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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

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

PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC TO SPACE ASSETS

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

Rome, May 2003

INTRODUCTORY NOTE

(prepared by the UNIDROIT Secretariat)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it desirable to implement the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*) [2] as it relates to space assets, in the light of the purposes set out in the preamble to the Convention,

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

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

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

HAVE AGREED upon the following provisions relating to space assets:

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

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

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

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

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

CHAPTER I – SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I – Defined terms

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

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

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

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

(c) "guarantor" means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or standby letter of credit or other form of credit insurance[8];

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

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

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

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

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

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

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

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

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

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

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

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

Article II – Application of the Convention as regards space assets

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

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

Article III – Application of the Convention to sales

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

Articles 3 and 4;
Article 16(1)(a)
Article 19(4);

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

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

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

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

Article IV – Sphere of application

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

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

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

(a) is in writing;

(b) relates to a space asset in respect of which the transferor has power to enter into the agreement; and

(c) enables the space asset to be identified in conformity with this Protocol.

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

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

Article VI – Representative capacities

A person may enter into an agreement or a sale, and register an international interest in, or a sale of, a space asset, in an agency, trust or other representative capacity. In such case, that party is entitled to assert rights and interests under the Convention and this Protocol. [11]

[11] This provision may need to be modified in order to bring it into line with certain technical corrections that have been made in respect of the comparable provision, Article IV, of the preliminary draft Protocol to the Convention on Matters specific to Railway Rolling Stock ("A person may, in relation to railway rolling stock, enter into an agreement, effect a registration as defined by Article 16(3) of the Convention and assert rights and interests under the Convention, in an agency, trust or representative capacity on behalf of a creditor or creditors").

Article VII – Identification of space assets

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

Article VIII – Choice of law

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

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

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

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

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

CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article IX – Modification of default remedies provisions

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

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

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

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

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

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

Article X – Modification of provisions regarding relief pending final determination

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

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

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

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

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

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

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

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

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

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

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

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

Article XI – Remedies on insolvency

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

Alternative A

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

(a) the end of the waiting period; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Alternative B

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

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

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

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

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

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

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

Article XII – Insolvency assistance

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

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

Article XIII – Modification of priority provisions

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

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

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

Article XIV – Modification of assignment provisions

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

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

Article XV – Debtor provisions

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

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

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

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

Article XVI – Limitations on remedies

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

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

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

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

Article XVII – The Supervisory Authority

1. – The Supervisory Authority shall be designated at the Diplomatic Conference to Adopt a Space Assets Protocol to the Cape Town Convention, provided that such Supervisory Authority is able and willing to act in such capacity. [18]

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

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

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

Article XVIII – First regulations

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

Article XIX – Additional modifications to Registry provisions

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

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

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

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

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

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

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

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

CHAPTER IV – JURISDICTION

Article XX – Waiver of sovereign immunity

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

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

CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS [20]

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

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

[CHAPTER VI – FINAL PROVISIONS

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

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

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

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

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

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

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

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

Article XXIII – Regional Economic Integration Organisations[22]

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

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

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

Article XXIV – Entry into force

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

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

Article XXV – Territorial units

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

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

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

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

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

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

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

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

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

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

Article XXVI – Declarations relating to certain provisions

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

(a) that it will not apply Article VIII;

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

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

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

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

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

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

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

Article XXVII – Declarations under the Convention

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

Article XXVIII – Reservations and declarations

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

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

Article XXIX – Subsequent declarations

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

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

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

Article XXX – Withdrawal of declarations

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

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

Article XXXI – Denunciations

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

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

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

Article XXXII – Review Conferences, amendments and related matters

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

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

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

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

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

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

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

Article XXXIII – Depositary and its functions

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

2. – The Depositary shall:

(a) inform all Contracting States of:

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

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

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

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

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

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

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

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

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