



**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  
Third session  
Rome, 7/11 December 2009**

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*REVISED EXPLANATORY NOTE  
ON THE BACKGROUND TO, AND  
THE REVISED DRAFT AGENDA FOR THE SESSION*

(prepared by the UNIDROIT Secretariat)

**I. BACKGROUND TO THE SESSION**

*(a) Establishment of the Committee of governmental experts*

1. The Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*)<sup>1</sup> and a Protocol thereto on Matters specific to Aircraft Equipment (hereinafter referred to as the *Aircraft Protocol*) were opened to signature in Cape Town on 16 November 2001. The Convention is designed to create a new legal regimen for the taking of security over high-value mobile equipment. For each category of such equipment covered by it the Convention is intended to be implemented by an equipment-specific Protocol. The Aircraft Protocol was the first Protocol so to implement the Convention. The Aircraft Protocol – and, therefore, the Convention as applied to aircraft objects – entered into force on 1 March 2006. On the same date the International Registry for aircraft objects also entered into operation. There are to date 32 Contracting Parties to the Convention<sup>2</sup> and 29 to the Aircraft Protocol.<sup>3</sup>

2. A second Protocol to the Convention, on Matters specific to Railway Rolling Stock (hereinafter referred to as the *Luxembourg Protocol*), was opened to signature in Luxembourg on 23 February 2007. This Protocol has not yet entered into force.

3. At its 80<sup>th</sup> session, held in Rome from 17 to 19 September 2001, the UNIDROIT Governing Council authorised the Secretariat to transmit the text of a preliminary draft Protocol to the Convention on Matters specific to Space Assets prepared by the Space Working Group (S.W.G.) to member Governments and to convene a first session of a UNIDROIT Committee of governmental experts at such time as a Steering and Revisions Committee, composed *inter alia* of Governing Council members, had had the opportunity to review the preliminary draft Protocol in the light of the Convention and the Aircraft Protocol and the results of the *ad hoc* consultative mechanism of

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<sup>1</sup> Reproduced in C.G.E./Space Pr./3/W.P. 3.

<sup>2</sup> See <http://www.unidroit.org/english/implement/i-2001-convention.pdf>.

<sup>3</sup> See <http://www.unidroit.org/english/implement/i-2001-aircraftprotocol.pdf>.

the United Nations Committee on the Peaceful Uses of Outer Space (U.N./COPUOS). The Governing Council further authorised the Secretariat to invite U.N./COPUOS members that were not UNIDROIT members, as well as the United Nations Office for Outer Space Affairs (U.N.O.O.S.A.), to take part in the work of the Committee of governmental experts.

*(b) First two sessions of the Committee of governmental experts*

4. Following the reaching by the Steering and Revisions Committee, meeting in Rome on 1 February 2002, of the conclusion that the preliminary draft Protocol was in line with the Convention and the Aircraft Protocol, a first session of the UNIDROIT Committee of governmental experts for the preparation of a draft Protocol to the Convention on Matters specific to Space Assets (hereinafter referred to as the *Committee of governmental experts*) met in Rome from 15 to 19 December 2003. A second session was held in Rome from 26 to 28 October 2004.<sup>4</sup> The current text of the preliminary draft Protocol on Matters specific to Space Assets (hereinafter referred to as the *preliminary draft Protocol*) laid before the Committee of governmental experts at its forthcoming session<sup>5</sup> is the preliminary draft Protocol as reviewed by the Committee of governmental experts at its first session, the second session having been confined to consideration of certain key policy issues.<sup>6</sup>

*(c) Key policy issues referred to intersessional work and the outcome of that referral*

5. At the conclusion of its second session,<sup>7</sup> the Committee of governmental experts referred some of the fundamental policy issues discussed by it during the session to intersessional work. In particular, first, it invited the S.W.G. to revise the working paper that it had submitted to that Committee on debtor's rights and related rights,<sup>8</sup> in close co-operation with interested Governments and taking into account the policy issues raised and drafting suggestions made with a view to the development of a new proposal for the following session of the Committee of governmental experts.<sup>9</sup> Secondly, it invited all Governments and the S.W.G. to provide the UNIDROIT Secretariat with additional information as to which services were considered to be public

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<sup>4</sup> Representatives of the following States participated in those sessions: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burkina Faso, Canada, the People's Republic of China, Colombia, the Czech Republic, France, Germany, Greece, India, Indonesia, Ireland, Italy, Japan, Kenya, Luxembourg, Malaysia, Mexico, Morocco, Nicaragua, Nigeria, the Islamic Republic of Pakistan, Portugal, the Republic of Korea, the Russian Federation, Saudi Arabia, Senegal, Slovakia, South Africa, Spain, Sweden, Syria, Thailand, Tunisia, Turkey, Ukraine, the United Kingdom and the United States of America. Representatives of the following intergovernmental Organisations also participated in these sessions: the European Commission, the European Space Agency (E.S.A.), the International Mobile Satellite Organization (I.M.S.O.), the International Telecommunication Union (I.T.U.) and U.N.O.O.S.A. Representatives of the following international non-governmental Organisations were present too: the Aviation Working Group, the European Centre for Space Law (E.C.S.L.), the European Satellite Operators Association, the International Association of Young Lawyers, the International Astronautical Federation (I.A.F.), the International Bar Association (I.B.A.), the International Institute of Space Law (I.I.S.L.), the International Law Association, the Rail Working Group and the S.W.G. The Committee of governmental experts appointed Mr S. Marchisio (Italy) as its Chairman and Mr J. Sánchez Cordero (Mexico) as First Deputy Chairman and Ms L. Shope-Mafole (South Africa) as Second Deputy Chairperson.

<sup>5</sup> Cf. C.G.E./Space Pr./3/W.P. 4.

<sup>6</sup> Namely the definition of space assets (Article I(2)(g)), debtor's rights and related rights (Article I(2)(a) and (f)), the identification of space assets and Registry considerations (Article VII), limitations on remedies (Article XVI) and the application and modification of default remedies (Articles IX(4), IX *bis*, X(5) and XVI(2)).

<sup>7</sup> Cf. Report on the session (C.G.E./Space Pr./2/Report).

<sup>8</sup> Cf. C.G.E./Space Pr./2/W.P. 4.

<sup>9</sup> Cf. C.G.E./Space Pr./2/Report, p. 4.

services in their countries and an indication as to how those services were protected, together with any comments and proposals on this issue.<sup>10</sup> Thirdly, it established a Sub-committee to develop proposals relating to the future international registration system for space assets (hereinafter referred to as the *Sub-committee on registration issues*), to focus on, first, the identification of space assets and related matters, secondly, the practical operation of the future International Registry and, thirdly, the role of the Supervisory Authority.<sup>11</sup> In addition, the S.W.G. was invited to include the detailed explanation that it had given at the session of the mechanics of a typical satellite financing transaction – including financing of the construction and assembly phases – in its revised working paper on debtor's rights and related rights.

6. A number of problems arose in the performance of these assignments. No revised working paper proved to be forthcoming from the S.W.G. on debtor's rights and related rights. Only eight Governments<sup>12</sup> responded to repeated calls from the Secretariat for information on the treatment of public service in their jurisdictions. Notwithstanding the placing by the I.T.U. of a special web forum at the disposal of members of the Sub-committee and the indication of willingness to serve on the Sub-committee on registration issues being formally expressed by 12 Governments,<sup>13</sup> seven intergovernmental Organisations<sup>14</sup> and five international non-governmental Organisations,<sup>15</sup> the representatives of only two Governments posted comments on that web forum.

(d) *Consideration of the key policy issues by Government/industry meetings*

7. Faced with these problems, the UNIDROIT Secretariat, in co-operation with the S.W.G., took the initiative of organising two Government/industry meetings designed to consider the key issues referred to intersessional work and the most appropriate means of bringing the planned Protocol to timeous completion. Both meetings attracted the attendance of a representative cross-section of Governments of the key space-faring nations and the international commercial space and financial communities,<sup>16</sup> a unique feature of these meetings being the way in which representatives of both participated on an equal footing.

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<sup>10</sup> Cf. *idem*, p. 6.

<sup>11</sup> Cf. *idem*, p. 7.

<sup>12</sup> Australia, the Czech Republic, Germany, the Philippines, Portugal, the Russian Federation, Syria and Ukraine.

<sup>13</sup> Algeria, Brazil, Canada, the Czech Republic, France, Germany, Greece, Italy, the Russian Federation, Ukraine, the United Kingdom and the United States of America.

<sup>14</sup> The European Commission, E.S.A., I.M.S.O., the I.T.U., the United Nations Commission on International Trade Law, U.N.O.O.S.A. and the World Intellectual Property Organization.

<sup>15</sup> The African Leasing Association, the E.C.S.L., the I.A.F., the S.W.G. and the I.I.S.L.

<sup>16</sup> Representatives of the Governments of the People's Republic of China, France, Germany, India, Italy, Japan, Mexico, Nigeria, the Republic of Korea, the Russian Federation, Spain, the United Kingdom and the United States of America participated in the meetings, as also representatives of ABN Amro N.V., Arianespace, the Aviation Working Group, Baker & McKenzie, BNP Paribas, the Boeing Capital Corporation, Calyon Groupe Crédit Lyonnais, Crédit Agricole S.A., Commerzbank, EADS, EADS Astrium, the European G.N.S.S. Supervisory Authority, Eutelsat Communications, Freshfields Bruckhaus Deringer, the Galileo Joint Undertaking, the German Space Agency, Hellas Sat S.A., Herbert Smith, Hispasat, Intelsat, Ltd., JSAT Corporation, Lovells, ManSat L.L.C., Marsh U.S.A. Inc., Milbank Tweed Hadley & McCloy L.L.P., the Royal Bank of Scotland, SES Astra, SES Global, Space Exploration Technologies (SpaceX), Space Systems/Loral, Inc., Telespazio, Thales Alenia Space France, Thales Alenia Space Italia, Virgin Galactic and White & Case L.L.P. A representative of U.N.O.O.S.A. also participated in the meetings, as also the Vice-Chair of the Outer Space Committee of the I.B.A., the Co-Chair of the Space Law Practice Group and a representative of Aviareto (the Registrar of the International Registry for aircraft objects).

8. The first of these meetings, hosted by the Royal Bank of Scotland in London on 24 April 2006, recognised the crucial importance of the preliminary draft Protocol being completed as timeously as possible, especially if the international commercial space and financial communities were to continue offering their expertise to the project. This was seen as particularly important in view of the significant presence at the meeting of representatives of all the key sectors in the space industry.

9. In the light of the urgency recognised in London, the UNIDROIT Secretariat, assisted by Sir Roy Goode, Adviser to the Secretariat on the Committee of governmental experts, subsequently set about seeking to move forward resolution of the key outstanding issues on its own. First, Sir Roy analysed what would be necessary, in terms of textual amendments to the preliminary draft Protocol, to bring about extension of the Convention as applied to space assets to debtor's rights and related rights. Secondly, on the basis of a questionnaire circulated among financial institutions and those advising such institutions, the Secretariat complemented the limited information it had been able to garner from Governments on the question of public service and drew up an interim report. Thirdly, judging the question of the identification of space assets for the purpose of their registration in the future International Registry for space assets as being, arguably, the most important of the issues referred to the Sub-committee on registration issues, the Secretariat circulated a questionnaire on this subject among manufacturers, launch service providers and financial institutions to complement the information that had been supplied by Governments and, on the basis of the information obtained by these two routes, drew up a further interim report.

10. As agreed at the London meeting, a further Government/industry meeting was held in New York on 19 and 20 June 2007 (hereinafter referred to as the *New York meeting*), hosted by Milbank Tweed Hadley & McCloy L.L.P. (New York), to consider the extent to which the efforts accomplished by the Secretariat since the London meeting provided a sound basis for resumption of the intergovernmental consultation process. This meeting was also seized of other documentation on the aforementioned issues, notably a memorandum on public service prepared by Messrs J. Bertran de Balanda, D. Bandet and B. Fournier-Montgieux of Herbert Smith L.L.P. (Paris), a memorandum on national restrictions on the transfer and operation of space assets prepared by Mr P.B. Larsen, Adjunct Professor, Georgetown University Law Center (Washington, D.C.) and a paper containing proposals to increase the credit value of the preliminary draft Protocol submitted by the Government of the United States of America. A number of provisional conclusions were reached at the meeting. In particular, there was recognition that, if the objective of timeous completion identified as crucial in London were to be realised, it was desirable that the sphere of application of the preliminary draft Protocol, hitherto delimited broadly so as to encompass likely future developments in the financing of space assets, be narrowed so as to concentrate essentially on the satellite, in its entirety, acknowledged as representing 80% of the space assets covered by the preliminary draft Protocol currently the subject of the type of financing envisaged by the Convention. Secondly, there was recognition that, while the intersessional work presented to the meeting as amplified by the discussions there constituted a sound basis for resumption of the intergovernmental consultation process, it would be prudent first to build broader consensus around the provisional conclusions reached in New York, so as not to prejudice the chances of success of such resumption. Thirdly, the representatives of the international commercial space and financial communities, again present in significant numbers in New York, called upon Governments to give a lead in the following stages of moving the process forward, as a justification for their continuing involvement.

(e) *Building of consensus by the Steering Committee around the conclusions reached at the Government/industry meetings*

(i) Establishment of the Steering Committee

11. In the wake of the New York meeting, the Secretariat conducted wide-ranging consultations with representatives of the Governments of the key space-faring nations and leading representatives of the international commercial space and financial communities having participated in that meeting with a view to seeking, first, confirmation as to their support for following up on the work begun in London and New York and, secondly, their opinion as to the most appropriate means of doing so. There was overwhelming support among those sounded by the Secretariat for the work begun in London and New York being carried through to its conclusion and it was on the basis of these consultations that the Secretariat proposed to the UNIDROIT General Assembly, at its 61<sup>st</sup> session, held in Rome on 29 November 2007, that it establish a Steering Committee, under the auspices and control of the Secretariat and open to both the Governments and the representatives of the international commercial space and financial communities that had participated in the two Government/industry meetings, for the purpose of building consensus around the provisional conclusions reached by the New York meeting in such a way as to permit early resumption of the intergovernmental consultation process and timeous completion of the preliminary draft Protocol. This proposal was endorsed by the General Assembly.

12. The Steering Committee held two meetings, the first in Berlin, hosted by the Government of Germany, from 7 to 9 May 2008 and the second in Paris, hosted by the European Centre for Space Law (E.C.S.L.), on 14 and 15 May 2009. At its first meeting the Steering Committee set up two sub-committees, one to consider the issue of default remedies in relation to components and the other to develop options on public service. The former met in Berlin, at the invitation of Commerzbank, on 31 October and 1 November 2008 and the latter in Paris, at the invitation of Crédit Agricole S.A., on 13 May 2009. As with the Government/industry meetings, all these meetings attracted the attendance of a representative cross-section of Governments of the key space-faring nations and the international commercial space and financial communities,<sup>17</sup> with everyone again participating on an equal footing.

(ii) Conclusions reached at the first meeting of the Steering Committee

13. At its first meeting the Steering Committee focussed on the conclusions that had been reached at the New York meeting on the key outstanding issues referred to intersessional work,<sup>18</sup> together with certain related questions that had arisen out of the discussion of those issues, namely, first, the sphere of application of the preliminary draft Protocol - and, in particular, the question of the coverage of components as a category of space asset - secondly, the question of the most appropriate criteria to be employed for identifying the different categories of space asset encompassed by the preliminary draft Protocol for the purposes of the future International Registry

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<sup>17</sup> Representatives of the Governments of Canada, the People's Republic of China, France, Germany, Greece, Italy, Japan, Mexico, Nigeria, the Russian Federation, South Africa, Spain, the United Kingdom and the United States of America participated in the meetings of the Steering Committee and its sub-committees, as also representatives of Arianespace, Baker & McKenzie, the Boeing Capital Corporation, Coface, Crédit Agricole S.A., Commerzbank, EADS, EADS Astrium, the European G.N.S.S. Supervisory Authority, the German Space Agency, Gide Loyrette Nouel, JSAT Corporation, ManSat L.L.C., Marsh S.A., SCOR Global P & C, SpaceCo, the Space Communication Corporation, Space Exploration Technologies (SpaceX), Telespazio, Thales Alenia Space France and Thales Alenia Space Italia. The meetings were also attended by representatives of E.S.A. and the E.C.S.L., as well as by the Co-Chair of the Space Law Practice Group, a representative of Aviareto and other experts attending in their personal capacity.

<sup>18</sup> Cf. § 5, *supra*.

and, thirdly, the question of the most appropriate balance to be struck in the preliminary draft Protocol on the issue of public service.

14. Consensus was reached across a wide range of these issues. On the question of the sphere of application of the preliminary draft Protocol, it was agreed that the categories of space asset to be covered should be defined on the basis of their falling within a list of "principal objects" and being "uniquely identifiable" and "capable of independent control". It was recommended that future space developments be accommodated by a procedure to be incorporated in the preliminary draft Protocol permitting the updating of registration requirements.<sup>19</sup> On the question as to whether the Convention as applied to space assets should extend to debtor's rights and related rights, it was agreed that it was appropriate for it so to extend. On the related question as to how such rights were to be accommodated in the future International Registry for space assets, there was agreement that, being inextricably tied to the space asset in question, they should be recorded as part of the registration and not be themselves susceptible to registration. It was further agreed that the transferability of such rights should be determined by the law pursuant to which they were granted.<sup>20</sup> On the question of the criteria to be employed for the identification of space assets, it was agreed that, along the lines of the solution enshrined in the Luxembourg Protocol,<sup>21</sup> a distinction should be drawn between those identification criteria required for the constitution of an agreement - for which a generic description of the asset would be sufficient - and those identification criteria required for registration in the future International Registry - for which unique identification of the asset would be required.<sup>22</sup> It was further agreed that identification criteria for registration purposes should not be spelled out only in the regulations to be promulgated under the future Protocol but that certain basic identification criteria should be set forth in the preliminary draft Protocol itself, to be supplemented by the future regulations.<sup>23</sup>

15. At the conclusion of the meeting, the Steering Committee invited the Co-chairmen of the Drafting Committee of the Committee of governmental experts (hereinafter referred to as the *Drafting Committee*), Canada and the United Kingdom (in the persons of Mr J.M. Deschamps and Sir Roy Goode respectively), to prepare an alternative version of the preliminary draft Protocol designed to illustrate to the Committee of governmental experts the way in which it would propose resolving the key policy issues referred to intersessional work by that Committee at its second session and those related issues that had arisen during consideration of the former (hereinafter referred to as the *alternative version*), with the idea of this alternative version being laid before the Committee of governmental experts, once reconvened, side by side with the preliminary draft Protocol as it had emerged from the first session of the Committee of governmental experts, leaving the latter free to decide which aspects of the two to adopt.

(iii) Establishment of sub-committees of the Steering Committee

16. On one issue, the question of limitations on the exercise of default remedies in relation to components, as mentioned above, the Steering Committee, however, failed to reach consensus in Berlin and, accordingly, set up a Sub-committee to find a solution agreeable to all.<sup>24</sup> On another, the question of public service, again as mentioned above, the Steering Committee considered the most appropriate solution to be to invite another Sub-committee to develop options for solutions capable of being laid before the Committee of governmental experts.<sup>25</sup>

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<sup>19</sup> Cf. Summary report on the meeting (Study LXXIIJ - Doc. 14), p. 10.

<sup>20</sup> *Idem*, p. 16.

<sup>21</sup> Cf. Article V of the Luxembourg Protocol.

<sup>22</sup> Cf. Study LXXIIJ - Doc. 14, p. 18.

<sup>23</sup> *Idem*, p. 19.

<sup>24</sup> *Idem*, p. 12.

<sup>25</sup> *Idem*, p. 25.

(a) *Sub-committee on default remedies in relation to components*

17. At its meeting, the Sub-committee on default remedies in relation to components discussed a proposal by the Government of Germany and the German Space Agency that would limit a creditor's right to exercise any default remedies in a space asset where this would adversely affect the interests of another creditor in an independent space asset. While consensus was not reached on a specific solution to this issue, several useful conclusions did emerge. First, it was agreed that limitations on default remedies should only apply to those independent space assets that were physically linked (such as a satellite and one of its transponders) as opposed to those assets that were merely functionally linked (such as several independent satellites operating in unison to carry out a single function or purpose).<sup>26</sup> The Governments of Germany and the United States of America were invited to prepare a joint proposal to reflect this agreement, using the original proposal tabled by the Government of Germany and the German Space Agency as a starting point.<sup>27</sup> Secondly, some reservations were expressed in respect of the conclusion reached by the Steering Committee at its first meeting that components should be covered by the preliminary draft Protocol - dealt with by way of a modified definition of space asset which covered the components in question as "objects ... capable of being independently controlled" - and it was, therefore, agreed that the Steering Committee should reconsider whether components should be so covered.<sup>28</sup>

(β) *Sub-committee on public service*

18. A number of conclusions were reached by the Sub-committee on public service at its meeting. First, it was recommended that a menu of options for addressing the issue of public service should be incorporated into the preliminary draft Protocol, leaving Contracting States the possibility of choosing among these options, by way of declaration, at the time of ratification or accession, according to the needs of their individual national laws.<sup>29</sup> Secondly, it was decided that the term "public service" should not be defined within the preliminary draft Protocol but rather that each Contracting State should be free to define, also by declaration, which services were to be considered of a public nature under its national law.<sup>30</sup>

(iv) *Conclusions reached at the second meeting of the Steering Committee*

19. At its second meeting, the Steering Committee, first, confirmed the conclusion reached at its first meeting as to the inclusion of components within the preliminary draft Protocol - albeit only those components capable of "independent ownership, use or control"<sup>31</sup> - secondly, qualified the conclusion reached at its first meeting regarding the extension of the Convention as applied to space assets to related rights - deciding that, because related rights would only rarely be transferred, it would be inappropriate for the preliminary draft Protocol to provide for extension of the Convention as applied to space assets to such rights and that it would be sufficient for it to impose a duty on a defaulting debtor/assignor to co-operate, to the fullest extent possible, in either the transfer of a licence to a creditor/assignee or, where this was not permitted, the termination of

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<sup>26</sup> Cf. Summary report on the meeting (Study LXXIJJ - Doc. 15), p. 7.

<sup>27</sup> *Idem.*

<sup>28</sup> *Idem.*

<sup>29</sup> Cf. Summary report on the meeting (Study LXXIJJ - Doc. 16), pp. 7 and 8. A list of these options is to be found in the Explanatory Memorandum on provisions of the alternative text implementing policy issues referred to and examined by the Steering Committee, prepared by Professor Sir Roy Goode (United Kingdom) and Mr Michel Deschamps (Canada) (C.G.E./Space Pr./3/W.P. 5 rev., § 9).

<sup>30</sup> *Idem*, p. 8.

<sup>31</sup> Cf. Summary report on the meeting (Study LXXIJJ - Doc. 17), pp. 6-8.

its own licence and the procuring of a new licence for the creditor/assignee<sup>32</sup> – and, thirdly, approved the proposals made by the Sub-committee on public service, adding two proposals of its own to the menu of options that that Sub-committee had come up with.<sup>33</sup>

20. Even if it had not proven possible for the informal negotiations that had taken place since the meeting of the Sub-committee on default remedies in relation to components to yield the joint proposal requested, the Steering Committee noted that good progress had been made, with agreement being reached on the desirability of three principles being reflected in such a joint proposal, namely, first, that the creation of an international interest in a space asset, such as a satellite, and in a physically linked component, such as a transponder, should, as far as possible, follow the concept used in the Aircraft Protocol for distinguishing between the airframe and aircraft engines, secondly, that there was no problem regarding the enforcement of a creditor's rights where there was no interference with the rights of creditors in a physically linked space asset and, thirdly, that, while steps should not in general be taken that would adversely affect the rights of a creditor in a physically linked asset, a creditor should be free to exercise his rights in an asset if his interest had been registered prior to the interest of another creditor of a physically linked asset.<sup>34</sup>

21. In the light of the progress achieved in the finding of solutions to the key policy issues referred to intersessional work by the Committee of governmental experts at the conclusion of its second session, the Steering Committee concluded that the time was ripe for the reconvening of the Committee of governmental experts.<sup>35</sup> It decided that the alternative version should be updated in the light of the conclusions reached at its meeting with a view to being laid before the Committee of governmental experts at its third session.<sup>36</sup> It was, furthermore, agreed that the informal negotiations should continue with a view to a joint proposal being laid before the Committee of governmental experts on default remedies in relation to components.<sup>37</sup>

## II. BUSINESS TO BE ACCOMPLISHED AT THE SESSION

### (a) *Basic texts (item No. 3 on the draft agenda)*

22. The main business to be accomplished by the Committee of governmental experts at its forthcoming session is listed in the draft agenda.<sup>38</sup> The principal item on the draft agenda is consideration of the preliminary draft Protocol as it emerged from the first session of the Committee of governmental experts<sup>39</sup> and the alternative version.<sup>40</sup> The text of the preliminary draft Protocol as reviewed by the Committee of governmental experts must, clearly, be the basic text before that Committee at its forthcoming session, as the current expression of its intent; as indicated above,<sup>41</sup> however, the alternative version will be as important a working tool for the Committee of governmental experts, designed as it is to show the Committee of governmental experts the Steering Committee's prescriptions for resolving those key policy issues referred to intersessional work by the Committee of governmental experts at its second session and those related questions that had arisen during consideration of those issues. In order to facilitate the work of the Committee of governmental experts, the Secretariat has prepared a document

<sup>32</sup> *Idem*, pp. 11 and 12.

<sup>33</sup> *Idem*, pp. 9 and 10.

<sup>34</sup> *Idem*, pp. 5 and 6.

<sup>35</sup> *Idem*, p. 15.

<sup>36</sup> *Idem*.

<sup>37</sup> *Idem*.

<sup>38</sup> C.G.E./Space Pr./3/W.P. 1 rev.

<sup>39</sup> C.G.E./Space Pr./3/W.P. 4.

<sup>40</sup> C.G.E./Space Pr./3/W.P. 5 rev.

<sup>41</sup> Cf. § 15, *supra*.

comparing the current text of the preliminary draft Protocol and the alternative version, in which the amendments that would result to the former were effect to be given to the latter are highlighted (proposed additions to the current text being underlined in the alternative version and proposed deletions being crossed out).<sup>42</sup>

23. While two other documents are listed on the draft agenda (namely, first, the report of the Sub-committee on registration issues<sup>43</sup> and, secondly, a document listing technical amendments – additional, that is, to the amendments on policy-related issues proposed by the Steering Committee – proposed to the alternative version by the Co-chairmen of the Drafting Committee) for consideration by the Committee of governmental experts at its forthcoming session, the Secretariat would submit that the importance of consensus being reached at the forthcoming session on the key outstanding policy issues that were the subject of the specific referral to intersessional work by the Committee of governmental experts at its second session means that it will be essential for the Committee of governmental experts to exhaust its consideration of these policy issues, together with the related questions that arose during consideration thereof, before moving on to tackle any other issues.

24. The policy issues in question and, therefore, the issues to be tackled by the Committee of governmental experts, in the Secretariat's opinion, as a matter of priority are, of course, identified in the explanatory memorandum to the alternative version. It may, however, be helpful for the Secretariat to list the individual provisions of the alternative version containing the Steering Committee's prescriptions for each policy issue. Its prescriptions on the matter of the sphere of application are to be found in Article I(2)(e), (j) and (k) of the alternative version.<sup>44</sup> Its prescriptions on the matter of debtor's rights and related rights are to be found in Articles I(2)(a), (f), (h) and (i), II(1), V, VI, VII, VIII, IX, X, XI, XII and XIX of the alternative version.<sup>45</sup> As has been explained elsewhere in this explanatory note,<sup>46</sup> the alternative version does not yet contain language reflecting the Steering Committee's conclusions on the question of default remedies in relation to components: the informal negotiations between the Governments of Germany and the United States of America with a view to the formulation of a joint proposal reflecting the conclusions of the Sub-committee of the Steering Committee on default remedies in relation to components continue. The results of these negotiations will, however, fall to be considered under Article XVIII(4) of the alternative version. The Steering Committee's prescriptions on the matter of public service are to be found in a footnote to Article XXVII[(3)] of the alternative version. Its prescriptions on the issue of the criteria to be employed for the identification of space assets - which must, however, be considered tentative in that they are, necessarily, subject to the work to be accomplished by the Sub-committee on registration issues at its meeting prior to the forthcoming session of the Committee of governmental experts – are to be found in Article XVI of the alternative version.<sup>47</sup>

*(b) Other documents to be considered (items No. 4 and No. 5 on the draft agenda)*

25. Once these issues have been satisfactorily dealt with by the Committee of governmental experts, the Secretariat would submit that it will be for that Committee to turn its attention to the report on the work of the Sub-committee on registration issues and the document containing technical amendments to the alternative version proposed by the Co-chairmen of the Drafting Committee.

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<sup>42</sup> C.G.E./Space Pr./3/W.P. 6 rev.

<sup>43</sup> Cf. § 5, *supra*.

<sup>44</sup> Cf. C.G.E./Space Pr./3/W.P. 5 rev., §§ 15-21.

<sup>45</sup> *Idem*, §§. 22-32.

<sup>46</sup> Cf. §§ 20 and 21, *supra*.

<sup>47</sup> Cf. C.G.E./Space Pr./3/W.P. 5 rev., §§ 33.and 34.

26. It was decided by the Committee of governmental experts at its second session that the Sub-committee on registration issues should work by electronic means. Unfortunately, as has been noted earlier,<sup>48</sup> serious problems arose in the practical implementation of this decision. It was for this reason that the Secretariat judged it opportune, in the wake of the Government/industry meeting held in London, to include the question of the criteria to be employed for the identification of space assets – one of the issues specifically referred to the Sub-committee on registration issues – among the key outstanding policy issues to be dealt with at the New York meeting and by the Steering Committee. And, as reported above, a certain amount of progress on this issue has been registered in these fora.<sup>49</sup> Moreover, on another of the questions referred to the Sub-committee on registration issues, namely the role of the Supervisory Authority of the future International Registry for space assets, there is a significant development to report: at the New York meeting the representative of Aviareto officially announced that that body was interested in also running the future International Registry for space assets, which, given the limited number of space assets likely to be registrable in the initial stages of the life of the future Protocol, might be expected to permit important economies of scale, that might potentially also be repeated were a similar solution to be adopted in respect of the Supervisory Authority. This expression of interest was confirmed at the second session of the Steering Committee.

27. It was recognised by the Steering Committee that, given the failure of the working method decided upon by the Committee of governmental experts at its second session for the Sub-committee on registration issues, it was desirable for that Sub-committee actually to meet.<sup>50</sup> Although it has not yet proven possible for such a meeting to be organised, it is envisaged that it will be held in Rome in advance of the forthcoming session of the Committee of governmental experts, either in October or November 2009. Consultations are underway at the time of the preparation of this explanatory note with a view to the establishment of suitable dates. As requested by the Committee of governmental experts at its second session, a report will be submitted by the Secretariat to that Committee at its forthcoming session on the work accomplished by the Sub-committee on registration issues.

(c) *Organisation of work: the Drafting Committee (item No. 2 on the draft agenda)*

28. One of the items on the draft agenda for the forthcoming session of the Committee of governmental experts is the organisation of its work. It is envisaged, in particular, that the Drafting Committee will be meeting at the forthcoming session to implement decisions taken by the Committee of governmental experts. The Secretariat would simply, at this stage, therefore, recall that the Drafting Committee was established at the first session of the Committee of governmental experts with the delegations of Canada, the People's Republic of China, France, Nigeria, Tunisia, the United Kingdom and the United States of America as members. The Drafting Committee elected Mr B.J. Welch (United Kingdom) and Mr J.M. Deschamps (Canada) as its Co-chairmen.<sup>51</sup>

(d) *Any other business: salvage interests (item No. 8 on the draft agenda)*

29. Another item on the draft agenda is "[a]ny other business". The Secretariat in this context would simply inform the Committee of governmental experts that, pursuant to a proposal tabled at the first meeting of the Steering Committee, an informal working group, external to the Steering Committee, was set up to look into salvage interests as these related to the preliminary draft

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<sup>48</sup> Cf. § 6 *in fine, supra*.

<sup>49</sup> Cf. § 14, *supra*.

<sup>50</sup> Cf. Summary report on the second meeting of the Steering Committee (*op. cit.*), p. 16.

<sup>51</sup> Cf. C.G.E./Space Pr./1/Report, § 9.

Protocol with a view to the development of a proposal for consideration by the Committee of governmental experts.<sup>52</sup>

*(e) Future work (item No. 6 on the draft agenda)*

30. The Secretariat would submit that, depending on the outcome of the forthcoming session of the Committee of governmental experts, the latter might be reconvened for a final one-week session, again in Rome, in Spring 2010, for finalisation of a preliminary draft Protocol capable of being laid before the Governing Council for advice and consent to the convening of a diplomatic Conference for the adoption of a draft Protocol.

31. In this connection, it is to be recalled that, at the 60<sup>th</sup> session of the UNIDROIT General Assembly, held in Rome on 1 December 2006, a member State expressed its willingness to consider hosting such a Conference, provided that the preliminary draft Protocol was concluded successfully.<sup>53</sup> That State would thus have the opportunity of confirming its willingness to host the Conference at the final session of governmental experts, which ought to enable the Conference, in principle, to be held either towards the end of 2010 or early in 2011.

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<sup>52</sup> Cf. Study LXXIIJ - Doc. 14, pp. 26 and 27.

<sup>53</sup> Cf. A.G. (60) 7, p. 5.