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**REPORT OF THE DIPLOMATIC CONFERENCE FOR THE ADOPTION OF THE DRAFT
PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS**
(DCME-SP-Report)

(Berlin, 27 February / 9 March 2012)

27 FEBRUARY 2012

FIRST MEETING OF THE PLENUM

Item No. 1 on the provisional Agenda: opening of the Conference

1. *Mr J.A. Estrella Faria (Secretary-General of the International Institute for the Unification of Private Law (UNIDROIT)), in the capacity of Secretary-General and Temporary President of the diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (hereinafter referred to as the *draft Protocol*), opened the Conference at the Federal Foreign Office in Berlin at 10.15 a.m.*
2. *Dr B. Grundmann (State Secretary, Federal Ministry of Justice) emphasised the need for an international regulatory framework to provide essential legal certainty for the international commercial space sector. In particular, she recalled the success of the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Cape Town Convention*) and the Protocol to the Cape Town Convention on Matters specific to Aircraft Equipment (hereinafter referred to as the *Aircraft Protocol*), one of the most successful international legal regimes of the past decade, noting in particular the high number of ratifications and the decrease in acquisition costs.*
3. *Mr F.J. Kremp (Deputy Director-General responsible for Legal and Consular issues including Migration, Federal Foreign Office) noted the economic and social importance of the draft Protocol as providing another non-obligatory option for the financing of space assets. He noted that adoption of the draft Protocol would help further to open up space markets, which had previously mostly been the prerogative of Governments.*
4. *Dr S. Halldorn (Director-General, Technology Policy, Federal Ministry of Economics and Technology) noted that the commercial space sector needed new and innovative mechanisms for financing space assets to stimulate competition, which would lead, in turn, to more innovation and creativity in this sector. He recalled in particular the potential benefits that*

could be passed on to small- and medium-sized enterprises, which constituted an indispensable basis for the development of the space industry, through an instrument like the draft Protocol.

5. *Mr Estrella Faria*, having expressed his gratitude to the Government of the Federal Republic of Germany for hosting the diplomatic Conference, drew attention to the similarity of the provisions of the draft Protocol to those of the Aircraft Protocol and the Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock (hereinafter referred to as the *Luxembourg Protocol*). He stressed that the objective of the adoption of the draft Protocol was to provide a uniform and predictable legal regimen that would facilitate asset-based financing for space assets. He noted that, in the light of the great success of the Aircraft Protocol and its positive effects on the relevant market, it was to be expected that the draft Protocol would also contribute to the growth of the international commercial space and financial communities. Mr Estrella Faria declared the Conference formally opened. He informed the Conference that Mr M.J. Stanford (Deputy Secretary-General of UNIDROIT) would serve as Executive Secretary of the Conference, Ms M. Schneider (Senior Officer of UNIDROIT) as Deputy Secretary and Mr D.A. Porrás (Associate Officer of UNIDROIT) as Assistant Secretary.

Item No. 2 on the provisional Agenda: adoption of the Agenda by the Conference

6. The provisional Agenda (DCME-SP - Doc.1) was adopted as the Agenda of the Conference (Cf. Appendix I).

Item No. 3 on the Agenda: adoption of the Rules of Procedure by the Conference

7. The provisional Rules of Procedure of the Conference (DCME-SP-Doc.2) were adopted by as the Rules of Procedure of the Conference.

Item No. 4 on the Agenda: election by the Conference of the President and the Vice-Presidents of the Conference

8. One delegation nominated Mr J.H.E. Kronke (Germany) to serve as President of the Conference. This proposal was duly seconded and the Conference elected Mr Kronke President. *Mr Kronke* expressed his gratitude to the Conference and his appreciation to the German Government for hosting the diplomatic Conference.
9. It was agreed that time should be allowed for informal consultations on the Vice-Presidents of the Conference.

Item No. 6 on the Agenda: election by the Conference of the Chairman of the Commission of the Whole

10. One delegation nominated Mr S. Marchisio (Italy) to serve as Chairman of the Commission of the Whole, notably in the light of his previous role as Chairman of the Committee of governmental experts for the preparation of the draft Protocol. Another delegation seconded this proposal and the Conference elected Mr Marchisio Chairman.
11. *The newly appointed Chairman of the Commission of the Whole* addressed the Conference, welcoming all participants and expressing his gratitude to the German Government for hosting the diplomatic Conference.
12. *The President* adjourned the meeting at 11 a.m.

FIRST MEETING OF THE COMMISSION OF THE WHOLE**Item No. 8 on the Agenda: consideration of the draft Protocol**

13. *The Chairman* opened the first meeting of the Commission of the Whole at 11.40 a.m. Sir Roy Goode (United Kingdom) was appointed Reporter.
14. It was agreed that the Commission of the Whole should first hold a general exchange of views on the draft Protocol.
15. Several delegations noted that the ultimate purpose of the drafting process was to develop a text that was both legally and technically sound. But, in view of the significant changes that had been made to the draft Protocol over the course of the intergovernmental negotiations, those delegations could no longer support adoption of the draft Protocol. In particular, they referred to the addition of a further supranational layer of legal regulations to space financing increasing, rather than decreasing the cost of such financing. One of these delegations further indicated that asset-based financing was not an approach typically employed for the financing of space projects and that the draft Protocol did not address any existing problems faced by the commercial space sector. Finally, one of these delegations expressed some concern regarding the interaction of the draft Protocol with the United Nations (U.N.) Convention on International Liability for Damage Caused by Space Objects and its incompatibility with current International Telecommunication Union practice in respect of the transfer of ownership.
16. One of the aforementioned delegations was of the view that the draft Protocol should be significantly modified in order to address the concerns of both its Government and its commercial space sector (cf. DCME-SP - Doc. 6 Add. 2).
17. Another such delegation drew attention to the concerns expressed by the commercial space sector, noting in particular that its Government had always supported development of commercial space activities as a matter of national policy. This delegation, however, noted that the concerns of industry must be given due consideration in order to secure the successful completion of the draft Protocol.
18. On the other hand, the vast majority of the delegations taking the floor expressed the view that, while there were still some technical issues to be resolved, the draft Protocol in principle provided a tool that could greatly benefit the development of the commercial space sector through asset-based financing, in particular in the emerging and developing worlds and that it was important for the Conference to complete the work that it had been mandated to accomplish, namely to finalise the draft Protocol.
19. In this context, it was, in particular, pointed out that at the conclusion of the fifth session of the Committee of governmental experts there was consensus that it be recommended to the Governing Council of UNIDROIT that the text of the draft Protocol was ripe for transmission to a diplomatic Conference for adoption. The draft Protocol, it was added, was an optional instrument and was not obligatory for those parties not wishing to avail themselves of asset-based financing and that the equivalent instrument in the aviation sector, the Aircraft Protocol, had been a tremendous success and that there was no reason why the same should not be expected of the draft Protocol.
20. One delegation expressed the view that other satellite operators around the world that did not oppose the draft Protocol could greatly benefit from such a new mechanism. In addition, adoption of the draft Protocol would attract commercial financing to fields that hitherto had been predominantly supported by States.

21. Another delegation expressed the view that the Conference should look to future market perspectives. Whilst aware of the need duly to consider the aspects of the draft Protocol that had attracted criticism, this delegation was in favour of moving to adoption of the draft Protocol at the Conference.
22. Yet another delegation noted the particular usefulness of the draft Protocol as a means of remedying the absence of an international legal framework suitable for space commerce, especially to promote the efforts of those countries wishing to engage in outer space activities for the first time.
23. *The Chairman* adjourned the meeting at 1 p.m.

SECOND MEETING OF THE COMMISSION OF THE WHOLE

Item No. 8 on the Agenda: consideration of the draft Protocol (continued)

24. *The Chairman* opened the meeting at 3.15 p.m.
25. *The Reporter* provided an overview of the key elements of the draft Protocol. He both highlighted the background to the adoption of the Cape Town Convention and the subsequent Protocols, namely the Aircraft Protocol and the Luxembourg Protocol, and made some introductory remarks on the definitions provided in the draft Protocol, in particular focussing on those which might be the subject of discussion, such as the definition of "space asset".

Re: Article I – Defined terms

Article I(1)

26. This paragraph was adopted without amendment.

Re: Article I(2)

27. The order in which the definitions appeared was questioned by some delegations, that noted that, while the alphabetical order found in the English text was logical, it did not translate into other languages; in particular, it was noted that the French text was not in alphabetical order, as the sub-paragraphs retained the order employed in the English text. However, in the light of the fact that the Convention and the other two Protocols adopted to date had all employed the alphabetical order of the definitions found in the English text, it was agreed that the same approach should be retained in the draft Protocol.

Re: Article I(2)(a): definition of "debtor's rights"

28. It was submitted by one delegation that the definition of the term "debtor's rights" should be clarified in order to facilitate consistent interpretations under both Civil and Common law. This delegation felt that "debtor's rights" should cover rights arising by reason "of the possession, disposition or operation of a space asset, including insurance proceeds following the loss of the asset". The definition should, however, cover only those rights that were capable of being disposed of by the debtor, which would exclude, *inter alia*, licences granted in relation to the asset.

Re: Article I(2)(b): definition of "guarantee contract"

29. It was proposed by one delegation that the definition of "guarantee contract" be deleted, in particular because of the different meanings given to the term "garantie" in French, which might result in confusion.

Re: Article I(2)(c): definition of "guarantor"

30. There were no comments on this definition. It was left open for further discussion in the context of the consideration of Article I(2)(b).

Re: Article I(2)(d): definition of "insolvency related event"

31. This paragraph was adopted without amendment.

Re: Article I(2)(e): definition of "licence"

32. One delegation proposed deletion of the words "in conformity with the applicable law" appearing in square brackets. It was so agreed.

Re: Article I(2)(f): definition of "obligor"

33. It was suggested by one delegation that the language of this definition required clarification in the French text.

Re: Article I(2)(g): definition of "primary insolvency jurisdiction"

34. This paragraph was adopted without amendment.

Re: Article I(2)(h): definition of "revenue salvage"

35. It was agreed that discussion of this definition, as a matter of concern to insurers, should be postponed (cf. §§ 77, 158 and 251-253, *infra*).

Re: Article I(2)(i): definition of "rights assignment"

36. This paragraph was adopted without amendment.

Re: Article I(2)(j): definition of "rights reassignment"

37. *The Reporter* drew attention to the question of whether only rights granted by contract should be the subject of this definition, noting in particular that such a reassignment would be carried out automatically under Article XII(4), and suggested that the Drafting Committee expand the definition of "rights reassignment" to reflect that provision too.

Re: Article I(2)(k): definition of "space"

38. It was agreed that the word "and" at the end of this provision should be considered as an unintended error and should be deleted. With that amendment, this definition was adopted.

Re: Article I(2)(l): definition of "space asset"

39. It was proposed by one delegation, which emphasised the need to narrow down and simplify the definition of "space asset", that this definition be amended so that only an asset "in

space or which has been the subject of an irreversible attempted launch” should fall within the sphere of application of the draft Protocol. That delegation also proposed that the draft Protocol should not apply to components.

40. In response to this proposed amendment, some delegations expressed the view that this proposal was worth considering but that time should be allowed for the necessary consultations.
41. Other delegations, however, noted that, in principle, they did not feel that such an amendment was appropriate, notably since, first, the definition of “space asset” should not exclude objects that were under construction on earth, in that it would be necessary for the draft Protocol to apply to pre-launch financing, and, secondly, that components should be retained within the sphere of application of the draft Protocol, in particular because the exclusion of components might limit the usefulness of the draft Protocol for small operators.
42. It was agreed that the proposed amendment should remain open pending consultations (cf. §§ 60-63, *infra*).

Re: Article I(2)(m): definition of “title salvage”

43. It was agreed that discussion of this definition, as a matter of concern to insurers, should be postponed (cf. §§ 77, 158 and 251-253, *infra*).

Re: Article I(3)

44. One delegation proposed an amendment to Article I(3) with a view to transforming the reference to Article 1(n) of the Convention into a new provision, while, for the purpose of Article 43 of the Convention, it was proposed that Article I(3) should not be modified. For the purpose of Article 1(n), i.e. for internal transactions, however, there should only be one State that could be identified as the State on the territory of which an object or space asset was situated.
45. Some delegations supported this proposal, in particular because such an amendment would provide clarification on jurisdiction over a space asset in the context of Article I(3).
46. Other delegations expressed concern over the relationship under Article I(3)(a) between the term “space asset” as used in the draft Protocol and the term “space object” as used in the U.N. Space Treaties.
47. It was agreed that this proposal should be the subject of further consultation (cf. §§ 64, 245-246, *infra*).
48. *The Chairman* adjourned the meeting at 6 p.m.

SECOND MEETING OF THE PLENUM

Item No. 5 on the Agenda: establishment by the Conference of the Credentials Committee, the Commission of the Whole, the Final Clauses Committee, the Drafting Committee and other Committees as necessary

49. *The President* opened the meeting at 6.01 p.m. and, following consultations, announced that the Credentials Committee was established by the Conference in the following membership: Burkina Faso, France, Germany, Japan and the Russian Federation.

50. *The President* adjourned the meeting at 6.05 p.m.

28 FEBRUARY 2012

THIRD MEETING OF THE COMMISSION OF THE WHOLE

Item No. 8 on the Agenda: consideration of the draft Protocol (continued)

51. *The Chairman* opened the meeting at 9.45 a.m.
52. He invited the delegations that had not expressed their general views on the previous day to make any general statements they might wish to address to the Commission of the Whole.
53. One delegation, whilst appreciative of the idea of harmonising laws to support the space industry, considered that it was also important duly to consider the views put forward by industry, in particular with respect to Article XXVII, regarding limitations on remedies in respect of public services. It was stressed that consistency with the I.T.U. regulations and U.N. practice was of paramount importance.
54. Another delegation drew attention to the *raison d'être* of the draft Protocol, namely the objective of reducing the cost of financing of space projects through a uniform set of rules that responded to the needs of the commercial space sector. It was suggested that consideration might be given to the possibility of the inclusion of additional measures which might help to achieve a more balanced approach. It was felt that such a balance could be struck by expanding the benefits that were provided to debtors. This delegation was of the view that the draft Protocol lacked specific provisions that would directly benefit debtors or protect their rights in such a way as to result in secure exposure discounts. The same delegation also drew attention to the concerns that had been expressed regarding the broad definition of "space asset" and the absence of a definition of public service. Nevertheless, the delegation believed that these concerns could be overcome through a mutually acceptable compromise which would allow for adoption of the draft Protocol.
55. Still another delegation highlighted the need for adoption of the draft Protocol as a practical reference tool for policy decision-making, in particular for the entry into, and participation in space activities. It was felt that the draft Protocol was a simple user-friendly instrument that could overcome barriers to a State's active participation in the commercial space market, a point that was confirmed by another delegation.
56. These delegations also expressed their appreciation of the invaluable contributions made by satellite operators to the work on the draft Protocol.
57. One delegation recalled that there was a need for examination of certain issues regarding State responsibility under Article 6 of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies (hereinafter referred to as the *Outer Space Treaty*), a matter of particular concern for Contracting States to that treaty. In addition, it was felt to be imperative that the draft Protocol take into account existing regulations and practices regarding space debris mitigation and export control of sensitive technology. Furthermore, it was proposed that more precise wording was needed with regard to the transfer of licences, notably in respect of the requisite State consent. This delegation proposed that Articles IV(4), V(2), IX, X(1), 19 and XX(4) be made the subject of particular examination in this regard. This proposal was supported and it was proposed that an informal working group be established to examine these Articles (hereinafter referred to as the *Informal Working Group*) (cf. §§ 78, 91-92, 108, 125, 134, 153-155, 167, 237-238 and 269, *infra*).

58. The Informal Working Group comprised, but was not limited to, the delegations of Canada, the People's Republic of China, France, Germany, India, Luxembourg, the Russian Federation, Saudi Arabia and South Africa. It was agreed that the Secretary-General should co-ordinate the first meeting of the Informal Working Group.

59. *The Chairman* resumed the discussion of specific provisions.

Re: Article I(2)(l): definition of "space asset" (continued) (cf. §§ 39-42, supra)

60. One delegation suggested that the definition of "space asset" should be accompanied by a reference to "any other future inventions".

61. One delegation proposed deleting the square brackets around the words "in respect of which a registration may be effected in accordance with the regulations" in sub-sub-paragraph (i), notably because it was felt that the draft Protocol should only apply to those space assets that were capable of being registered and searched, two aspects seen as fundamental for the establishment of priority in respect of an international interest. This proposal was supported by several delegations.

62. However, some other delegations proposed deleting the words in square brackets themselves, notably because they did not feel it was appropriate for the sphere of application to be capable of being expanded by an external body but, rather, that the sphere of application should be established during the Conference on the basis of the definition of "space asset".

63. It was agreed that the words in square brackets should be deleted but that the concern expressed by those in favour of only deleting the square brackets should be dealt with elsewhere in the draft Protocol, for example in the provisions concerning the future registration system or entry into force or by means of a Resolution to be adopted by the Conference.

Re: Article I(3) (continued) (cf. §§ 44-47, supra)

64. One delegation submitted a proposal to amend Article I(3) (DCME-SP – W.P. 1 rev.), the effect of which would be to delete the reference to Article 1(n) of the Convention and add a new sub-paragraph to Article I(3) that would specifically deal with internal transactions (cf. §§ 245-246, *infra*).

65. *The Chairman* adjourned the meeting at 12.30 p.m.

FOURTH MEETING OF THE COMMISSION OF THE WHOLE

Item No. 8 on the Agenda: consideration of the draft Protocol (continued)

66. *The Chairman* opened the meeting at 3 p.m.

Re: Article II – Application of Convention as regards space assets, debtor's rights and aircraft objects

Article II(1)

67. This paragraph was adopted without amendment.

Re: Article II(2)

68. This paragraph was adopted without amendment.

Re: Article II(3)

69. Several delegations raised concerns with regard to the drafting of this paragraph, noting that, notwithstanding these concerns, these delegations were fully in support of the objective of that provision, namely to avoid duplication of the application of the Aircraft Protocol and the draft Protocol. In particular, it was noted that the language of Article II(3) should be formulated in such a manner as to indicate what was covered by the draft Protocol rather than indicating what should not be covered and that, in this connection, the second sentence of Article II(3) could be deleted.
70. Another delegation observed that the formulation of Article II(3) used different concepts to describe aircraft objects from that used in other international instruments, such as the Convention on International Civil Aviation, opened to signature in Chicago on 7 December 1944. That delegation considered it advisable to utilise the formulations “aircraft” and “spacecraft” for the purpose of Article II(3) as well.
71. Another delegation stated that it would be impracticable to determine whether an object was “predominantly” used in air space or in outer space and, proposed avoiding use of the word “predominantly”.
72. One technical adviser was concerned that the sphere of application of the Aircraft Protocol should not be affected by Article II(3).
73. One delegation suggested that consideration of this paragraph should be postponed until 5 March 2012, when the presence of the observer of the Aviation Working Group might shed additional light on the implications of this provision. It was so agreed (cf. §§ 189-190, 202-204 and 248, *infra*).

Re: Article III – Return of a space asset

74. This Article was adopted without amendment (cf. §§ 249-250, *infra*).

Re: Article IV – Application of the Convention to sales and salvage interests (cf. §§ 35, 43 and 57, supra)

75. One delegation proposed moving the text of paragraph 3 to the end of paragraph 1, as had been done in the Aircraft Protocol. It was agreed that the Drafting Committee would take this proposal into consideration.
76. One delegation expressed the view that this Article was not the appropriate place for paragraph 2, noting that the title of the Article referred to the application of the Convention to sales and salvage interests but said nothing about rights assignments. It was agreed to forward this matter to the Drafting Committee for consideration.
77. It was agreed that discussion of paragraphs 4 and 5 should be postponed, as it was both a matter of concern to insurers and the subject of consultations and the work of the Informal Working Group (cf. §§ 158 and 251-253, *infra*).

Re: Article V – Formalities, effects and registration of contracts of sale (cf. § 57, supra)

78. It was agreed to postpone discussion on paragraph 2 pending the work of the Informal Working Group.
79. One delegation expressed concern with the wording of Article V(3), noting in particular that the word “indefinitely” might lead to a case where a registration based on a contract that was found to be invalid would remain on the future International Registry indefinitely. In this context, it was pointed out that, under Article 25(4) of the Cape Town Convention, a party in

whose favour the registration was made had an obligation to discharge that registration from the Registry following a written request from the debtor.

80. It was agreed that this matter should be referred to the Drafting Committee (cf. §§ 254-255, *infra*).

Re: Article VI – Representative capacities

81. This Article was adopted without amendment.

82. *The Chairman* adjourned the meeting at 4.15 p.m.

THIRD MEETING OF THE PLENUM

Item No. 4: election by the Conference of the President and the Vice-Presidents of the Conference

83. *The President* opened the meeting at 4.50 p.m.

84. Following consultations, the Conference elected the five Vice-Presidents of the Conference as follows: Mr H.S. Burman (United States of America), H.E. Mr M. Gourdault-Montagne (France), Deputy Minister I.E. Manylov (Russian Federation), H.E. Rev. M. Stofile (South Africa) and Mr W. Tang (People's Republic of China).

Item No. 5: establishment by the Conference of the Credentials Committee, the Commission of the Whole, the Final Clauses Committee, the Drafting Committee and other Committees as necessary

85. Following consultations, the Conference established the Drafting Committee in the following composition: Canada, the People's Republic of China, France, Germany, Japan, Nigeria, Pakistan, the Russian Federation and the United States of America.

86. Following consultations, the Conference established the Final Clauses Committee in the following composition: Canada, the Czech Republic, France, Germany, India, South Africa and the United States of America, with the observer from the European Union being invited to attend meetings as an observer.

87. *The President* adjourned the meeting at 5.04 p.m.

FIFTH MEETING OF THE COMMISSION OF THE WHOLE

Item No. 8 on the draft Protocol: consideration of the Protocol (continued)

88. *The Chairman* opened the meeting at 5.05 p.m.

Re: Article VII – Identification of space assets

89. This Article was adopted without amendment (cf. § 256, *infra*).

Re: Article VIII – Choice of law

90. It was agreed to postpone discussion of this Article, as a matter that concerned the competences of the European Union (cf. §§ 100-102 and 257, *infra*).

Re: Article IX – Formal requirements for rights assignment

91. It was noted that this Article was the subject of consultations in the Informal Working Group.

Re: Article X – Effects of rights assignment

92. It was noted that this Article was also the subject of consultations in the Informal Working Group.

Re: Article XI – Assignment of future rights

93. This Article was adopted without amendment.

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

94. One delegation proposed adding the words “under paragraph 1” at the end of paragraph 3. It was so agreed (cf. § 258, *infra*).

Re: Article XIII – Priority of recorded rights assignment

95. One delegation pointed out that the word “sur” should be added after the words “enregistrée prime” in the French version of this Article.

96. Another delegation expressed concern that pre-existing interests in space assets might be prejudiced once the draft Protocol came into force. *The Reporter*, however, pointed out that, under Article 60 of the Cape Town Convention, pre-existing interests in assets were excluded from the sphere of application of the Cape Town Convention.

97. Yet another delegation wondered whether paragraph 2 was in line with Article 19(4) of the Cape Town Convention. It was agreed that this matter should be referred to the Drafting Committee (cf. § 259, *infra*).

98. *The Chairman* adjourned the meeting at 5.30 p.m.

29 FEBRUARY 2012

SIXTH MEETING OF THE COMMISSION OF THE WHOLE

Item No. 8 on the agenda: consideration of the draft Protocol (continued)

99. *The Chairman* opened the meeting at 10 a.m.

Re: Article VIII – Choice of law (continued) (cf. § 90, supra)

100. One delegation wondered whether this provision implied that the parties would have the option to make the law “which is to govern their contractual rights and obligations” enforceable under the domestic law of the Contracting State, noting in particular the concern that such a choice of law might lead to a conflict between the law chosen and the law of the Contracting State. It was recalled that the choice of law did not govern the enforcement of the law but merely the substance of the law to be applied.

101. The observer of the European Union (E.U.) noted that Article VIII fell under E.U. competence and the E.U. would be opting out of this provision, because it was not compatible with E.U. Regulation 593/2008 on the law applicable to contractual obligations and E.U. Regulation 864/2007 on the law applicable to non-contractual obligations.

102. This Article was adopted without amendment (cf. § 257, *infra*).

Re: Article XIV – Obligor’s duty to creditor

103. This Article was adopted without amendment.

Re: Article XV: Rights reassignment

104. This Article was adopted without amendment. (Cf. § 260, *infra*).

Re: Article XVI: Derogation

105. This Article was adopted subject to the ongoing consultations on Article XVII(3) (cf. § 261, *infra*).

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

106. Paragraphs 1 and 2 of this Article were adopted without amendment. Discussion of paragraph 3 was postponed pending the outcome of the ongoing consultations on this provision (cf. §§ 181-182, 262-263 and 311-312, *infra*).

Re: Article XVIII – Default remedies as regards rights assignment and rights reassignment

107. This Article was adopted without amendment.

Re: Article XIX – Placement of data and materials (cf. § 57, supra)

108. One delegation proposed inserting the words “Subject to Article XXVI” at the beginning of this Article. This proposal was supported by several delegations and was adopted.

109. One delegation suggested that it would be necessary to identify the third party holding the data and materials referred to in this provision in order to provide transparency in respect of the legal relationship between these parties. This proposal found support among some delegations.

110. Other delegations opposed this proposal, principally because it had never been intended that the Cape Town Convention or the draft Protocol should provide for the disclosure of the contents of private contracts that might contain sensitive information.

111. It was recognised that the proposal did not enjoy broad consensus and it was, therefore, rejected (cf. § 264, *infra*).

Re: Article XX – Modification of provisions regarding relief pending final determination

112. The observer of the E.U. noted that Article XX fell under E.U. competence and that the E.U. would be making a declaration to indicate that it would be choosing to apply this Article.

113. One observer drew attention to the term “working days” in this Article and reminded the Commission that during the finalisation of the Luxembourg Protocol that term had been found inappropriate because different States had different interpretations of what “working days” was intended to mean. This problem had been resolved on that occasion by replacing that term with a reference to “calendar days”. The observer in question also mentioned that, where there had been references to a specific number of “working days” prior to that change, the number of days was extended to allow for week-ends.

114. This proposal was broadly supported by delegations and adopted (cf. § 265, *infra*).

Re: Article XXI – Remedies on insolvency

115. One delegation noted that the observer from the Aviation Working Group was not present but would be arriving on 5 March 2012 and proposed that discussion of this Article be postponed in view of the recommendation that that observer would be making in respect of this Article. This delegation gave a brief summary of the recommendation: under the revised Aircraft Sector Understanding issued by Resolution of the Organisation for Economic Co-operation and Development (O.E.C.D.) in respect of financing under the Cape Town regimen, Alternative A of the corresponding Article in the Aircraft Protocol was recognised as providing calculable discount benefits to debtors seeking financing by reducing the risk faced by creditors and Alternative B not. The O.E.C.D. provided discounts to those States Parties that chose Alternative A under that Article but not to those that chose Alternative B. The view was expressed that the mechanism provided by Alternative B could neither reduce risk nor lower cost as effectively as Alternative A and that Alternative B should, therefore, be deleted from the draft Protocol.
116. However, several other delegations were not in favour of this recommendation, indicating that Alternative B should be retained for the time being and it was agreed that further discussion of the recommendation should be postponed until 5 March 2012.
117. The observer of the E.U. indicated that this Article fell under its competence and that the E.U. would be opting to apply this Article.
118. This Article was adopted, subject to further discussion of Alternative B (cf. §§ 166 and 266, *infra*).

Re: Article XXII – Insolvency assistance

119. One delegation asked whether the Drafting Committee might not be able to amend the language in this Article in the light of references in Article I(3) that were similar to some of the connecting factors found in paragraph 2 of this Article in order to avoid confusion. It was so agreed (cf. § 267, *infra*).

Re: Article XXIII – Modification of priority provisions

120. This Article was adopted without amendment (cf. § 268, *infra*).
121. *The Chairman* adjourned the meeting at 12.30 p.m.

SEVENTH MEETING OF THE COMMISSION OF THE WHOLE

Item No. 8 on the agenda: consideration of the draft Protocol (continued)

122. *The Chairman* opened the meeting at 3 p.m.

Re: Article XXIV – Modification of assignment provisions

123. This Article was adopted without amendment.

Re: Article XXV – Debtor provisions

124. One delegation informed the Commission that it would be making a proposal for a new Article XXV and requested that discussion of this Article be postponed until 2 March 2012 so that its delegation could carry out consultations and prepare its proposal. It was so agreed (cf. §§ 187-188, *infra*).

Re: Article XXVI – Limitations on remedies (cf. § 57, supra)

125. This Article being the subject of work by an Informal Working Group, it was agreed that further discussion thereof should be postponed until that Informal Working Group had presented the results of its work to the Commission (cf. §§ 134, 153-155, 167, 237-238 and 269, *infra*).

Re: Article XXVII: Limitations on remedies in respect of public service

126. This Article being the subject of informal consultations, it was agreed that further discussion thereof should be postponed until the proposal resulting from those consultations could be laid before the Commission (cf. §§ 183-184, 191-196, 199-201, 207-211, 270-271 and 314-317, *infra*).

Re: Article XXX – Identification of space assets for registration purposes

127. Several delegations expressed concern with the use of the term “serial number”, noting that this number would not always be available in respect of a particular space asset, and proposed replacing the word “and” with the word “or” in order to provide some flexibility in the identification criteria. Other delegations agreed and proposed that the addition of the words “if available” to the criteria might achieve a similar result.

128. Another delegation proposed that an asset might be uniquely identified by reference to the financing contract connected to that asset.

129. It was agreed to postpone further discussion of this issue pending consultations (cf. §§ 147-152 and 274, *infra*).

Re: Article XXXI – Additional modifications to Registry provisions

130. One delegation was of the opinion that a provision should be included in the draft Protocol similar to Article XIX of the Aircraft Protocol, which provided for the designation of national entry points to the International Registry for aircraft objects.

131. It was agreed to include such a provision and the matter was referred to the Drafting Committee, which was invited to prepare a proposal that could be referred back to the Commission for the taking of a final decision (cf. §§ 275-276, *infra*).

132. *The Chairman* adjourned the meeting at 4 p.m.

1 MARCH 2012

EIGHTH MEETING OF THE COMMISSION OF THE WHOLE

Item No. 8 on the Agenda: consideration of the draft Protocol (continued)

133. *The Chairman* opened the meeting at 11.45 a.m.

134. *The Secretary-General* informed the Commission that the Informal Working Group working on a proposal for a new Article XXVI had had a very productive meeting the previous evening and that an alternative text that reflected the various proposals tabled was being drafted. The members of that working group were invited to meet again in order to reach a final agreement with a view to presenting its proposal to the Commission the following day (cf. §§ 57 and 125 *supra* and §§ 153-155, 167, 237-238 and 269, *infra*).

Re: Article XXXII – Waiver of sovereign immunity

135. One delegation indicated that it might be appropriate to give a more precise description of a space asset in paragraph 2 in order to avoid confusion as to which assets were specifically the subject of this provision.

136. This Article was adopted without amendment but with the proviso that the Official Commentary should clarify the fact that the applicability of the waiver of sovereign immunity would not apply to third parties (cf. §§ 165 and 277, *infra*).

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

137. This Article was adopted without amendment.

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

138. This Article was adopted without amendment (cf. §§ 278-280 and 313, *infra*).

Re: Title of the draft Protocol

139. The title was approved without amendment.

Re: Preamble to the draft Protocol

140. It was proposed by some delegations that the second and fifth clauses of the preamble be amended by replacing the word “need” by the words “potential benefits”.

141. Another delegation recommended inserting the word “potentially” in clause 3 before the word “yield”. However, it was stressed that the extensive use of the word “potential” would undermine the aims of the draft Protocol.

142. Another delegation put forward a proposal to replace the term “mindful” at the beginning of the second, third and fourth clauses of the preamble by the words “desirous”, “recognising” and “noting” respectively, in order to avoid the repetitive use of the word “mindful”.

143. One delegation wondered whether clause 3 might not be clarified by adding the words “of such services” after the word “financing”.

144. In the light of the numerous proposals made in respect of the preamble, the Chairman asked those States which had made proposals to submit them in writing so that the Commission could consider them in a more informed manner (cf. §§ 175-180 and 244, *infra*).

145. *The Chairman* adjourned the meeting at 12.50 p.m.

NINTH MEETING OF THE COMMISSION OF THE WHOLE

Item No. 8 on the Agenda: consideration of the draft Protocol (continued)

146. *The Chairman* opened the meeting at 4.25 p.m.

Re: Article XXX – Identification of space assets for registration purposes (continued) (cf. §§ 127-129, supra)

147. A joint proposal was presented to the Commission (DCME-SP- Doc. 12) under which the words "serial number" would be replaced by the words "identification number". The sponsors of this proposal considered that it would be sufficient for the "identification number" to be any number "uniquely associated to the space asset" - a phrase which was used in Article XIV(1) of the Luxembourg Protocol. It was felt that this criterion would help ensure the flexibility required by the draft Protocol, which would invariably have to cover a variety of products.
148. One delegation submitted that this proposal was in line with the current practice in industry to assign numbers to space assets and that this approach would enable the draft Protocol to cover high-value components.
149. One delegation raised the concern that it might be difficult to assign a single identification number to a space asset, in particular because objects contained many parts with numbers and it would create unmanageable confusion to try and determine which of these numbers should be employed for a given asset. This delegation considered the serial number to be the appropriate criterion. Additionally, it proposed that supplementary identification criteria be submitted on a voluntary basis.
150. Other delegations felt that having mandatory criteria for registration purposes might limit the scope of the draft Protocol, particularly in those cases where not all the criteria required under this proposal were available, and wondered whether it might not be possible to add the words "to the extent available".
151. *The Reporter* pointed out that the criteria necessary to identify a space asset for the purposes of registration would vary and wondered whether it might not be more appropriate to use language which would refer to the identification criteria prescribed by the regulations.
152. This proposal found broad support and was adopted, with the specific language being left to be determined by the Drafting Committee (cf. § 274, *infra*).

Re: Article XXVI: Limitations on remedies (continued) (cf. §§ 57, 125 and 134, supra)

153. A joint proposal for Article XXVI was presented to the Commission on behalf of the Informal Working Group on Article XXVI (DCME-SP – Doc. 13 corr.), which was felt to be appropriate in the light of the concerns that had been expressed regarding this Article.
154. One delegation noted that the French version of paragraph 2 was not in line with the English version.
155. It was agreed that the joint proposal was acceptable in principle but that it be referred to the Drafting Committee for linguistic improvement (cf. §§ 167, 237-238 and 269, *infra*).
156. *The Chairman* adjourned the meeting at 5.25 p.m.

2 MARCH 2012**TENTH MEETING OF THE COMMISSION OF THE WHOLE****Item No. 8 on the Agenda: consideration of the draft Protocol (continued)**

157. *The Chairman* opened the meeting at 10.30 a.m.

Re: Article IV(4) and (5) – Application of the Convention to sales and salvage interests (continued) (cf. §§ 35, 43 and 77, supra).

158. A proposal was presented to the Commission (DCME-SP - Doc. 15) which sought to amend the draft Protocol's approach to dealing with salvage insurance. This proposal contained new language to be embodied in Article IV and an amendment to the definition of "salvage" in Article I. There was broad support for this proposal and it was adopted (cf. §§ 251-253, *infra*).

Re: Articles XXVIII – The Supervisory Authority

159. The observer of the International Civil Aviation Organization (ICAO) recalled his Organisation's experience in acting as Supervisory Authority under the Aircraft Protocol, noting in particular that ICAO had accepted this role on the conditions that such a function would not cause any additional financial burden to that Organisation and that its rules of immunity would continue to apply. The observer stressed ICAO's collaboration with industry in respect of the work of the Preparatory Commission for the establishment of the International Registry for aircraft objects and during the sessions of the working group that prepared the first regulations.

160. The observer of the International Telecommunication Union (I.T.U.) indicated to the Commission, on behalf of the Secretary-General of I.T.U., that that Organisation continued to express interest for I.T.U. to become the Supervisory Authority but that the matter of whether or not I.T.U. would become Supervisory Authority should not be prejudged. He further indicated that in July 2012 the I.T.U. Secretary-General would be reporting to the I.T.U. Council which would be considering this issue in the light of the outcome of the diplomatic Conference, taking into account the financial, juridical and technical implications of the I.T.U.'s assumption of the role of Supervisory Authority. This observer noted that a final decision would be taken by the I.T.U. plenipotentiary Conference to be held in October 2014.

161. In the light of this statement, one delegation proposed that, pending conclusion of the I.T.U.'s deliberations on the possibility of its assumption of the role of Supervisory Authority, a Preparatory Commission should be established by the Conference to act as Provisional Supervisory Authority, so that steps could be taken to lay the groundwork for the future International Registry for space assets, adding that representatives of industry should be invited to participate in the work of the Preparatory Commission as observers. He indicated that the Preparatory Commission could be empowered to appoint the Supervisory Authority and to select a future Registrar. This proposal was broadly supported by delegations.

162. One delegation proposed that paragraph 3 of this Article should be mandatory. This proposal was also broadly supported.

163. Subject to the necessary amendment to paragraph 3 being made by the Drafting Committee, this Article was adopted (cf. §§ 272-273, *infra*).

Re: Article XXIX – First regulations

164. This Article was adopted without amendment.

Re: Article XXXII – Waiver of sovereign immunity (continued) (cf. §§ 135-136, supra)

165. This Article was adopted without amendment (cf. § 277, *infra*).

Re: Article XXI – Remedies on insolvency (continued) (cf. §§ 115-118, supra)

166. The delegation that had proposed deleting Alternative B of this Article, finding little support for its proposal, withdrew it. This Article was, therefore, adopted without amendment (cf. § 266, *infra*),

Re: Article XXVI – Excluded matters (cf. §§ 57, 125, 134 and 153-155, supra)

167. One delegation expressed concern with the proposed new text of sub-paragraph 2(b), noting that it contained some ambiguity as to the intention behind this provision, which might have an adverse effect on States' ability to regulate the assignment and use of orbital positions and frequencies. It was agreed that this concern should be dealt with in the future Official Commentary (cf. §§ 237-238 and 269, *infra*).

168. *The Chairman* adjourned the meeting at 12.50 p.m.

FOURTH MEETING OF THE PLENUM

Item No. 7 on the Agenda: examination by the Conference of the Report of the Credentials Committee

169. In the absence of the President, *Mr H.S. Burman (Vice-President of the Conference)* opened the meeting at 12.50 p.m. and invited Mr E. Zoungrana (Chairman of the Credentials Committee) to present the interim report of the Credentials Committee.

170. *The Chairman of the Credentials Committee* noted that that Committee was made up of the delegations of Burkina Faso, France, Germany, Japan and the Russian Federation. He further noted that the Credentials Committee had met three times, twice on 28 February and again on 2 March 2012.

171. The Chairman of the Credentials Committee reported that as of 9.45 a.m. on 2 March 2012, 38 States and one Regional Economic Integration Organisation, four intergovernmental Organisations, four international non-governmental Organisations and 13 technical advisers had registered for the Conference. He further reported that of these participants, credentials in due and proper form had been received from 26 States, one Regional Economic Integration Organisation, two intergovernmental Organisations, two international non-governmental Organisations and all 13 technical advisers. He also noted that seven States had submitted Full Powers.

172. Pursuant to Rule 4 of the Rules of Procedure of the Conference, the Chairman of the Credentials Committee urged those participants not yet having submitted their credentials to the Secretariat to do so as soon as possible.

173. *The Vice-President* adjourned the meeting at 1 p.m.

ELEVENTH MEETING OF THE COMMISSION OF THE WHOLE**Item No. 8 on the Agenda: consideration of the draft Protocol (continued)**

174. *The Chairman* opened the meeting at 4.15 p.m.

Re: Preamble (continued) (cf. §§ 140-144, supra)

175. One delegation presented a proposal (DCME-SP - Doc. 14) for amending the language of the preamble to the draft Protocol. In particular, this proposal sought to change the use of the word "mindful" in the second, third and fourth clauses, noting that the use of this one word was overly repetitious. This proposal found some support and it was left to the Drafting Committee to find suitable language to deal with this concern.

176. One delegation expressed concern with the use of the words "will yield" in the third clause of the preamble. It was agreed that these words should be changed to read "may yield".

177. One delegation proposed deleting the word "established" in the fourth clause of the preamble. It was so agreed.

178. In the light of another proposal which had been tabled earlier in the discussions by a delegation, it was agreed to refer this provision to the Drafting Committee to see how reference to the United Nations international space treaties might best be achieved in the preamble.

179. One delegation proposed deleting the words "recognising the need for" appearing in the second line of the fifth clause of the preamble. It was proposed that these words be replaced by the words "contemplating the expected benefits of". It was so agreed.

180. The preamble, as amended, was adopted (cf. § 244, *infra*).

Re: Article XVII – Modification of default remedies provisions as regards space assets (continued) (cf. § 106, supra)

181. A joint proposal for paragraph 3 (DCME-SP –Doc. 17) designed to deal with the concerns surrounding the issue of default remedies in relation to components was submitted. One of the delegations that put forth this proposal indicated that it was felt that the proposal met the needs of both the credit industry and those having an interest in components. In respect of the text in square brackets at the beginning of paragraph 3, it was noted that this language served the purpose of clarifying that this provision was not intended to affect inter-creditor agreements in any way. It was also recommended that a proposed transitional provision be referred to the Drafting Committee in order to ensure the priority of existing international interests. Finally, it was emphasised that in order for this provision to have the desired effect, the regulations of the future International Registry would have to provide for the notification of international interests in physically-linked space assets. It was proposed that this last point should be embodied in a Resolution of the Conference.

182. This proposal met with widespread support and was adopted (cf. §§ 262-263 and 311-312, *infra*).

Re: Article XXVII – Limitations on remedies in respect of public service (continued) (cf. § 126, supra)

183. A joint proposal (DCME-SP - Doc. 18) was laid before the Commission that was felt to be capable of dealing with the concerns of both States and the commercial space sector. There was broad support for this proposal, though some delegations noted that they would need time to consider this proposal before it could be adopted.

184. It was agreed to postpone discussion of this proposal until the following meeting (cf. §§ 191-196, 199-201, 207-211, 270-271 and 314-317, *infra*).

185. *The Chairman* adjourned the meeting at 6.10 p.m.

5 MARCH 2012

TWELFTH MEETING OF THE COMMISSION OF THE WHOLE

Item No. 8 on the Agenda: consideration of the draft Protocol (continued)

186. *The Chairman* opened the meeting at 10 a.m.

Re: Article XXV – Debtor provisions (continued) (cf. § 124, supra)

187. One delegation withdrew its proposal for an amended text of this Article, indicating that it would, however, be dealing with its concerns on this issue through a draft Resolution.

188. This Article was adopted without amendment.

Re: Article II(3) – Application of the Convention as regards space assets, debtor's rights and aircraft objects (continued) (cf. §§ 69-73, supra)

189. The observer of the Aviation Working Group (A.W.G.) made a statement with regard to the interaction between the Aircraft Protocol and the future Space Protocol. In order fully to avoid overlap between the draft Protocol and the Aircraft Protocol, it was recommended that assets covered by the Aircraft Protocol be excluded from the future Space Protocol. However, it was recognised that such an approach would raise policy concerns. The observer of the A.W.G., therefore, proposed language for a provision (DCME-SP - Doc. 28) that would minimise the overlap between the two Protocols to the maximum extent possible while respecting the core policies of both instruments. The observer proposed an amendment to paragraph 3 which he proposed would exclude the application of the draft Protocol to a space asset that, first, fell under the definition of "aircraft objects" under the Aircraft Protocol and, secondly, was not designed to "transit" through air space to space (as defined under Article I(2)([k]) of the draft Protocol), where it was to be primarily used. Furthermore, he stressed that the most practical way of dealing with any residual ambiguity left by this approach would be to provide general guidance of what was intended, legally possible and appropriate within the Official Commentaries on the two Protocols.

190. It was agreed to postpone further discussion on this issue pending further consultations (cf. §§ 202-204 and 248, *infra*).

Re: Article XXVII – Limitations on remedies in respect of public service (continued) (cf. §§ 126 and 183-184, supra)

191. One delegation proposed enabling a Contracting State to register a public service notice within the context of paragraph 1 of this Article as well. This proposal was supported by some delegations.
192. That same delegation put forward a proposal to modify paragraph 3 of the jointly proposed Article XXVII (DCME-SP - Doc. 18) in such a way as not to affect the ability of a creditor, if so authorised by the relevant authorities, temporarily to operate or ensure the continued operation of a space asset, given that the debtor would be incapable of doing so, during the period referred to in this paragraph. Furthermore, this delegation noted that the “relevant authorities” were not intended to be the courts in that jurisdiction but rather the licensing authorities. It was agreed to give effect to this proposal by means of a reference to the proposed Article XXVI that was under discussion by the Informal Working Group. Another delegation suggested that this point be further clarified in the future Official Commentary.
193. Some delegations expressed concern that the reduced time-period referred to in paragraph 3, - which had been reduced from six months to three months -, might be too short for States to be able to ensure the continuity of a public service which might otherwise be interrupted by the rightful exercise of a default remedy by a creditor. Another delegation stressed, however, that the three-month period was a compromise which the commercial space and financing communities had agreed was acceptable, in that this was seen by industry to be the absolute maximum amount of acceptable risk they were willing to undertake in respect of additional delays in the exercise of their default remedies. This delegation emphasised that to add any additional time under this paragraph would undermine the potential value of the draft Protocol by discouraging investment in future Contracting States.
194. One delegation proposed making the length of time referred to in this Article subject to an option by way of a declaration, as was done for Article XXI. In this case, States would be allowed to choose between applying either the three-month or the six-month time-period under paragraph 3 of this Article. Some delegations supported this proposal, whilst others suggested that it might be more useful to let Contracting States opt out of such a provision. However, one delegation noted that this might lead to an abuse of flags of convenience or forum shopping, should the draft Protocol make the application of this Article as optional.
195. It was stressed that, in order to provide certainty, creditors would need to know if a public service exemption was to apply to a particular space asset before the financing could be extended. In this context, it was felt that leaving this matter to the choice of individual States would only create more confusion for creditors.
196. *The Secretary-General* put forward a proposal under which this Article would provide for the application of a three-month time-period, while providing elsewhere, in the future Article concerning declarations, for the possibility of a State choosing to apply the six-month time-period by declaration (cf. §§ 199-201, 207-211, 270-271 and 314-317, *infra*).
197. *The Chairman* adjourned the meeting at 12.55 p.m.

THIRTEENTH MEETING OF THE COMMISSION OF THE WHOLE**Item No. 8 on the Agenda: consideration of the draft Protocol (continued)**

198. *The Chairman* opened the meeting at 3.45 p.m.

Re: Article XXVII – Limitations on remedies in respect of public service (continued) (cf. §§ 126, 183-184 and 191-196, supra)

199. Several delegations expressed their support for a solution similar to the one proposed by the Secretary-General.

200. It was proposed that a general rule should be inserted in Article XXVII(3) which would provide for a standard waiting period of three months, with the possibility of a Contracting State extending this time-period by declaration upon ratification to a time-period of no more than six months. This declaration would be included in the Final Clauses.

201. Many delegations expressed their agreement with this common understanding. However, it was asked that time be allowed to consider this proposal, given the importance of the issue. It was agreed that the deliberations on this issue be concluded no later than the morning of 6 March 2012 (cf. §§ 207-211, 270-271 and 314-317, *infra*).

Re: Article II(3): Application of the Convention as regards space assets, debtor's rights and aircraft objects (continued) (cf. §§ 69-73 and 189-190, supra)

202. One delegation wondered whether or not the reference to the "regulations" at the end of the proposed sub-paragraph 3(b) was redundant. However, it was noted that this reference existed to add clarity for the reader. *The Reporter* also reminded the Commission that many Articles in the Convention and draft Protocol were independent of the requirements for registration, such as default remedies, and that caution should be exercised in making reference to the regulations in this context. It was suggested that this language could be improved on by the Drafting Committee.

203. Another delegation wondered about the appropriateness of the word "transit" and wondered whether there might not be more suitable language to employ here.

204. It was agreed to postpone further discussion on this issue pending further consultations (cf. § 248, *infra*).

205. *The Chairman* adjourned the meeting at 5.40 p.m.

6 MARCH 2012**FOURTEENTH MEETING OF THE COMMISSION OF THE WHOLE****Item No. 8 on the Agenda: consideration of the draft Protocol (continued)**

206. *The Chairman* opened the meeting at 10.30 a.m.

Re: Article XXVII - Limitations on remedies in respect of public service (continued) (cf. §§ 126, 183-184, 191-196 and 199-201, supra)

207. *The Chairman* recalled that the joint proposal before the Commission contained a general rule in paragraph 3, which provided for a waiting period of three months before default remedies could be exercised against a space asset that would interrupt the provision of a

public service, whilst adding a rule that would permit for a declaration by Contracting States at the time of ratification to opt for a waiting period of up to six months. It was further recalled that there had been broad agreement on this proposal on the previous day.

208. Some delegations expressed the opinion that, in view of the importance of ensuring the continuity of public services, a six-month time-period was more reasonable and should be retained in the draft Protocol. These delegations proposed having six months as the default time-period in this provision whilst, conversely, allowing States to opt for a three-month time period by way of declaration.
209. Other delegations re-emphasised the objective of the draft Protocol, namely to facilitate asset-based financing. Those delegations felt that a six-month time-period would provide less incentive to make use of the draft Protocol. These delegations stressed the importance of keeping the language as previously proposed, namely to have three months as the default time-period with the ability to opt for a six-month time-period by way of declaration.
210. *The Secretary-General* suggested the taking of a neutral approach, not expressing any hierarchy between the options for three months or six months as the time-period. At the same time, in order to preserve flexibility, it was proposed that a Contracting State should, at the time of ratification, acceptance, approval of, or accession to the future Protocol, specify by declaration a waiting period of not less than three months and not more than six months to be applied in this provision.
211. There was broad support for this proposal and it was adopted (cf. §§ 270-271 and 314-317, *infra*).

Re: draft Resolutions Nos 1 and 2

212. *The Executive Secretary* introduced draft Resolution No. 1 relating to the setting up of the Preparatory Commission for the establishment of the International Registry for space assets (DCME-SP - Doc. 24) and draft Resolution No. 2 relating to the establishment of the Supervisory Authority of the International Registry for space assets (DCME-SP - Doc. 25).
213. One delegation proposed the inclusion in draft Resolution No. 1 of a cross-reference to draft Resolution No. 2 designed to solidify the relationship between the two.
214. Some delegations were of the view that the reference to the “competent authorities” in draft Resolution No. 2 should be replaced by “governing body”. The observer of the International Telecommunication Union (I.T.U.) found this proposal to be acceptable and it was so agreed.
215. One delegation proposed the inclusion of a paragraph that would take into account the possibility that the I.T.U. did not agree to become Supervisory Authority and allow for the appointment of another body to act in that capacity. It was emphasised that the decision to appoint a Supervisory Authority should be taken by States owing to the financial and juridical implications. There was general agreement that candidates for the role of Supervisory Authority were not limited to international Organisations.
216. One delegation proposed amending the fourth clause of draft Resolution No. 2 to read: “considering the desire of the Conference to invite the I.T.U. to consider becoming Supervisory Authority”. This proposal found support among some delegations, although some preferred the existing language.
217. Another delegation proposed adding the words “the Secretary-General of” after the word “representing”.

218. It was agreed that this paragraph should read: "CONSIDERING the interest expressed at the Conference by the observer representing the International Telecommunication Union (I.T.U.) for the I.T.U. to consider becoming Supervisory Authority".

219. The draft Resolutions were adopted in principle and referred to the Drafting Committee (cf. §§ 334-337, *infra*).

Re: draft Resolution No. 3

220. *The Reporter* introduced draft Resolution No. 3 for the regulations of the International Registry for space assets (DCME-SP - Doc. 26). He suggested adding the words "so far as practicable" in the draft Resolution.

221. With this amendment, the draft Resolution was approved (cf. § 338, *infra*).

Re: draft Resolution No. 4

222. *The Reporter* introduced draft Resolution No. 4 relating to the provision of reasonable discounts on exposure rates to debtors by financing organisations (DCME-SP-Doc. 19 rev.). The delegation that had put forward this proposal emphasised the need formally to encourage benefits in favour of the debtor, as the draft Protocol contained numerous provisions that favoured the position of creditors but not so many favouring that of debtors. This was seen as being particularly important for developing countries which might receive discounts or rebates through the draft Protocol.

223. There was consensus that this draft Resolution, while not imposing any mandatory obligations on Contracting States, would encourage assistance for developing States.

224. One delegation proposed replacing the words "developing nations" with "developing countries". It was so agreed.

225. Another delegation proposed substituting the words "negotiating States" by "Contracting States". It was so agreed (cf. § 339, *infra*).

Re: draft Resolution No. 5

226. *The Reporter* introduced draft Resolution No. 5 relating to the Official Commentary on the Space Assets Protocol (DCME-SP-Doc.27).

227. The draft Resolution was approved without amendment (cf. § 340, *infra*).

Re: draft Final Provisions, Article E – Transitional provisions

228. One delegation proposed the exclusion from the application of the draft Protocol of those space assets that already existed at the time of the entry into force of the future Protocol, those that were under construction or those that were subject to binding contracts for construction prior to the entry into force of the future Protocol.

229. The majority of delegations expressed concern at the idea of placing such a considerable limitation on the scope of the draft Protocol. It was agreed that Article E should be retained as drafted (cf. §§ 294-296, *infra*).

Re: *draft Final Act*

230. *The Secretary-General* introduced the draft Final Act (DCME-SP – Doc. 23). He pointed out that the purpose of the Final Act was to authenticate the draft Protocol and, as such, it was distinct from the signing of the future Protocol itself.
231. *The Executive Secretary* noted that the draft Final Act was a work in progress and would be updated in the light of the final report of the Credentials Committee (cf. §§ 341-342, and 346 *infra*).
232. *The Chairman* adjourned the meeting at 1.40 p.m.

FIFTEENTH MEETING OF THE COMMISSION OF THE WHOLE

Item No. 8 on the Agenda: consideration of the draft Protocol (continued)

233. *The Chairman* opened the meeting at 4.25 p.m.
234. In the light of the imminent departure of the Chairman, one delegation nominated Mr V. Kopal (Czech Republic) as Deputy Chairman of the Commission. This proposal was duly seconded and Mr Kopal was elected Deputy Chairman of the Commission.
235. *Mr M. Deschamps (Canada), Chairman of the Drafting Committee*, introduced the Report of that Committee to the Commission of the Whole (DCME-SP - Doc. 32).
236. *The Reporter* gave a brief account of the amendments that the Drafting Committee had been made to the text of the draft Protocol over the course of the diplomatic Conference.
237. *The Secretary-General* reported on the results of the work of the Informal Working Group held to discuss concerns relating to Article XXVI (cf. §§ 57, 78, 91-92, 108, 125, 134, 153-155 and 167, *supra*). He reported that one such concern discussed by the Informal Working Group was the relationship between the draft Protocol and national laws and regulations under which a State could prevent the transfer of an asset to certain individuals. There was agreement in the Informal Working Group that, rather than amending the draft Protocol, a note should be included in the future Official Commentary indicating that, for the purposes of Article XXVI(3)(b), the protection of national security in some States could include the enforcement of laws and regulations that prohibited making assets or funds available in certain circumstances as those laws and regulations applied to their nationals or in their territory.
238. One delegation, whilst expressing its support for the language of the note agreed upon by the Informal Working Group, asked that an explanatory remark to this note be included in the future Official Commentary, pointing out that inclusion of this note in the Official Commentary was in no way meant to indicate that the situation under the Aircraft Protocol and the Luxembourg Protocol was different but that it was simply an effort by the Conference to be clear and explicit on this particular point (cf. § 269, *infra*).
239. One delegation, speaking on behalf of all delegations participating in the Commission, expressed its sincere gratitude to the Chairman for his able and balanced leadership of the Commission of the Whole.
240. *The Chairman* adjourned the meeting at 5.10 p.m.

7 MARCH 2012**SIXTEENTH MEETING OF THE COMMISSION OF THE WHOLE****Item No. 8 on the Agenda: consideration of the draft Protocol (continued)**

241. *The Deputy Chairman* opened the meeting at 9.30 a.m.

Re: report by the Drafting Committee

242. *The Chairman of the Drafting Committee* introduced the report by that Committee to the Commission of the Whole, highlighting the changes made to the draft Protocol.

243. *The Deputy Chairman* proposed that the Commission look only at those provisions to which the Drafting Committee had made amendments. It was so decided.

Re: preamble (continued) (cf. §§ 140-144 and 175-180, supra)

244. The preamble was adopted without amendment.

Re: Article I: Defined terms (continued) (cf. §§ 44-47 and 64, supra)

245. One delegation proposed substituting the phrase “under of one of the following” by “under any of the following” in Article I(3). The proposal was supported by other delegations and approved.

246. One delegation put forward the suggestion to modify the language of Article I(3) further by simply referring to a space asset as being located on the territory of the Contracting State which had registered that asset with the United Nations. Yet another delegation proposed modifying the wording of this provision so as to refer to a space asset being on the territory of the Contracting State that had furnished the relevant information to the Secretary-General of the United Nations under any of the Outer Space Treaties or Resolutions, and deleting sub-paragraphs (a)-(c) of this paragraph. No consensus could be reached on either of these proposals and it was, therefore, agreed to retain the wording of this paragraph as proposed by the Drafting Committee.

247. This Article was adopted with the amendment referred to above.

Re: Article II – Application of the Convention as regards space assets, debtor’s rights and aircraft objects (continued) (cf. §§ 67-73, 189-190 and 202-204, supra)

248. This Article was adopted without amendment.

Re: Article III – Preservation of rights and interests in a space asset (continued) (cf. § 74, supra)

249. One delegation drew attention to the fact that the process of docking always took place in space and that the brackets in this Article should be deleted, retaining the words “in space”. It was so agreed.

250. This Article was adopted as thus amended.

Re: Article IV – Application of the Convention to sales; salvage (continued) (cf. §§ 35, 43, 75-77 and 158, supra)

251. One delegation proposed deletion of the words “[i]n this paragraph” at the beginning of the second sentence of paragraph 3 in order to make it clear that the definition of the term

“salvage” provided in this definition was not meant to be limited to this paragraph. This proposal found support and was adopted.

252. Another delegation proposed making the second sentence a separately defined term under Article I(2). In this regard, *the Reporter* explained that, in line with the practice of UNIDROIT, only those terms that were used more than once in the draft Protocol were included in the definitions appearing in Article I(2). Otherwise, terms were defined in the provision in which they were introduced.

253. It was agreed to invite the Drafting Committee to give due consideration to the comments made on this Article.

Re: Article V – Formalities, effects and registration of contracts of sale (continued) (cf. §§ 78-79, supra)

254. One delegation recalled the inconsistency that had arisen between the French and the English versions with respect to the word “indefinitely” found in the English text of paragraph 3. It was pointed out that the words “sans limitation de durée” were preferable to the term “indéfiniment” for this purpose.

255. It was agreed to refer this point to the Drafting Committee.

Re: Article VII – Identification of space assets (continued) (cf. § 89, supra)

256. This Article was adopted without amendment.

Re: Article VIII – Choice of law (continued) (cf. §§ 90 and 100-102, supra)

257. This Article was adopted without amendment.

Re: Article XII – Recording of rights assignment or acquisition by subrogation as part of registration of international interest (continued) (cf. § 94, supra)

258. This Article was adopted without amendment.

Re: Article XIII – Priority of recorded rights assignment (continued) (cf. §§ 95-97, supra)

259. This Article was adopted without amendment.

Re: Article XV – Rights reassignment (continued) (cf. § 104, supra)

260. This Article was adopted, subject to the deletion of the word “any” in paragraph 1.

Re: Article XVI – Derogation (continued) (cf. § 105, supra)

261. This Article was adopted without amendment.

Re: Article XVII – Modification of default remedies provisions as regards space assets (continued) (cf. §§ 106 and 181-182, supra)

262. One delegation recommended adding a note in the future Official Commentary to the effect that the general principles of tort law of a Contracting State would not be affected by this provision and that the exercise of default remedies that would have an adverse effect on a physically linked asset could always be dealt with by such laws.

263. Some delegations were concerned that the language of paragraph 3 and Article E of the draft Final Provisions created some ambiguity regarding the transitional period and pre-existing interests. It was agreed that these concerns should be referred to the Drafting Committee (cf. 311-312, *infra*).

Re: Article XIX – Placement of data and materials (continued) (cf. §§ 108-111, supra)

264. This Article was adopted without amendment.

Re: Article XX: Modification of provisions regarding relief pending final determination (continued) (cf. §§ 112-114, supra)

265. This Article was adopted without amendment.

Re: Article XXI – Remedies on insolvency (continued) (cf. §§ 115-118 and 166, supra)

266. This Article was adopted without amendment.

Re: Article XXII – Insolvency assistance (continued) (cf. § 119, supra)

267. This Article was adopted without amendment.

Re: Article XXIII – Modification of priority provisions (continued) (cf. § 120, supra)

268. This Article was adopted without amendment.

Re: Article XXVI – Preservation of powers of Contracting States (continued) (cf. §§ 125, 134, 153-155, 167 and 237-238, supra)

269. This Article was adopted without amendment.

Re: Article XXVII – Limitations on remedies in respect of public services (continued) (cf. §§ 126, 183-184, 191-196, 199-201 and 207-211, supra)

270. One delegation noted the omission of the word “public” in line five of paragraph 8 before the term “services provider”. It was agreed to remedy this omission.

271. This Article was adopted as thus amended (cf. §§ 314-317, *infra*).

Re: Article XXVIII – The Supervisory Authority (continued) (cf. §§ 159-163, supra)

272. One delegation proposed inserting a reference in this provision to the draft Resolution referred to in paragraph 1.

273. This Article was adopted.

Re: Article XXX – Identification of space assets for registration purposes (continued) (cf. §§ 127-129 and 147-152, supra)

274. This Article was adopted without amendment.

Re: Article XXXbis – Designated entry points (continued) (cf. §§ 130-131, supra)

275. This Article was adopted without amendment.

Re: Article XXXI – Additional modifications to Registry provisions (continued) (cf. §§ 130-131, supra)

276. This Article was adopted without amendment.

Re: Article XXXII – Waiver of sovereign immunity (continued) (cf. §§ 135-136 and 165, supra)

277. This Article was adopted without amendment.

Re: Article XXXIV – Relationship with the United Nations Outer Space Treaties and instruments of the International Telecommunication Union (continued) (cf. § 138, supra)

278. One delegation proposed replacing the capital letters used in the reference to the United Nations "Outer Space Treaties" by small letters. It was so agreed.

279. Another delegation proposed replacing the words "does not" with "shall not". It was so agreed.

280. It was agreed to refer these two points to the Drafting Committee (cf. § 313, *infra*).

281. Subject to implementation of the drafting refinements that it had decided upon, the Commission approved the Report of the Drafting Committee and gave the Drafting Committee authority to implement the changes agreed upon in the text of the draft Protocol to be forwarded by the Commission of the Whole to the Conference.

282. *The Deputy Chairman* adjourned the meeting at 1.20 p.m.

FIFTH MEETING OF THE PLENUM

Item No. 10 on the Agenda: examination by the Conference of the Report of the Final Clauses Committee

283. *The President* opened the meeting at 4.40 p.m.

284. *Ms N. Chadha (India), Chairperson of the Final Clauses Committee*, presented the Report of the Final Clauses Committee to the Plenum (DCME-SP – Doc. 35), highlighting the changes made with respect to the draft Final Provisions submitted by the Secretariat (DCME-SP – Doc. 5) and noting the addition of a draft witness clause.

285. In respect of Article C, *the Chairperson* indicated that the majority view of the Final Clauses Committee was that the entry into force of the Protocol should be triggered by the deposit of the tenth instrument of ratification. However, there was one delegation and one observer which felt that the entry into force should be triggered by the deposit of the twentieth such instrument.

Re: Article A – Signature, ratification, acceptance, approval or accession

286. This Article was adopted without amendment.

Re: Article B – Regional Economic Integration Organisations

287. This Article was adopted without amendment.

Re: Article C – Entry into force

288. Some delegations proposed that the entry into force of the draft Protocol should be triggered by the deposit of the twentieth instrument of ratification. These delegations noted that strong reservations had been voiced in respect of the draft Protocol, in particular from parts of the space industry sector. It was felt that the entry into force of the Protocol should be based upon a “critical mass” of Contracting States that would provide sufficient traffic for the operation of the future International Registry. The time that would be required to build up such broad support among stakeholders would allow the commercial space sector to make the necessary arrangements in order to take account of the effects of the future Protocol, notably because the creation of the future International Registry for space assets would have an impact on transactions irrespective of membership of UNIDROIT, the Convention or the future Protocol.
289. Some delegations considered a significantly lower number of instruments for ratification, round about five, to be a more appropriate number of ratifications for the entry into force of the future Protocol. It was recalled that the Aircraft Protocol had only required eight instruments of ratification for entry into force and the Luxembourg Protocol only four. It was noted that a number ranging from five to ten instruments of ratification was common practice for the entry into force of a private law instrument.
290. With a view to arriving at a compromise, the overwhelming majority of delegations expressed the view that ten instruments of ratification would be the most appropriate solution. It was felt that this number took adequate account of the different ratification processes of States.
291. It was so agreed.
292. As thus amended, the Article was adopted.

Re: Article D – Territorial units

293. This Article was adopted without amendment.

Re: Article E – Transitional provisions (cf. §§ 228-229, supra)

294. One delegation proposed replacing the word “object” in paragraph 2 with the word “space asset”. It was so agreed.
295. The same delegation also noted that it would be necessary to choose between the alternatives provided for under paragraph 3; it proposed choosing the words “this Protocol” and deleting the words “the preceding paragraph”. It was so agreed.
296. As thus amended, the Article was adopted.

Re: Article F – Declarations relating to certain provisions

297. This Article was adopted without amendment.

Re: Article G – Declarations under the Convention

298. In order to bring this Article into line with Article E, prescribing the non-applicability of Article 60 of the Convention to space assets, one delegation suggested removing the reference to that Article. It was so agreed.
299. As thus amended, the Article was adopted.

Re: Article H – Reservations and declarations

300. This Article was adopted without amendment.

Re: Article I – Subsequent declarations

301. One delegation noted that the reference to Article 60 of the Convention should again be deleted from paragraph 1. It was, therefore, agreed to delete the phrase “, other than the declaration made in accordance with Article G under Article 60 of the Convention,”.

302. As thus amended, the Article was adopted.

Re: Article J – Withdrawal of declarations

303. Several delegations noted that paragraph 1 also contained a reference to Article 60 of the Convention, which should be deleted and it was agreed to delete the phrase “, other than a declaration made in accordance with Article G under Article 60 of the Convention,”.

304. As thus amended, the Article was adopted.

Re: Article K – Denunciations

305. This Article was adopted without amendment.

Re: Article L – Review Conferences, amendments and related matters

306. This Article was adopted without amendment.

Re: Article M – Depositary and its functions

307. This Article was adopted without amendment.

Re: Draft witness clause

308. This clause was adopted without amendment.

309. The Report of the Final Clauses Committee was thus approved by the Conference.

Item No. 9 on the Agenda: examination by the Conference of the Report of the Commission of the Whole

310. *The Reporter* presented to the Conference, on behalf of the Chairman of the Drafting Committee, the changes made to the text of the draft Protocol requested by the Commission of the Whole.

Re: Article XVII– Modification of default remedies provisions as regards space assets (continued) (cf. §§ 106, 181-182 and 262-263, supra)

311. One delegation noted that the first sentence of paragraph 3 contained a reference to an international interest as well as to a sale but that the second sentence contained a reference only to a sale. That delegation was of the view that a corresponding reference should also be made to an international interest in the second sentence of that paragraph. In this context, that delegation noted that Article 60 of the Convention did not apply to the draft Protocol.

312. It was agreed that the second sentence of paragraph 3 should indicate that, for the purposes of that paragraph, a sale or an interest comparable to an international interest created or

arising before the effective date of the Convention, as defined in Article E of the draft Final Provisions, which was registered within three years from the effective date of the Convention, was deemed to be a sale or an international interest registered at the time of the constitution of the sale or the interest comparable to an international interest, as applicable.

Re: Article XXXIV – Relationship with the United Nations Outer Space Treaties and instruments of the International Telecommunication Union (continued) (cf. §§ 138 and 278-281, supra)

313. This Article was adopted without amendment.

Re: Article XXVII – Limitations on remedies in respect of public service (continued) (cf. §§ 126, 183-184, 191-196, 199-201, 207-211 and 270-271, supra)

314. One delegation suggested that in sub-paragraph 6(c) the words “the substitution of the debtor as operator” were not appropriate, because there were many cases in which the debtor would not be the operator but rather a party contracted by the debtor to operate the asset. This delegation proposed replacing the words “of the debtor” either with the words “of the operator” or with the words “of the debtor or another person acting on behalf of or under contract with the debtor”.

315. Other delegations did not support this proposal, as it was felt that such an amendment would change the substance of the Article.

316. The delegation proposing this revision proposed, as an alternative, that the Official Commentary clarify that there might be situations in which a person other than the debtor would act as the operator of a space asset and that this Article should be applicable to those situations.

317. It was so agreed.

318. Following the Conference’s completion of its review of the entire text of the draft Protocol, *the President* declared the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets, as amended, adopted by consensus.

319. *The President* then proceeded to invite delegations which wished to make their closing statements to do so.

320. *The delegation of Canada* expressed its view that the stakeholders that the Protocol was meant to benefit had expressed their opposition to the instrument and that the Canadian delegation was of the opinion that the Protocol would increase the costs of financing rather than lowering these costs, as intended. That delegation further noted that its position had not changed over the course of the diplomatic Conference and that Canada would sign the Final Act but did not intend to sign the Protocol or become Party thereto.

321. *The delegation of the United States of America*, while conceding that many improvements had been made to the Protocol during the Conference, nevertheless reiterated its serious concerns regarding the Protocol and suggested that, until an appropriate level of support could be expected from the commercial space sector, the Protocol should remain under consideration.

322. *The delegation of the United Kingdom* stated that it did not support the adoption of the Protocol, noting that that delegation felt that there was no need for such an instrument, that there was still a great deal of opposition thereto and that the new regimen would affect even States that did not implement the Protocol.

323. *The delegation of Luxembourg* stated that it was not yet convinced that the Protocol could achieve the desired benefits, in particular with regard to developing countries. As a member of the European Union, this delegation felt that it would need to study the Protocol further and, therefore, did not consider itself in a position to sign the Protocol at the end of the Conference.
324. On the contrary, *the delegation of Germany* took the view that the thorough and constructive deliberations of the Conference had produced a Protocol that would work in practice and yield the expected benefits. This delegation felt that the valid concerns raised by industry, such as the issue of salvage, had been addressed in a satisfactory manner and that there was no doubt that any further delay in the adoption of the Protocol could not be expected to result in further improvements but would rather bring the negotiations to a complete halt. Whilst it was understood that States were free not to sign the Protocol, States willing to do so should not be denied the opportunity.
325. *The delegation of Saudi Arabia* agreed with the statement made by the previous delegation, emphasising that those States opposed to the Protocol did not need to sign it and that those States which, on the contrary, believed in the value of the new instrument should not be deprived of its expected benefits.
326. *The delegation of the People's Republic of China* expressed its satisfaction with the improvements in the Protocol achieved during the Conference and expressed its satisfaction at the successful conclusion and adoption of the Protocol. This delegation also stated that its domestic commercial space sector supported the Protocol and declared its support of the Protocol as adopted.
327. *The President* postponed the examination of the draft Resolutions and the draft Final Act to 8 March 2012.
328. *The President* adjourned the meeting at 7.05 p.m.

8 MARCH 2012

SIXTH MEETING OF THE PLENUM

Item No. 11 on the Agenda: adoption by the Conference of the Final Act of the Conference and of any instruments, recommendations and resolutions resulting from its work

329. *The President* opened the meeting at 10 a.m.
330. *The President* informed the Conference that two items remained to be considered: the adoption of the five draft Resolutions and the adoption of the draft Final Act of the diplomatic Conference. Some delegations took the opportunity to make general statements, in particular thanking the German Government for hosting the diplomatic Conference.
331. *The delegation of the Russian Federation* noted in particular that it believed that the Protocol was a viable and effective legal instrument which would facilitate asset-based financing, in particular in those spheres which lacked access to private investment. This delegation also felt that the Protocol represented a balanced approach for the interests of both the public and the private sector.
332. *The delegation of Italy* agreed that the Protocol represented a balanced achievement that took all concerns into account.

333. *The delegation of India*, expressing its appreciation for being a part of the negotiating process for the development of the Protocol, emphasised the benefits that were to be derived from space-based services, in particular in developing countries.
- Re: draft Resolution 1 relating to the setting up of the Preparatory Commission for the establishment of the International Registry for space assets (continued) (cf. §§ 212-219, supra)*
334. One delegation proposed replacing the words “nominated by the following States” with the words “nominated by one-third of the negotiating States”, noting that this approach had worked well in the context of the Aircraft Protocol. It was so agreed.
335. Resolution 1 was adopted as thus amended.
- Re: draft Resolution 2 relating to the establishment of the Supervisory Authority of the International Registry for space assets (continued) (cf. §§ 212-219, supra)*
336. One delegation proposed the addition of wording whereby it would be requested that the I.T.U. duly inform the Secretary-General of UNIDROIT as to its decision whether or not to become the Supervisory Authority once taken. It was so agreed.
337. Resolution 2 was adopted as thus amended.
- Re: draft Resolution 3 relating to the regulations of the International Registry for space assets (continued) (cf. §§ 220-221, supra)*
338. Resolution 3 was adopted without amendment.
- Re: draft Resolution 4 relating to the provision of reasonable discounts on exposure rates to debtors by financing organisations (continued) (cf. §§ 222-225, supra)*
339. Resolution 4 was adopted, subject to the addition of the word “as” after the words “as well” in the first line of the last clause.
- Re: draft Resolution 5 relating to the Official Commentary on the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (continued) (cf. §§ 226-227, supra)*
340. Resolution 5 was adopted without amendment.
- Re: draft Final Act (cf. §§ 230-231, supra)*
341. *The President* introduced the draft Final Act.
342. *The Executive Secretary* explained that paragraphs 3 and 4 would be finalised following the final meeting of the Credentials Committee and the delivering of its final report to the Conference the following day.
343. With this decision, the Final Act was adopted.
344. *The President* adjourned the meeting at 10.50 a.m.

9 MARCH 2012

SEVENTH MEETING OF THE PLENUM

345. *The President* opened the meeting at 9.22 a.m.
346. *The Chairman of the Credentials Committee* presented the final Report of the Credentials Committee (DCME-SP - Doc. 42). He reported that the Credentials Committee had met five times since the beginning of the Conference, the last meeting having been held that morning at 9 a.m. The Credentials Committee had found that 40 States, one Regional Economic Integration Organisation, four intergovernmental Organisations, five international non-governmental Organisations and 13 technical advisers had registered for the Conference, with the credentials of 34 of those States and one Regional Economic Integration Organisation being found to be in due and proper form. Furthermore, he reported that six States, as well as the four intergovernmental Organisations and five international non-governmental Organisations, had participated as observers. Finally, the Chairman of the Credentials Committee noted that nine States had presented Full Powers to sign the Protocol.¹
347. *The President* thanked the Chairman of the Credentials Committee for his report. There were no further comments.
348. *The President* pointed out that paragraphs 3 and 4 of the Final Act could be finalised in the light of the final report of the Credentials Committee. It was so done, the Final Act being adopted without any further comments.
349. *The President* adjourned the meeting at 9.30 a.m.

EIGHTH MEETING OF THE PLENUM

350. *The President* opened the meeting at 11.08 a.m.
351. *The President* drew the meeting's attention to the gratitude which had been expressed by the delegations participating in the Plenum to the Government of the Federal Republic of Germany. In particular, the President thanked Dr G. Schmidt-Bremme (Head of the Civil/Commercial Law Division, Federal Foreign Office) and Dr H.-G. Bollweg (Head of Division, Federal Ministry of Justice) for all their hard work in acting as the hosts of the Conference. The President also acknowledged the key contributions made by the German Space Agency, through, in particular, Dr B. Schmidt-Tedd (Head of Legal Support).
352. *The Secretary-General* declared the Protocol open to signature, calling the delegation of each State having the power to sign the Final Act, in alphabetical order, to sign the Final Act and, for those States having Full Powers, to sign the Protocol itself. The Final Act was signed by the following 25 States: Brazil, Burkina Faso, Canada, the Czech Republic, France, Germany, Ghana, India, Iraq, Ireland, Italy, Japan, Luxembourg, Madagascar, Pakistan, the People's Republic of China, the Republic of Korea, the Russian Federation, Saudi Arabia, Senegal, South Africa, Spain, Turkey, the United States of America and Zimbabwe. The Protocol was signed by Burkina Faso, Saudi Arabia and Zimbabwe.
353. *The Secretary-General* concluded the Conference by specially recognising the work of Mr M.J. Stanford, Executive Secretary of the Conference and Deputy Secretary-General of UNIDROIT, both for his dedication to the Institute in general and the role he had played in facilitating and assisting adoption of the Protocol in particular. This recognition was seconded by the German delegation and was unanimously supported by the Plenum.
354. *The President* declared the Conference closed at 12.08 p.m.

¹ The final list of participants is reproduced in Appendix II to this Report.

APPENDIX I**AGENDA**

1. Opening of the Conference
2. Adoption of the Agenda by the Conference
3. Adoption of the Rules of Procedure by the Conference
4. Election by the Conference of the President and the Vice-Presidents of the Conference
5. Establishment by the Conference of the Credentials Committee, the Commission of the Whole, the Final Clauses Committee, the Drafting Committee and other Committees as necessary
6. Election by the Conference of the Chairman of the Commission of the Whole
7. Examination by the Conference of the Report of the Credentials Committee
8. Consideration of the draft Protocol
9. Examination by the Conference of the Report of the Commission of the Whole
10. Examination by the Conference of the Report of the Final Clauses Committee
11. Adoption by the Conference of the Final Act of the Conference and of any instruments, recommendations and resolutions resulting from its work
12. Signature of the Final Act and of any instruments adopted by the Conference.

APPENDIX II**FINAL LIST OF PARTICIPANTS
LISTE DEFINITIVE DES PARTICIPANTS****REPRESENTATIVES / REPRESENTANTS****STATES / ETATS**

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Ouagadougou
Président du Comité de Vérification des Pouvoirs /
Chairman of the Credentials Committee

Conseiller

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