

UNIDROIT 2001
Study LXXIIJ - Doc. 4
(Original: English)

UNIDROIT

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
=====

**CURRENT WORKING DRAFT OF A PRELIMINARY DRAFT PROTOCOL TO THE
DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN
MOBILE EQUIPMENT ON MATTERS SPECIFIC TO SPACE PROPERTY**

(prepared in March 2001 for discussion within the Space Working Group by Peter D. Nesgos,
Esq., co-ordinator of the Working Group, with the assistance of Dara A. Panahy, Esq.)

Rome, March 2001

**CURRENT WORKING DRAFT OF A PRELIMINARY DRAFT PROTOCOL TO
THE DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN
MOBILE EQUIPMENT ON MATTERS SPECIFIC TO SPACE PROPERTY ***

PRELIMINARY DRAFT PROTOCOL TO THE DRAFT
UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT ON MATTERS SPECIFIC TO SPACE PROPERTY

CHAPTER I SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I	Defined terms
Article II	Application of Convention as regards space property
Article III	Application of Convention to sales
Article IV	Sphere of application
Article V	Formalities and effects of contract of sale
Article VI	Representative capacities
Article VII	Description of space property
Article VIII	Choice of law

CHAPTER II DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article IX	Modifications to default remedies provisions
Article X	Modification of provisions regarding relief pending final determination
Article XI	Remedies on insolvency
Article XII	Insolvency assistance
Article XIII	Modification of priority provisions
Article XIV	Modification of assignment provisions

* This working draft was prepared in March 2001 for discussion within the Space Working Group by PETER D. NESGOS, Partner, *Milbank, Tweed, Hadley & McCloy LLP*, New York, as one of the co-ordinators of that group, with the assistance of DARA A. PANAHY. It seeks to implement the ideas that came out of the meeting of the restricted informal group of experts to identify, and engage in a preliminary discussion of the issues which merit consideration in the context of the relationship between the draft UNIDROIT Convention on International Interests in Mobile Equipment and the preliminary draft Space Property Protocol and the existing body of international space law, held in Rome on 18 and 19 October 2000 (cf. UNIDROIT Study LXXIII-Doc. 1) and the meeting of the Space Working Group held in Rome on 19 and 20 October 2000 (cf. UNIDROIT Study LXXIII-Doc. 2) (together, the "Rome Meetings". It should be noted that the references in this text to the draft Convention and the draft Aircraft Protocol are to the versions of these texts as reviewed by the Drafting Committee at the third session (Rome, 20-31 March 2000) of the UNIDROIT Committee of governmental experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment and the Sub-Committee of the ICAO Legal Committee on the study of international interests in mobile equipment (aircraft equipment) (UNIDROIT CGE/INT.INT/3-REPORT ICAO REF. LSC/ME/3-REPORT) and the ICAO Legal Committee at its 31st session (Montreal, 28 August-8 September 2000) (ICAO Doc 9765-LC (191)).

CHAPTER III REGISTRY PROVISIONS RELATING TO INTERNATIONAL
INTERESTS IN SPACE PROPERTY

Article XV The Supervisory Authority and the Registrar
Article XVI First regulations
Article XVII Designated entry points
Article XVIII Additional modifications to Registry provisions

CHAPTER IV JURISDICTION

Article XIX Waiver of sovereign immunity

CHAPTER V RELATIONSHIP WITH OTHER CONVENTIONS

Article XX Relationship with 1988 UNIDROIT Convention on International
Financial Leasing

CHAPTER VI FINAL PROVISIONS

Article XXI Adoption of Protocol
Article XXII Entry into force
Article XXIII Territorial units
Article XXIV Declarations relating to certain provisions
Article XXV Subsequent declarations
Article XXVI Withdrawal of declarations and reservations
Article XXVII Denunciations
Article XXVIII Establishment and responsibilities of Review Board
Article XXIX Depositary arrangements

PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC
TO SPACE PROPERTY ¹

(as established by the Space Working Group organised, at the invitation of the President of UNIDROIT, by Mr Peter D. Nescgos, Partner, Milbank, Tweed, Hadley & McCloy LLP, New York)

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it desirable to implement the UNIDROIT Convention on International Interests in Mobile Equipment as it relates to space property, in the light of the purposes set out in the preamble of the Convention,

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

MINDFUL of the principles of international law established by the international space treaties under the auspices of the United Nations,

HAVE AGREED upon the following provisions relating to space property:

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:

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

“guarantor” means a person who, for the purpose of assuring the 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;

“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;

¹ This preliminary draft Protocol follows very closely the draft Protocol to the draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment as reviewed by the Drafting Committee in the light of the Joint Session’s third reading thereof (Rome, 20-31 March 2000) (UNIDROIT CGE/INT.INT/3-REPORT ICAO REF. LSC/ME/3-REPORT) and the ICAO Legal Committee at its 31st session (Montreal, 28 August-8 September 2000) (ICAO Doc 9765-LC (191)).

“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;

“proceeds” means any income or revenue received upon the sale, lease, use, operation, licensing, exchange or disposition of space property;

“space property” means: (i) any separately identifiable object that is in space or that is on the ground but that is intended to be launched and placed in space or has been returned from space, including separately identifiable components forming a part of the space property or attached to or contained within the space property, (ii) any separately identifiable object assembled or manufactured in space, (iii) any launch vehicle that is expendable or can be reused to transport persons or goods to and from space, (iv) to the extent permissible and assignable under applicable law, all permits, licences, approvals and authorisations granted or issued by a national or intergovernmental body or authority to control, use and operate the space property, including orbital use authorisations and authorisations to transmit and receive radio signals to and from space property, and (v) all proceeds derived from space property.² As used in this definition, the term “space” shall include any celestial body.³

Article II – Application of Convention as regards space property

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

2. – The Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as the UNIDROIT Convention on International Interests in Mobile Equipment as applied to space property.

² Further consideration must be given whether to include the above concept of “proceeds” within the definition of space property, or alternatively, rely on the collateral definition of “proceeds” in the base Convention. Several participants at the Rome Meetings alternatively suggested the inclusion of the above concept of “proceeds” in the remedies provision of the Protocol, subject to the feasibility of perfecting security interests in such proceeds.

³ During the Rome Meetings, various participants raised the issue of whether property in manufacture, transport or pre-launch stages should be considered space property, and considered the relative benefits thereof in the context of asset-based financing, recognising that such characterisation may conflict with applicable domestic laws relating to security interests. Further discussion took place regarding whether the inclusion of permits, licences, approvals and authorisations issued by national or intergovernmental bodies in the definition of “space property” should be subject to an optional (opt-out) provision. It was also suggested that intellectual property rights, which may be integral to the beneficial use of the space property, would be otherwise adequately addressed by existing international and domestic law. Also, intangible property rights relating to the ability to command and control orbiting space property were recognised as important to the effective exercise of remedies of constructive repossession. However, discussion took place as to the appropriateness of such a broad and comprehensive definition of space property. An alternative approach suggested was the streamlining of the definitions and the broadening of provisions relating to remedies to facilitate the exercise by the creditor of appropriate remedies. In line with further suggestions in Rome, the definition of space property was broadened to include property on any celestial body.

Article III – Application of Convention to sales

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

Articles 3 and 4;
Article 15(1) (other than sub-paragraph (c));
Article 17;
Article 18(3);
Article 19(1) (as regards registration of a contract of sale or a prospective sale);
Article 24(2) (as regards a prospective sale); and
Article 29.⁴

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 28 (other than Article 28(3) which is replaced by Article XIII(1)), Chapter X, Chapter XII (other than Article 42), Chapter XIII and Chapter XIV (other than Article 55) shall apply to contracts of sale and prospective sales.

Article IV – Sphere of application

The parties may, by agreement in writing, exclude the application of Article XI and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article IX (2)-(7).⁵

Article V – Formalities and effects of contract of sale

1. – An agreement is a contract of sale for the purposes of this Protocol if it:
 - (a) is in writing;
 - (b) relates to space property in respect of which the transferor has power to enter into the agreement; and
 - (c) enables the space property to be identified in conformity with this Protocol.
2. – A contract of sale transfers the interest of the seller in the space property 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 The draft Aircraft Protocol extends the application of the Convention to sales; there was consensus at the Rome Meetings for this Protocol to take the same approach to create an international regimen to provide for the recognition of sales of space property.

⁵ Insolvency is an area where strong domestic mandatory rules exist. Consideration must be given to the appropriate balance between a predictable set of rules for the purposes of the Protocol and the significance of domestic laws.

Article VI – Representative capacities

A person may enter into an agreement or a sale and, register an international interest in, or a sale of, space property in an agency, trust or other representative capacity. In such case, that party is entitled to assert rights and interests under the Convention.

Article VII – Description of space property

A description of space property that provides the name of the debtor and the creditor, provides an address for the debtor and for the creditor and contains a general description of the space property indicating the name of the manufacturer (or principal manufacturer, if more than one manufacturer exists), its manufacturer's serial number (if one exists) and its model designation (or comparable designation, if a model designation does not exist) and indicating its intended location is necessary and sufficient to identify the object for the purposes of Articles 6(c) and 30(2)(b) of the Convention and Article V(1)(c) of this Protocol.⁶

Article VIII – Choice of law

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

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

CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article IX – Modifications to default remedies provisions

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

2. – In order to facilitate the exercise of remedies available to the creditor, the creditor and the debtor may agree to place into escrow with the International Registry, at the time of creation of an international interest, the access and command codes required to access, command, control and operate the space property.

⁶ Unlike the very definite limitation of the draft Aircraft Protocol's application to aircraft, engines and helicopters, how would we identify space property for the purposes of the International Registry? Would a manufacturer's serial number be adequate? Could this be applied to resources or commodities produced in space? Participants at the Rome Meetings suggested the possibility of multiple space property search criteria to increase the likelihood of reliable searches.

3. – In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter:

(a) change or cause to be changed any access and command codes required to facilitate access to, and the command, control and operation of, the space property;

[(b) other remedies specific to space property to be considered].⁷

4. – A Contracting State may decide to restrict the remedies provided in Chapter III of the Convention and Chapter II of this Protocol where the exercise of such remedies would involve or require the disclosure of restricted or controlled technical information to nationals of states other than the Contracting State without such Contracting State's prior approval.

5. – The creditor shall not exercise the remedies specified in paragraph 3 without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.

6. – (a) Article 7(2) of the Convention shall not apply to space property.

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

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

(ii) an agreement between the debtor and the creditor as to what is a commercially reasonable manner shall be conclusive; and

(iii) the creditor may not take possession or control of space property in a manner that contravenes public order [or would adversely affect the operation of space property that is used for public safety].⁸ A remedy exercised in accordance with the foregoing sentence shall not be deemed to contravene public order where such remedy disrupts one or more

⁷ Currently, the most likely remedy scenario involves taking constructive repossession of an orbiting satellite through tracking, telemetry and command. This, however, does not require use of an existing TT&C facility (though this would likely be the most expeditious means of taking control). This would require the necessary access and command codes. Assuming it is not necessary to gain physical possession of any existing TT&C facility (particularly if legal or practical difficulties could be anticipated in taking possession), would it be appropriate to be entitled to seek judicial relief in any country that would have "line of site" of the satellite (especially if such country was a Contracting State of the Convention/Protocol)? What additional remedies should be considered for equipment other than satellites, particularly for equipment in low earth orbit that may be physically repossessed? As proposed at the Rome Meetings, the remedies provisions have been altered to add an optional (opt-out) provision to accommodate potential conflicts with other applicable laws. Other experts raised the question of whether recourse to binding arbitration should be allowed as an enforcement mechanism under this Protocol. In line with the proposal to streamline the definition of space property, it was suggested that the remedies section be broadened, for example, to include the right constructively to repossess orbiting space property expeditiously through the use of access and command codes that would be escrowed at the time of the creation of a security interest and held by the Registrar. Due consideration was also recommended for the dissemination of access and command codes where such information would be considered by a Contracting State controlled or restricted for export.

⁸ It was suggested at the Rome Meetings that States should be able to opt-out of remedies that might adversely affect the provision of satellite services, such as navigation and radio determination, having public safety applications.

communications systems or operational systems of which the space property constitutes an integral part.⁹

7. – 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 7(3) of the Convention. The foregoing shall not prevent a chargee and a chargor from agreeing to a longer period of prior notice.

Article X – Modification of provisions regarding relief pending final determination

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

2. – For the purposes of Article 12(1) of the Convention, "speedy" in the context of obtaining relief means within such number of calendar 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.¹⁰

3. – Article 12(1) of the Convention applies with the following being added immediately after sub-paragraph (d):

"(e) sale and application of proceeds therefrom", and Article 42(2) applies with the insertion after the words "Article 12(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 28 of the Convention.

5. – The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 12(2) of the Convention.

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

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

⁹ Consideration is required as to the effect of exercising control where the result may be significant disruption of communications. Safety issues may need to be considered where communications may include navigation, global positioning, telecommunications and safety/distress applications. Should this affect the exercise of remedies? If space equipment includes critical components on a space station, should any limitations apply where safety of life may become an issue? In the event a State invokes a claim of disruption to public order, it was suggested at the Rome Meetings that such State should have the obligation to indemnify the relevant creditor for the financial loss resulting thereby.

¹⁰ The draft Aircraft Protocol has specified what is to constitute "speedy judicial relief". We must consider the reasonableness of specifying a minimum period, taking into account an appropriate duration for proceedings and the importance of prompt action to preserve equipment that may require immediate preservation.

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies.

Article XI – Remedies on insolvency

1. – This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXIV(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 the space property 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 the space property 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 the space property under paragraph 2:

- (a) the insolvency administrator or the debtor, as applicable, shall preserve the space property 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 property under arrangements designed to preserve the space property and maintain it and its value.

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

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

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

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies.

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

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

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

12. – No rights or interests, except for preferred non-consensual rights or interests of a category covered by a declaration deposited under Article 39(1), shall have priority in the insolvency over registered interests.

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

[Alternative B]

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

(a) cure all defaults 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 the space property, 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 debtor, as applicable, does not give notice in conformity with paragraph 2, or when he has declared that he will give possession of the space property but fails to do so, the court may permit the creditor to take possession of the space property 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 property shall not be sold pending a decision by a court regarding the claim and the international interest.¹¹

¹¹ During the Rome Meetings, it was suggested that Alternative B was too attenuated an alternative.

Article XII – Insolvency assistance

The courts of a Contracting State: (i) in which the space property is situated, (ii) from which space property is being launched into space, (iii) in which space property is returned from space, (iv) from which space property may be controlled, (v) in which the debtor is located, or (vi) having a close connection with the space property shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with the foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI.¹²

Article XIII – Modification of priority provisions

1. – A buyer under a registered contract of sale takes its interest free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest, but subject to a previously registered interest.

2. – The provisions of Article 28(1)-(4) of the Convention shall determine the priority of the holders of interests in space property and Article 28(6) shall not apply.

Article XIV – Modification of assignment provisions

1. – Article 30(2) of the Convention applies with the following being added immediately after sub-paragraph (c):

“(d) is consented to in writing by the debtor, whether or not the consent is given in advance of the assignment or identifies the assignee.”

2. – Article 35 of the Convention applies as if the words following the phrase “under Article 28” were omitted.

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

Article XV – The Supervisory Authority and the Registrar

1. – The Supervisory Authority shall be [TBD].¹³

¹² Article XII of the draft Aircraft Protocol imposes a requirement that courts of a Contracting State in which an aircraft object is situated shall co-operate to the maximum extent possible. We have required the same of courts of a Contracting State in which the space property is situated, from which the space property may be controlled, in which the debtor is located or having a close connection with the space property. In line with suggestions made at the Rome Meetings to include property in the manufacture, transport or pre-launch stages in the definition of space property, are these appropriate links and should there be additional links?

¹³ At the Rome meetings, it was decided that the United Nations should be approached as a possible Supervisory Authority. This was one of the matters that might usefully be raised in the background paper, requested of the Office for Outer Space Affairs and UNIDROIT for consideration at the 40th session of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space in April, 2001.

2. – The first Registrar shall operate the International Registry for a period of five years after the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or re-appointed at regular five-year intervals by the Supervisory Authority.

Article XVI – First regulations

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

Article XVII – Designated entry points

1. – At the time of ratification, acceptance, approval of, or accession to this Protocol, a Contracting State may, subject to paragraph 2, designate an entity in its territory as the entity through which the information required for registration shall or may be transmitted to the International Registry.

2. – A Contracting State may make a designation under the preceding paragraph only in relation to:

- (a) registrable non-consensual rights or interests created under its domestic law;
- and
- (b) notices of national interests.

Article XVIII – Additional modifications to Registry provisions

1. – For the purposes of Article 18(5) of the Convention, the search criterion for space property shall be the [name of the debtor/manufacturer's serial number], supplemented as necessary to ensure uniqueness. Such supplementary information for searches shall be specified in the regulations.¹⁴

2. – For the purposes of Article 24(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 calendar days after the receipt of the demand described in such paragraph.

3. – The fees referred to in Article 16(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 16(2) of the Convention.

¹⁴ As noted above (*see* commentary to Article VII), we must consider further the “search criteria” for the International Registry. Not all space property may have a manufacturer’s serial number. However, there must be a reliable and consistent basis to identify unique space property in order to ensure that searches may be effected properly.

4. – The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated during working hours in their respective territories.

5. – The insurance or financial guarantee referred to in Article 27(2) shall cover all liability of the Registrar under the Convention.

CHAPTER IV – JURISDICTION

Article XIX – Waiver of sovereign immunity

1. – Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Articles 41, 42 or 44 of the Convention or relating to enforcement of rights and interests relating to space property 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 a writing that contains a description of the space property.

CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS

Article XX – Relationship with 1988 UNIDROIT Convention on International Financial Leasing

The Convention shall supersede the 1988 UNIDROIT *Convention on International Financial Leasing* as it relates to space property.

CHAPTER VI – FINAL PROVISIONS

Article XXI – Adoption of Protocol

1. – This Protocol is open for signature at the concluding meeting of the Diplomatic Conference for the Adoption of the Draft Protocol on Matters Specific to Space Property and will remain open for signature by all Contracting States at [_____] until [_____].

2. – This Protocol is subject to ratification, acceptance or approval of Contracting States that have signed it.

3. – This Protocol is open for accession by all States that are not signatory Contracting States as from the date it is open for signature.

4. – Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the depositary.¹⁵

Article XXII – Entry into force

1. – This Protocol enters into force on the first day of the month following the expiration of three months after the date of deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession.

2. – For each Contracting State that ratifies, accepts, approves or accedes to this Protocol after the deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession, this Protocol enters into force in respect of that Contracting State on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article XXIII – Territorial units

1. – If a Contracting State has two or more 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 substitute its declaration by another declaration at any time.

2. – These declarations are to be notified to the depositary and are to state expressly the territorial units to which this Protocol extends.

3. – If a Contracting State makes no declaration under paragraph 1, this Protocol is to extend to all territorial units of that Contracting State.

Article XXIV – Declarations relating to certain provisions

1. – A Contracting State may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will apply any one or more of Articles VIII, XII and XIII of this Protocol.

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

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

¹⁵ It is recommended that a resolution be adopted at, and contained in the Final Acts and Proceedings of, the Diplomatic Conference, contemplating the use by Contracting States of a model ratification instrument that would standardise, *inter alia*, the format for the making and/or withdrawal of declarations and reservations.

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

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

Article XXV – Subsequent declarations

1. – A Contracting State may make a subsequent declaration at any time after the date on which it enters into force for that Contracting State, by the deposit of an instrument to that effect with the depositary.

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 deposit of the instrument in which such declaration is made with the depositary. Where a longer period for that declaration to take effect is specified in the instrument in which such declaration is made, it shall take effect upon the expiration of such longer period after its deposit with 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 that subsequent declaration.

Article XXVI – Withdrawal of declarations and reservations

Any Contracting State that makes a declaration under, or a reservation to this Protocol may withdraw it at any time by a formal notification in writing addressed to 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 the receipt of the notification by the depositary.

Article XXVII – Denunciations

1. – This Protocol may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State, by the deposit of an instrument to that effect with the depositary.

2. – Any such denunciation shall take effect on the first day of the month following the expiration of [six/twelve] months after the date of deposit of the instrument of denunciation with the depositary. Where a longer period for that denunciation to take effect is specified in the instrument of denunciation, it shall take effect upon the expiration of such longer period after its deposit with 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 that denunciation.

Article XXVIII – Establishment and responsibilities of Review Board

1. – A five-member Review Board shall promptly be appointed to prepare yearly reports for the Contracting States addressing the matters specified in sub-paragraphs (a) – (d) of paragraph 2.

2. – At the request of not less than twenty-five percent of the Contracting States, conferences of the Contracting States shall be convened from time to time to consider:

(a) the practical operation of this Protocol and its effectiveness in facilitating the asset-based financing and leasing of space property;

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

(c) the functioning of the international registration system and the performance of the Registrar and its oversight by the Supervisory Authority; and

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

Article XXIX – Depositary arrangements

1. – This Protocol shall be deposited with the [_____].

2. – The [depositary] shall:

(a) inform all Contracting States of this Protocol and [_____] of:

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

(ii) each declaration made in accordance with this Protocol;

(iii) the withdrawal of any declaration;

(iv) the date of entry into force of this Protocol; and

(v) the deposit of an instrument of denunciation of this Protocol together with the date of its deposit and the date on which it takes effect.

(b) transmit certified true copies of this Protocol to all signatory States, to all States acceding to the Protocol and to [_____];

(c) provide the Registrar with the contents of each instrument of ratification, acceptance, approval, accession, declaration or withdrawal so that the information contained therein may be made publicly accessible; and

(d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised, have signed this Protocol.