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

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

Article XV – Rights reassignment

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

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

Article XVI – Derogation

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

CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article XVII – Modification of default remedies provisions as regards space assets

1. – Article 8(3) of the Convention shall not apply to space assets. Any remedy given by the Convention in relation to a space asset shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it

is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.

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

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

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

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

- (a) to the secured obligations and the security interest were references to the obligations secured by the rights assignment and the security interest created by that assignment;
- (b) to the object were references to the debtor's rights.

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

Article XIX – Placement of data and materials

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

Article XXI – Modification of provisions regarding relief pending final determination

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

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

3. – Article 13(1) of the Convention applies with the following being added immediately after 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 substitution of "Article 13" for the words "Article 13(1)(d) or other interim relief by virtue of Article 13(4)"~~insertion after the words "Article 13(1)(d)" of the words "and (e)".~~

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

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

Article XXII – Remedies on insolvency

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

Alternative A

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, ~~give possession of or control and operation to Article XXVI-1(2) of this Protocol, give possession of or control 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. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7 and to Article XXVI 1(2) of this Protocol, give possession of or control over the debtor's rights covered by a rights assignment 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 over the debtor's rights covered by the rights assignment.

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

~~5.~~ 6. – Unless and until the creditor is given possession of or control ~~and operation~~ over the space asset under paragraph 2 or the debtor's rights under paragraph 3:

- (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.~~ 7. – 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.

* It was agreed by the Drafting Committee that the future Official Commentary should make it clear that, if the creditor was already in possession of or had control of the debtor's rights, then there would be no need to rely on this provision.

~~7.~~ 8. – The insolvency administrator or the debtor, as applicable, may retain possession of ~~or~~ and control and operation over the space asset and the debtor's rights covered by a rights assignment where, by the time specified in paragraph ~~2,~~ or paragraph 3 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.~~ 9. – No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph ~~2~~ or paragraph 3.

~~9.~~ 10. – No obligations of the debtor under the agreement may be modified without the consent of the creditor.

~~10.~~ 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.

~~11.~~ 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 insolvency proceedings over registered interests. This provision shall not derogate from the provisions of Article XXVII(2) of this Protocol.

~~12.~~ 13. – The Convention as modified by Article XVIII of this Protocol shall apply to the exercise of any remedies under this Article.

Alternative B

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

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

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

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

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

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

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

Article XXIII – Insolvency assistance

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

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

Article XXIII~~V~~ – Modification of priority provisions

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

2. – The buyer of a space asset under a registered sale acquires its interest in that asset subject to an interest previously registered.

Article XXIV – Modification of assignment provisions

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

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

Article XXVI – Debtor provisions

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

(a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4)(b) of the Convention or, in the capacity of buyer, Article XXIII~~V~~(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 XXIII~~V~~(2) of this Protocol, but only to the extent, if any, that such holder has agreed.

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

Article XXVII – Limitations on remedies

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

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

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

{Article XXVII-bis – Limitations on remedies in respect of public service[±]

¹ ~~At the conclusion of its intersessional meeting, held in Rome on 20 and 21 October 2010, the Informal Working Group on limitations on remedies recommended the following proposed new Alternative C:~~
~~“{Alternative C^(±)~~

~~1. — An entity of a Contracting State that enters into a contract with the debtor or an entity controlled^(±±) by the debtor for the provision of a service acknowledged by the parties as being a public service in that Contracting State and involving access to or the use of a space asset in respect of which the debtor has entered into an agreement with a creditor governed by this Protocol may register a notice in the International Registry, in accordance with Article 16 of the Convention, stating that the space asset is providing or intended to provide a public service.^{(***)(****)}~~

~~2. — A creditor holding an international interest in a space asset of a kind that is the subject of a notice registered in accordance with the preceding paragraph may not exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol in respect of that space asset that would result in the interruption of the public service covered by that notice prior to the expiration of six months after its registration of a notice in the International Registry, in accordance with Article 16 of the Convention, of its intention to exercise any such remedies, if the debtor does not cure its default within that period.^(****)~~

~~3. — The Registrar shall notify the State entity of the date of expiry of the six month period referred to in the preceding paragraph.^(*****)~~

~~4. — During the period referred to in the preceding paragraph:~~

~~— (a) the creditor, the debtor and the State entity shall co-operate in good faith with a view to finding a commercially reasonable solution permitting the continuation of the public service; and~~

~~— (b) the State entity may participate in any proceedings of the regulatory authority of the licensing State in which the debtor may participate, subject to the approval of the regulatory authority of that State if it is not a Contracting State.~~

~~{5. — Notwithstanding paragraphs 2 and 3, the creditor is free to exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol if, at any time during the period referred to in paragraph 2, the State entity fails to perform its duties under the contract referred to in paragraph 1.}~~

~~{6. — The limitation on the remedies of the creditor provided for in paragraph 2 shall not apply in respect of an international interest registered prior to the notice referred to in paragraph 1.}~~“

Footnotes:

[±] — It was proposed by the Informal Working Group that this or any other rule on the subject that might be included in the planned Protocol should be subject, on the one hand, to the possibility for States, via the lodging of a declaration, to opt into the rule and, on the other, to the possibility for the parties to the agreement providing for the public service to contract out.]

^{**} — Concern was expressed by one of the Co-chairmen of the Drafting Committee as to the uncertainty that use of the concept of “control” might en-gender.

^{***} — It is suggested by the Co-chairmen of the Drafting Committee that, in so far as the notice provided for under this paragraph would need to identify a specific space asset, a requirement of identifiability will need to be incorporated in this paragraph, in accordance with the requirements of the envisaged International Registry for space assets.

^{****} — It is noted by the Co-chairmen of the Drafting Committee that, in so far as the notice envisaged by this paragraph does not fall within one of the categories listed under Article 16 of the Convention, the preliminary draft Protocol will need to amend Article 16 on this point.

1. – Where the debtor or an entity controlled by the debtor and a public services provider enter into a contract that provides for the use of a space asset to provide services that are needed for the provision of a public service in a Contracting State, the parties and the Contracting State may agree that the public services provider may register a **public service** notice in the International Registry, in accordance with Article 16 of the Convention, stating that the space asset designated in such notice is providing or intended to provide a service under that contract (specifying the applicable portions thereof) that is needed to support the provision of a public service recognised as such under the laws of the relevant Contracting State.

2. – For the purposes of this Article,

(a) “public service notice” means a notice in the International Registry describing, in accordance with the regulations, the services which under the contract are intended to support the provision of a public service recognised as such under the laws of the relevant Contracting State;

(b) “public services provider” means an entity of a Contracting State, another entity situated in that Contracting State and designated by the Contracting State as a provider of a public service or an entity recognised as a provider of a public service under the laws of a Contracting State.

3. – A creditor holding an international interest in a space asset that is the subject of a **public service** notice registered in accordance with the preceding paragraph may not, in the event of default, exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol in respect of that space asset that would result in the **[interruption] [termination]** of the **relevant** public service covered by that notice prior to the expiration of a **period of six months from the date of** after its registration **by the creditor** of a notice in the International Registry, in accordance with Article 16 of the Convention, of its intention to exercise any such remedies, if the debtor does not cure its default within that period.

4. – The Registrar shall notify the creditor, the debtor and the public services provider of the date of registration of the notice **by the creditor** referred to in the preceding paragraph and of the date of expiry of the ~~six month~~ period referred to therein.

5. – During the period referred to in the preceding paragraph 3:

(a) the creditor, the debtor and the public services provider shall co-operate in good faith with a view to finding a commercially reasonable solution permitting the continuation of the public service; and, as appropriate,

(b) the regulatory authority of a Contracting State that issued a licence required by the debtor to operate the space asset that is the subject of a **public service** notice registered in accordance with paragraph 1 shall give the public services provider the opportunity to participate in any proceedings in which the debtor may participate in that Contracting State, with a view to the appointment of another operator under a new licence to be issued by that regulatory authority.

6. – Notwithstanding paragraphs ~~23~~ and ~~34~~, the creditor is free to exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol if, at any time during the period referred to in paragraph 2, the public services provider fails to perform its duties under the contract referred to in paragraph 1.

***** It is suggested by the Co-chairmen of the Drafting Committee that consideration should be given to it being required that the creditor also inform the State entity of any notice that it might be intending to give to the International Registry under paragraph 2.

7. – The limitation on the remedies of the creditor provided for in paragraph 23 shall not apply in respect of an international interest registered prior to the **public service** notice referred to in paragraph 1, unless otherwise agreed by the parties.

~~{Alternative A~~

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

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

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

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

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

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

~~5. — A State may only invoke the right to object to the exercise of default remedies in accordance with this Article if it has registered in the International Registry a notice recording that the space asset is used for providing a public service in the vital interest of that State prior to the registration of an international interest in that space asset by a creditor [or if it has registered such notice within six months of the launch of a space object, even if after the registration of an international interest by the creditor].²~~

~~{Alternative B~~

~~Concept~~

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

² — Alternative A constitutes a discussion proposal that emerged from the Informal Working Group of the Committee of governmental experts on limitations on remedies at the third session of that Committee, held in Rome from 7 to 11 December 2009.

Two technical approaches to achieve this goal

I. — Rights approach

Article ...

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

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

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

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

II. — Remedies approach

Article ...

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

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

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

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

Such a notice can be registered by the parties to the contract or by the State to which the public service is provided.]³ }

³ Alternative B constitutes a discussion proposal that emerged from the Informal Working Group of the Committee of governmental experts on limitations on remedies at the fourth session of that Committee.

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

Article XXVIII – The Supervisory Authority

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

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

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

Article XXIX – First regulations

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

Article XXX – Identification of space assets for registration purposes

1. – With respect to a space asset that has not been launched, a description of the space asset that contains the name of its manufacturer, its manufacturer's serial number, and its model designation, and satisfies such other requirements as may be established in the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry. After launch of the space asset the creditor may add to its registration data all or any of the additional data specified in paragraph 2 but failure to do so or the addition of incorrect data shall not affect the validity of the registration.

2. – With respect to a space asset that has been launched, a description of the space asset that contains the date and time of its launch, its launch site, the name of its launch provider and [...] and satisfies such other requirements as may be established in the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry.

Article XXXI – Additional modifications to Registry provisions

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

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

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

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

5. - The insurance or financial guarantee referred to in Article 28(4) shall cover the liability of the Registrar under the Convention to the extent provided by the regulations.

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

CHAPTER IV – JURISDICTION

Article XXXII – Waiver of sovereign immunity

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

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

CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS

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

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

Article XXXIV – Relationship with the United Nations Outer Space Treaties and instruments of the International Telecommunication Union

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

[CHAPTER VI – FINAL PROVISIONS ⁴*Article XXXV – Signature, ratification, acceptance, approval or accession*

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

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

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

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

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

Article XXXVI – Regional Economic Integration Organisations

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

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

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

Article XXXVII – Entry into force

1. – This Protocol enters into force between the States which have deposited instruments referred to in sub-paragraph (a) on the later of:

⁴ It is envisaged that, in line with practice, draft Final Provisions will be prepared for the diplomatic Conference at such time as the Committee of governmental experts has completed its work. The draft Final Provisions set out in Chapter VI are in no way intended to prejudge that process. They are based on the Final Provisions contained in the Aircraft and Luxembourg Protocols.

(a) the first day of the month following the expiration of three months after the date of the deposit of the [fifth] instrument of ratification, acceptance, approval or accession, and

(b) the date of the deposit by [the Secretariat] with the Depositary of a certificate confirming that the International Registry is fully operational.

2. – For other States this Protocol enters into force on the first day of the month following the later of:

(a) the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession; and

(b) the date referred to in sub-paragraph (b) of the preceding paragraph.

Article XXXVIII – Territorial units

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

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

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

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

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

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

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

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

Article XXXIX – Transitional provisions

In relation to space assets Article 60 of the Convention shall be modified as follows:

(a) in paragraph 2(a), after "situated" insert "at the time the right or interest is created or arises";

(b) replace paragraph 3 with the following:

“3. – A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when Articles 29, 35 and 36 of the Convention as modified or supplemented by the Protocol will become applicable, to the extent and in the manner specified in the declaration, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in that State. Any priority of the right or interest under the law of that State, so far as applicable, shall continue if the right or interest is registered in the International Registry before the expiration of the period specified in the declaration, whether or not any other right or interest has previously been registered.”

Article XL – Declarations relating to certain provisions

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

- (a) that it will not apply Article VIII;
- (b) that it will apply either or both of Articles XXIII and XXVII.

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

3. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article XX~~I~~ wholly or in part. If it so declares with respect to Article XX~~I~~(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 XXI~~I~~ 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 XXI~~I~~.

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

Article XLI – Declarations under the Convention

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

Article XLII – Reservations and declarations

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

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

Article XLIII – Subsequent declarations

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

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

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

Article XLIV – Withdrawal of declarations

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

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

Article XLV – Denunciations

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

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

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

Article XLVI – Review Conferences, amendments and related matters

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

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

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

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

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

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

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

Article XLVII – Depositary and its functions

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

2. – The Depositary shall:

(a) inform all Contracting States of:

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

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

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

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

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

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

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

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

APPENDIX XII

REPORT OF THE DRAFTING COMMITTEE *

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

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

THE STATES PARTIES TO THIS PROTOCOL,

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

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

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

MINDFUL of the established principles of space law, including those contained in the international space treaties of the United Nations and the instruments of the International Telecommunication Union,

MINDFUL of the continuing development of the international commercial space industry and recognising the need for a uniform and predictable regimen governing interests in space assets and in related rights 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.

* This report reflects the work done by the Drafting Committee, over its four meetings, in implementing the decisions taken by the Committee of governmental experts at its current session, as revised by the co-Chairmen of the Drafting Committee in the light of the Committee of governmental experts review of that work on the afternoon of 24 February 2011.

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

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

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

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

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

(e) “licence” means any permit, authorisation, concession or equivalent instrument ~~[under in conformity with the applicable law relevant national laws]~~ that is granted or issued by, or pursuant to the authority of, a national or intergovernmental or other international body or authority, when acting in a regulatory capacity, to manufacture, launch, control, use or operate a space asset, or relating to the use of orbital positions or the transmission, emission or reception of electromagnetic signals to and from a space asset;

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

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

(h) “revenue salvage” means an interest in debtor’s rights which has become vested in the insurer of the related space asset by contract or operation of law upon payment of proceeds following a constructive total loss ~~[of] [affecting]~~ the space asset;

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

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

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

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

(i) a spacecraft, such as a satellite, space station, space module, space capsule, space vehicle, or reusable launch vehicle [in respect of which a registration may be effected in accordance with the regulations], whether or not including a space asset falling within (ii) or (iii) below;

(ii) a payload (whether telecommunications, navigation, observation, scientific or otherwise) in respect of which a separate registration may be effected in accordance with the regulations; or

(iii) a part of a spacecraft or payload such as a transponder, in respect of which a separate registration may be effected in accordance with the regulations , together with all installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto.

(m) "title salvage" means title to a space asset which has become vested in the insurer of the space asset by contract or operation of law upon payment of proceeds following a constructive total loss ~~[of] [affecting]~~ the space asset.

3. – In Article[s] [1(n) and] 43(1) of the Convention and Article XXII of this Protocol, references to a Contracting State on the territory of which an object or space asset is ~~located or~~ situated shall, as regards a space asset when not on Earth, be treated as references to any of the following:

(a) a Contracting State which registers the space asset, or on the registry of which the space asset is carried, for the purposes of:

(i) the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, signed at London, Moscow and Washington, D.C. on 27 January 1967; [or]

(ii) the Convention on Registration of Objects Launched into Outer Space, signed at New York on 14 January 1975; [or]

(iii) United Nations General Assembly Resolution 1721 (XVI) B of 20 December 1961;]

(b) the Contracting State which is the State granting a licence to operate the space asset; or

(c) the Contracting State on the territory of which a mission operation centre for the space asset is located.

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

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

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

3. – [An aircraft object for the purposes of the Convention as applied to aircraft objects shall not constitute a space asset.] *

Article III – Return of a space asset

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

* The Drafting Committee draws attention to the possible risk of inhibiting development of space vehicle financing through the inappropriate application of the Aircraft Protocol. In addition, there is the risk that engines installed on a spacecraft could possibly also fall within the definition of an aircraft engine.

Article IV – Application of the Convention to sales and salvage interests

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

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

2. – The provisions of this Protocol applicable to rights assignments also apply to a transfer to the buyer of a space asset of rights to payment or other performance due or to become due to the seller by any person with respect to the space asset as if references to the debtor and the creditor were references to the seller and the buyer respectively.

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

4. – For the purposes of this Protocol, ~~the acquisition of title to~~ a space asset by way of ~~acquired as title salvage is treated as if it were acquired by way of~~ a sale.

5. – Nothing in the Convention or this Protocol affects any rights of an insurer under the applicable law to revenue salvage as against the holder of an interest registered or a rights assignment recorded after the time when the salvage vests in the insurer under the applicable law. This paragraph does not affect the application of Article 9(5) of the Convention in relation to ownership or any other interest derived from or passing to a chargee whose interest was registered or an assignee whose interest was recorded prior to the time of such vesting.

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

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

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

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

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

Article VI – Representative capacities

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

Article VII – Identification of space assets

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

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

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

Article VIII – Choice of law

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

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

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

Article IX – Formal requirements for rights assignment

A transfer of debtor's rights is constituted as a rights assignment where it is in writing and enables:

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

Article X – Effects of rights assignment

1. – A rights assignment made in conformity with Article IX transfers to the creditor the debtor's rights the subject of the rights assignment to the extent permitted by the applicable law.

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

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

Article XI – Assignment of future rights

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

Article XII – Recording of rights assignment or acquisition by subrogation as part of registration of international interest

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

2. – Articles 18, 19, 20(1) – (4), 25(1), (2) and (4) and 30 of the Convention apply in relation to a record made in accordance with the preceding paragraph as if:

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

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

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

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

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

Article XIII – Priority of recorded rights assignment

1. – Subject to paragraph 2, a recorded rights assignment has priority over any other transfer of debtor's rights (whether or not a rights assignment) except a rights assignment previously recorded.

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

Article XIV – Obligor's duty to creditor

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

(a) the obligor has been given notice of the rights assignment in writing by or with the authority of the debtor; and

(b) the notice identifies the debtor's rights.

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

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

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

Article XV – Rights reassignment

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

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

Article XVI – Derogation

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

CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article XVII – Modification of default remedies provisions as regards space assets

1. – Article 8(3) of the Convention shall not apply to space assets. Any remedy given by the Convention in relation to a space asset shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.

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

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

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

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

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

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

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

Article XIX – Placement of data and materials

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

Article XX – Modification of provisions regarding relief pending final determination

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

* The Drafting Committee has not considered this provision, which is under consideration by the Informal Working Group on default remedies in relation to components.

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 substitution of “Article 13” for the words “Article 13(1)(d) or other interim relief by virtue of Article 13(4)”.

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

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

Article XXI – Remedies on insolvency

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

Alternative A

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph ~~7-8~~ and to Article XXVI(2) of this Protocol, give possession of or control 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 over the space asset if this Article did not apply.

3. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph ~~7-8~~ and to Article XXVI (2) of this Protocol, give possession of or control over the debtor’s rights covered by a rights assignment 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 over the debtor’s rights covered by the rights assignment.

4. – 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.

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

* It was agreed by the Drafting Committee that the future Official Commentary should make it clear that, if the creditor was already in possession of or had control of the debtor’s rights, then there would be no need to rely on this provision.

6. – Unless and until the creditor is given possession of or control over the space asset under paragraph 2 or the debtor's rights under paragraph 3:

(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.

7. – 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.

8. – The insolvency administrator or the debtor, as applicable, may retain possession of and control over the space asset and the debtor's rights covered by a rights assignment where by the time specified in paragraph 2 or paragraph 3 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.

9. – No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2 or paragraph 3.

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 insolvency proceedings over registered interests. This provision shall not derogate from the provisions of Article XXVI(2) of this Protocol.

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

Alternative B

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XL(4) of this Protocol 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 XXII – Insolvency assistance

1. – This Article applies only where a Contracting State has made a declaration pursuant to Article XL(1) of this Protocol.

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; (iv) in which the space asset is registered; (v) which has granted a licence in respect of the space asset; or (vi) otherwise having a close connection with the space asset, shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XXI of this Protocol.

Article XXIII – Modification of priority provisions

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

2. – The buyer of a space asset under a registered sale acquires its interest in that asset subject to an interest previously registered.

Article XXIV – 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 XXV – 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 XXIII (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 XXIII (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 XXVI – Limitations on remedies

1. – This Article applies only where a Contracting State has made a declaration pursuant to Article XL(1) of this Protocol.

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

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

Article XXVII – Limitations on remedies in respect of public service

1. – Where the debtor or an entity controlled by the debtor and a public services provider enter into a contract that provides for the use of a space asset to provide services that are needed for the provision of a public service in a Contracting State, the parties and the Contracting State may agree that the public services provider may register a public service notice.

2. – For the purposes of this Article:

(a) "public service notice" means a notice in the International Registry describing, in accordance with the regulations, the services which under the contract are intended to support the provision of a public service recognised as such under the laws of the relevant Contracting State;

(b) "public services provider" means an entity of a Contracting State, another entity situated in that Contracting State and designated by the Contracting State as a provider of a public service or an entity recognised as a provider of a public service under the laws of a Contracting State.

3. – A creditor holding an international interest in a space asset that is the subject of a public service notice may not, in the event of default, exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol that would make the space asset unavailable for the provision in respect of that space asset that would result in the ~~[interruption]~~ ~~[termination]~~ of the relevant public service prior to the expiration of a period of six months from the date of registration by the creditor of a notice in the International Registry that the creditor may of its intention to exercise any such remedies; if the debtor does not cure its default within that period.

4. - ~~The Registrar shall notify t~~The creditor shall notify, the debtor and the public services provider of the date of registration of ~~the its notice under by the creditor referred to in the~~ preceding paragraph and of the date of expiry of the period referred to therein. [The creditor shall also provide them with a copy of that notice.]

5. - During the period referred to in paragraph 3:

(a) the creditor, the debtor and the public services provider shall co-operate in good faith with a view to finding a commercially reasonable solution permitting the continuation of the public service; and, as appropriate,

(b) the regulatory authority of a Contracting State that issued a licence required by the debtor to operate the space asset that is the subject of a public service notice shall give the public services provider the opportunity to participate in any proceedings in which the debtor may participate in that Contracting State, with a view to the appointment of another operator under a new licence to be issued by that regulatory authority.

6. - Notwithstanding paragraphs 3 and 4, the creditor is free to exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol if, at any time during the period referred to in paragraph 2, the public services provider fails to perform its duties under the contract referred to in paragraph 1.

7. - The limitation on the remedies of the creditor provided for in paragraph 3 shall not apply in respect of an international interest registered prior to the public service notice, unless otherwise agreed by the parties.

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

Article XXVIII – The Supervisory Authority

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

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

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

Article XXIX – First regulations

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

Article XXX – Identification of space assets for registration purposes

1. – With respect to a space asset that has not been launched, a description of the space asset that contains the name of its manufacturer, its manufacturer's serial number, and its model designation, and satisfies such other requirements as may be established in the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry. After launch of the space asset the creditor may add to its registration data all or any of the additional data specified in paragraph 2 but failure to do so or the addition of incorrect data shall not affect the validity of the registration.

2. – With respect to a space asset that has been launched, a description of the space asset that contains the date and time of its launch, its launch site, the name of its launch provider and [...] and satisfies such other requirements as may be established in the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry.

Article XXXI – Additional modifications to Registry provisions

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

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

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

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

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

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

CHAPTER IV – JURISDICTION

Article XXXII – Waiver of sovereign immunity

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

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

CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS

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

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

Article XXXIV – Relationship with the United Nations Outer Space Treaties and instruments of the International Telecommunication Union

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

[CHAPTER VI – FINAL PROVISIONS ¹*Article XXXV – Signature, ratification, acceptance, approval or accession*

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

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

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

¹ It is envisaged that, in line with practice, draft Final Provisions will be prepared for the diplomatic Conference at such time as the Committee of governmental experts has completed its work. The draft Final Provisions set out in Chapter VI are in no way intended to prejudge that process. They are based on the Final Provisions contained in the Aircraft and Luxembourg Protocols.

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

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

Article XXXVI – Regional Economic Integration Organisations

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

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

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

Article XXXVII – Entry into force

1. – This Protocol enters into force between the States which have deposited instruments referred to in sub-paragraph (a) on the later of:

(a) the first day of the month following the expiration of three months after the date of the deposit of the [fifth] instrument of ratification, acceptance, approval or accession, and

(b) the date of the deposit by [the Secretariat] with the Depositary of a certificate confirming that the International Registry is fully operational.

2. – For other States this Protocol enters into force on the first day of the month following the later of:

(a) the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession; and

(b) the date referred to in sub-paragraph (b) of the preceding paragraph.

Article XXXVIII – Territorial units

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

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

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

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

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

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

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

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

Article XXXIX – Transitional provisions

In relation to space assets Article 60 of the Convention shall be modified as follows:

(a) in paragraph 2(a), after "situated" insert "at the time the right or interest is created or arises";

(b) replace paragraph 3 with the following:

"3. – A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when Articles 29, 35 and 36 of the Convention as modified or supplemented by the Protocol will become applicable, to the extent and in the manner specified in the declaration, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in that State. Any priority of the right or interest under the law of that State, so far as applicable, shall continue if the right or interest is registered in the International Registry before the expiration of the period specified in the declaration, whether or not any other right or interest has previously been registered."

Article XL – Declarations relating to certain provisions

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

(a) that it will not apply Article VIII;

(b) that it will apply either or both of Articles XXII and XXVI.

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

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

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

Article XLI – Declarations under the Convention

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

Article XLII – Reservations and declarations

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

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

Article XLIII – Subsequent declarations

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

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

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

Article XLIV – Withdrawal of declarations

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

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

Article XLV – Denunciations

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

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

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

Article XLVI – Review Conferences, amendments and related matters

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

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

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

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

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

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

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

Article XLVII – Depositary and its functions

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

2. – The Depositary shall:

(a) inform all Contracting States of:

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

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

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

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

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

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

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

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

APPENDIX XIII

ADDENDUM TO THE REPORT OF THE DRAFTING COMMITTEE *

Article XVI - Derogation

The reference to Article XVII(3) should be inside square brackets, in view of the pending nature of Article XVII(3) itself.

Article XXVIII - The Supervisory Authority

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

2. - Unchanged.

3.- The Supervisory Authority may establish a commission of experts, from among persons nominated by the negotiating 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 XXX - Identification of space assets for registration purposes

~~1. With respect to A description of a space asset that has not been launched, a description of the space asset that contains the name of its manufacturer, its manufacturer's serial number, and its model designation, and satisfies such other requirements as may be established in the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry. After launch of the space asset the creditor may add to its registration data all or any of the additional data specified in paragraph 2 but failure to do so or the addition of incorrect data shall not affect the validity of the registration.~~¹

* In order not to hold things up, the co-Chairmen of the Drafting Committee agreed at the conclusion of their revision meeting held on 24 February 2011 to come back to the Committee of governmental experts with an Addendum to the Report of the Drafting Committee (C.G.E./Space Pr./5/W.P. 21) concerning Articles XVI, XXVIII(1) and (3), XXX and XXXI(1) of the revised preliminary draft Protocol.

¹ The text of the revised preliminary draft Protocol under consideration by the Committee of governmental experts at the current session (C.G.E./Space Pr./5/W.P. 3) contains a separate paragraph 2 as follows:

"2. - With respect to a space asset that has been launched, a description of the space asset that contains the date and time of its launch, its launch site, the name of its launch provider and [...] and satisfies such other requirements as may be established in the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry."

However, in the light of the Committee of governmental experts' decision that the requirements of paragraph 1 should apply to space assets already launched as well as those not yet launched, paragraph 2 would appear to be no longer relevant, since the regulations will make whatever provision is considered necessary.

Article XXXI – Additional modifications to Registry provisions

Renumber the current paragraph 1 as paragraph 1 *bis* and insert a new paragraph 1 worded as follows:

1. Article 16 of the Convention applies with the following being added immediately after paragraph 1:

“1 *bis* The International Registry shall also provide for:

- (a) the recording of rights assignments;
- (b) the recording of acquisitions of debtor’s rights by subrogation;
- (c) the registration of public service notices under Article XXVII(1) of the [Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets]; and
- (d) the registration of creditors’ notices under Article XXVII(3) of the [Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets].”.

APPENDIX XIV

**REPORT BY THE INFORMAL WORKING GROUP ON DEFAULT REMEDIES
IN RELATION TO COMPONENTS**

(prepared by the UNIDROIT Secretariat)

The Informal Working Group on default remedies in relation to components held five meetings during the current session, on 22, 23, 24 and 25 February 2011.

The meetings of the Informal Working Group were attended by representatives of the Governments of Canada, the People's Republic of China, Germany, Italy, Japan, the Russian Federation and the United States of America, with Mr O. Heinrich (BHO Legal), Ms M. Leimbach (Groupe Crédit Agricole) and Mr B. Schmidt-Tedd (German Space Agency) as observers. Mr J.A. Estrella Faria, Secretary-General of UNIDROIT, acted as moderator.

At the conclusion of its fifth meeting, the Informal Working Group agreed that the following options for dealing with the problem of limitations on remedies for physically linked space assets should be laid before the Committee for further consideration:

Option No. 1

[No additional provision in the revised preliminary draft Protocol]

Option No. 2

[In the absence of an agreement among two or more parties with interests governed by this Protocol with respect to physically linked space assets, and without prejudice to the priority and related provisions of the Convention and this Protocol, if the exercise of a remedy provided for under this Protocol by a creditor of one of the physically linked space assets will cause physical damage to, or render inoperable, another physically linked space asset, the applicable law shall determine whether the creditor may proceed with the exercise of such remedy.]

Option No. 3

[In the absence of an agreement among two or more parties with interests governed by this Protocol with respect to physically linked space assets, and without prejudice to the priority and related provisions of the Convention and this Protocol, if the exercise of a remedy provided for under this Protocol by a creditor of one of the physically linked space assets will cause physical damage to, or render inoperable, another physically linked space asset, such creditor exercising such remedy shall compensate for the damage caused to the holder of the relevant interests in the physically linked asset.]

It is to be noted that the submission of these options by the Informal Working Group does not imply their endorsement by the Informal Working Group: they seek rather to reflect the discussions that have taken place in the Informal Working Group during its five meetings.

It is also to be noted that not all the options presented would be acceptable to certain members of the Informal Working Group and that individual members' endorsement of one option would not necessarily imply their endorsement of another.

APPENDIX XV

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

***as established by the UNIDROIT Committee of governmental experts for the preparation of
a draft Protocol to the Cape Town Convention on Matters specific to Space Assets at the
conclusion of its fifth session, held in Rome from 21 to 25 February 2011***

THE STATES PARTIES TO THIS PROTOCOL,

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

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

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

MINDFUL of the established principles of space law, including those contained in the international space treaties of the United Nations and the instruments of the International Telecommunication Union,

MINDFUL of the continuing development of the international commercial space industry and recognising the need for a uniform and predictable regimen governing interests in space assets and in related rights and facilitating asset-based financing of the same,

HAVE AGREED upon the following provisions relating to space assets:

CHAPTER I – SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I – Defined terms

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

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

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

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

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

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

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

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

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

(h) ["revenue salvage" means an interest in debtor's rights which has become vested in the insurer of the related space asset by contract or operation of law upon payment of proceeds following a constructive total loss of the space asset;]¹

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

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

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

[(l)] "space asset" means any man-made uniquely identifiable asset in space or designed to be launched into space, and comprising

(i) a spacecraft, such as a satellite, space station, space module, space capsule, space vehicle or reusable launch vehicle [in respect of which a registration may be effected in accordance with the regulations], whether or not including a space asset falling within (ii) or (iii) below;

(ii) a payload (whether telecommunications, navigation, observation, scientific or otherwise) in respect of which a separate registration may be effected in accordance with the regulations; or

(iii) a part of a spacecraft or payload such as a transponder, in respect of which a separate registration may be effected in accordance with the regulations,

¹ This provision is in square brackets so as to permit the checking of its drafting once a decision is taken on the text of Article IV(5).

together with all installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto[; and .

(m) "title salvage" means title to a space asset which has become vested in the insurer of the space asset by contract or operation of law upon payment of proceeds following a constructive total loss of the space asset].²

3. – In Article[s] [1(n) and] 43(1) of the Convention and Article XXII of this Protocol, references to a Contracting State on the territory of which an object or space asset is situated shall, as regards a space asset when not on Earth, be treated as references to any of the following:

(a) a Contracting State which registers the space asset, or on the registry of which the space asset is carried, for the purposes of:

(i) the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, signed at London, Moscow and Washington, D.C. on 27 January 1967;

(ii) the Convention on Registration of Objects Launched into Outer Space, signed at New York on 14 January 1975; or

(iii) United Nations General Assembly Resolution 1721 (XVI) B of 20 December 1961;

(b) the Contracting State which is the State granting a licence to operate the space asset; or

(c) the Contracting State on the territory of which a mission operation centre for the space asset is located.

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

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

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

[3. – Nothing in this Protocol affects the application of the Protocol to the Convention on Matters specific to Aircraft Equipment to an object designed predominantly for use in air space. An object which is designed predominantly for use in outer space does not constitute an aircraft object for the purposes of the latter Protocol.]³

Article III – Return of a space asset

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

² This provision is in square brackets so as to permit the checking of its drafting once a decision is taken on the text of Article IV(5).

³ The text of this provision as originally proposed provided that nothing in this Protocol was to affect the application of the Aircraft Protocol to aircraft objects. However, this raised concerns both in the Drafting Committee of the Committee of governmental experts and in the Committee of governmental experts itself that it might inhibit development of space financing by unintentionally covering objects which, though designed predominantly for use in outer space, could fall within the definition of an airframe or an aircraft engine. The second sentence is intended to meet these concerns.

Article IV – Application of the Convention to sales and salvage interests

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

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

2. – The provisions of this Protocol applicable to rights assignments also apply to a transfer to the buyer of a space asset of rights to payment or other performance due or to become due to the seller by any person with respect to the space asset as if references to the debtor and the creditor were references to the seller and the buyer respectively.

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

[4. – For the purposes of this Protocol, the vesting of a space asset by way of title salvage is treated as if it were a sale.]⁴

[5. – [Nothing in the Convention or this Protocol affects any rights of an insurer under the applicable law to revenue salvage.][as against the holder of an interest registered or a rights assignment recorded after the time when the salvage vests in the insurer under the applicable law. This paragraph does not affect the application of Article 9(5) of the Convention in relation to ownership or any other interest derived from or passing to a chargee whose interest was registered or an assignee whose interest was recorded prior to the time of such vesting.]]

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

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

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

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

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

⁴ This provision is in square brackets so as to permit the checking of its drafting once a decision is taken on the text of Article IV(5).

Article VI – Representative capacities

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

Article VII – Identification of space assets

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

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

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

Article VIII – Choice of law

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

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

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

Article IX – Formal requirements for rights assignment

A transfer of debtor's rights is constituted as a rights assignment where it is in writing and enables:

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

Article X – Effects of rights assignment

1. – A rights assignment made in conformity with Article IX transfers to the creditor the debtor's rights the subject of the rights assignment to the extent permitted by the applicable law.

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

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

Article XI – Assignment of future rights

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

*Article XII – Recording of rights assignment or acquisition by subrogation
as part of registration of international interest*

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

2. – Articles 18, 19, 20(1) – (4), 25(1), (2) and (4) and 30 of the Convention apply in relation to a record made in accordance with the preceding paragraph as if:

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

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

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

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

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

Article XIII – Priority of recorded rights assignment

1. – Subject to paragraph 2, a recorded rights assignment has priority over any other transfer of debtor's rights (whether or not a rights assignment) except a rights assignment previously recorded.

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

Article XIV – Obligor's duty to creditor

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

(a) the obligor has been given notice of the rights assignment in writing by or with the authority of the debtor; and

(b) the notice identifies the debtor's rights.

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

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

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

Article XV – Rights reassignment

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

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

Article XVI – Derogation

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

CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article XVII – Modification of default remedies provisions as regards space assets

1. – Article 8(3) of the Convention shall not apply to space assets. Any remedy given by the Convention in relation to a space asset shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.

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

[Alternative A

3. – No additional provision should be included in this Protocol on this subject.]

[Alternative B

3. – In the absence of an agreement among two or more parties with interests governed by this Protocol with respect to physically linked space assets, and without prejudice to the priority and related provisions of the Convention and this Protocol, if the exercise of a remedy provided for under this Protocol by a creditor of one of the physically linked space assets will cause physical damage to, or render inoperable, another physically linked space asset, the applicable law shall determine whether the creditor may proceed with the exercise of such remedy.]

[Alternative C

3. – In the absence of an agreement among two or more parties with interests governed by this Protocol with respect to physically linked space assets, and without prejudice to the priority and related provisions of the Convention and this Protocol, if the exercise of a remedy provided for under this Protocol by a creditor of one of the physically linked space assets will cause physical damage to, or render inoperable, another physically linked space asset, such creditor exercising such remedy shall compensate for the damage caused to the holder of the relevant interests in the physically linked space asset.]

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

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

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

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

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

Article XIX – Placement of data and materials

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

Article XX – Modification of provisions regarding relief pending final determination

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

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

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

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

and Article 43(2) applies with the substitution of “Article 13” for the words “Article 13(1)(d) or other interim relief by virtue of Article 13(4)”.

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

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

Article XXI – Remedies on insolvency

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

Alternative A

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 8 and to Article XXVI(2) of this Protocol, give possession of or control 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 over the space asset if this Article did not apply.

3. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 8 and to Article XXVI (2) of this Protocol, give possession of or control over the debtor's rights covered by a rights assignment to the creditor, no later than the earlier of ⁵:

(a) the end of the waiting period; and

(b) the date on which the creditor would be entitled to possession of or control over the debtor's rights covered by the rights assignment.

4. – 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.

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

6. – Unless and until the creditor is given possession of or control over the space asset under paragraph 2 or the debtor's rights under paragraph 3:

(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.

7. – 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.

8. – The insolvency administrator or the debtor, as applicable, may retain possession of and control over the space asset and the debtor's rights covered by a rights assignment where by the time specified in paragraph 2 or paragraph 3 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.

9. – No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2 or paragraph 3.

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 insolvency proceedings over registered interests. This provision shall not derogate from the provisions of Article XXVI(2) of this Protocol.

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

⁵ It was agreed by the Drafting Committee of the Committee of governmental experts that the future Official Commentary should make it clear that, if the creditor was already in possession of or had control of the debtor's rights, then there would be no need to rely on this provision.

Alternative B

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XL(4) of this Protocol 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 XXII – Insolvency assistance

1. – This Article applies only where a Contracting State has made a declaration pursuant to Article XL(1) of this Protocol.

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; (iv) in which the space asset is registered; (v) which has granted a licence in respect of the space asset; or (vi) otherwise having a close connection with the space asset, shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XXI of this Protocol.

Article XXIII – Modification of priority provisions

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

2. – The buyer of a space asset under a registered sale acquires its interest in that asset subject to an interest previously registered.

3. The docking of one space asset with another in outer space does not affect ownership, rights or an international interest in those assets.

4. Ownership of or another right or interest in a space asset shall not be affected by its installation on or removal from another space asset.

Article XXIV – 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 XXV – 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 XXIII(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 XXIII(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 XXVI – Limitations on remedies

1. – This Article applies only where a Contracting State has made a declaration pursuant to Article XL(1) of this Protocol.

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

[Alternative text

2. - Nothing in the Convention and this Protocol limits the ability of a Contracting State, in accordance with its laws and regulations, to restrict or attach conditions:

(a) to the constitution of an international interest or a rights assignment, for reasons of national security, international peace and security, or in order to regulate controlled goods, and

(b) to the exercise of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol, including to the placement of command codes and related data and materials pursuant to Article XIX, for reasons of national security, international peace and security or where the exercise of such remedies would involve or require the transfer of controlled goods, technology, data or services, or would involve the transfer or assignment of a licence, or the grant of a new licence.]

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

Article XXVII – Limitations on remedies in respect of public service

1. – Where the debtor or an entity controlled by the debtor and a public services provider enter into a contract that provides for the use of a space asset to provide services that are needed for the provision of a public service in a Contracting State, the parties and the Contracting State may agree that the public services provider may register a public service notice.

2. – For the purposes of this Article:

(a) “public service notice” means a notice in the International Registry describing, in accordance with the regulations, the services which under the contract are intended to support the provision of a public service recognised as such under the laws of the relevant Contracting State;

(b) “public services provider” means an entity of a Contracting State, another entity situated in that Contracting State and designated by the Contracting State as a provider of a public service or an entity recognised as a provider of a public service under the laws of a Contracting State.

3. – A creditor holding an international interest in a space asset that is the subject of a public service notice may not, in the event of default, exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol that would make the space asset unavailable for the provision of the relevant public service prior to the expiration of a period of six months from the date of registration by the creditor of a notice in the International Registry that the creditor may exercise any such remedies if the debtor does not cure its default within that period.

4. – The creditor shall promptly notify the debtor and the public services provider of the date of registration of its notice under the preceding paragraph and of the date of expiry of the period referred to therein.

5. – During the period referred to in paragraph 3:

(a) the creditor, the debtor and the public services provider shall co-operate in good faith with a view to finding a commercially reasonable solution permitting the continuation of the public service; and, as appropriate,

(b) the regulatory authority of a Contracting State that issued a licence required by the debtor to operate the space asset that is the subject of a public service notice shall give the public services provider the opportunity to participate in any proceedings in which the debtor may participate in that Contracting State, with a view to the appointment of another operator under a new licence to be issued by that regulatory authority.

6. – Notwithstanding paragraphs 3 and 4, the creditor is free to exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol if, at any time

during the period referred to in paragraph 3, the public services provider fails to perform its duties under the contract referred to in paragraph 1.

7. – The limitation on the remedies of the creditor provided for in paragraph 3 shall not apply in respect of an international interest registered prior to the public service notice, unless otherwise agreed by the parties.

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

Article XXVIII – The Supervisory Authority

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

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

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

Article XXIX – First regulations

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

Article XXX – Identification of space assets for registration purposes

A description of a space asset that contains the name of its manufacturer, its manufacturer's serial number and its model designation, and satisfies such other requirements as may be established in the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry.

Article XXXI – Additional modifications to Registry provisions

1. Article 16 of the Convention applies with the following being added immediately after paragraph 1:

- “1 *bis* The International Registry shall also provide for:
- (a) the recording of rights assignments;
 - (b) the recording of acquisitions of debtor's rights by subrogation;

(c) the registration of public service notices under Article XXVII(1) of the [Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets]; and

(d) the registration of creditors' notices under Article XXVII(3) of the [Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets].”.

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

3. – 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.

4. – 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.

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

6. – The insurance or financial guarantee referred to in Article 28(4) of the Convention shall cover the liability of the Registrar under the Convention to the extent provided by the regulations.

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

CHAPTER IV – JURISDICTION

Article XXXII – Waiver of sovereign immunity

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

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

CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS

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

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

Article XXXIV – Relationship with the United Nations Outer Space Treaties and instruments of the International Telecommunication Union

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

[CHAPTER VI – FINAL PROVISIONS ⁶*Article XXXV – Signature, ratification, acceptance, approval or accession*

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

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

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

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

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

Article XXXVI – Regional Economic Integration Organisations

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

⁶ It is envisaged that, in line with practice, draft Final Provisions will be prepared for the diplomatic Conference by the UNIDROIT Secretariat. The draft Final Provisions set out in Chapter VI are in no way intended to prejudge that process. They are based on the Final Provisions contained in the Protocols to the Convention on Matters specific to Aircraft Equipment and on Matters specific to Railway Rolling Stock.

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

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

Article XXXVII – Entry into force

1. – This Protocol enters into force between the States which have deposited instruments referred to in sub-paragraph (a) on the later of:

(a) the first day of the month following the expiration of three months after the date of the deposit of the [fifth] instrument of ratification, acceptance, approval or accession, and

(b) the date of the deposit by [the Supervisory Authority] with the Depository of a certificate confirming that the International Registry is fully operational.

2. – For other States this Protocol enters into force on the first day of the month following the later of:

(a) the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession; and

(b) the date referred to in sub-paragraph (b) of the preceding paragraph.

Article XXXVIII – Territorial units

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

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

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

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

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

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

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

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

Article XXXIX – Transitional provisions

In relation to space assets Article 60 of the Convention shall be modified as follows:

(a) in paragraph 2(a), after "situated" insert "at the time the right or interest is created or arises";

(b) replace paragraph 3 with the following:

"3. – A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when Articles 29, 35 and 36 of the Convention as modified or supplemented by the Protocol will become applicable, to the extent and in the manner specified in the declaration, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in that State. Any priority of the right or interest under the law of that State, so far as applicable, shall continue if the right or interest is registered in the International Registry before the expiration of the period specified in the declaration, whether or not any other right or interest has previously been registered."

Article XL – Declarations relating to certain provisions

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

- (a) that it will not apply Article VIII;
- (b) that it will apply either or both of Articles XXII and XXVI.

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

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

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

Article XLI – Declarations under the Convention

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

Article XLII – Reservations and declarations

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

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

Article XLIII – Subsequent declarations

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

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

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

Article XLIV – Withdrawal of declarations

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

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

Article XLV – Denunciations

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

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

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

Article XLVI – Review Conferences, amendments and related matters

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

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

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

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

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

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

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

Article XLVII – Depositary and its functions

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

2. – The Depositary shall:

(a) inform all Contracting States of:

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

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

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

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

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

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

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

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