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Item No. 7(b) on the agenda: International interests in mobile equipment – preliminary draft Protocol to the Cape Town Convention on Matters specific to Space Assets

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Steps needed to permit the resumption and timeous completion of the intergovernmental negotiations on the preliminary draft Protocol</i>
<i>Action to be taken</i>	<i>(1) Subject to the outcome of RBS Forum, reconvening of the Committee of governmental experts, with an accelerated timetable for completion of the project and (2) Convening of a meeting of the Sub-committee on the future international registration system for space assets</i>
<i>Related documents</i>	<i>None</i>

DISCUSSION LEADING PARAMETERS AS PROPOSED BY THE SECRETARIAT

Priority			
	high	medium	low

I. Strategic Plan

Yes, because of (1) UNIDROIT's unique position to carry out work on specific areas of secured transactions (cf. Strategic Objective No. 1) and, (2) its potential benefits for developing countries and economies in transition (cf. Strategic Objective No. 7)

II. Work Programme 2006-2008

Yes

III. Current assessment

- Recent feedback from Member States

Varied, from **high** (Czech Republic, France, Germany, Italy, Nigeria, Russian Federation, South Africa and United States of America) to **low** (Canada and United Kingdom)

- Recent feedback from industry and other private stakeholders
Varied, from **high** (manufacturers and financiers as well as Organisation for Economic Co-operation and Development, which recommended it under the *Space 2030 project*) to **medium-low** (operators)

On time			
	yes	slightly delayed	no

Timeframe determined by CGE/Governing Council/General Assembly

Timeframe to be determined at this session

Problems to be overcome	<ol style="list-style-type: none"> 1. Securing of more active industry support for the Space Working Group 2. Securing of responses from Governments participating in the Committee of governmental experts on "public service" 3. Securing of participation by Governments in the Sub-committee on the international registration system
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Staffing implications	One officer with support from another officer and one secretary (part-time) (to be supported, if at all possible, by external funding, currently being sought by the Secretariat)
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Budget implications	Funding (inclusive of both premises and interpretation) for one session of the Committee of governmental experts in 2006 (<i>circa</i> € 17,000) and another session in 2007 (<i>circa</i> € 17,000) and a diplomatic Conference either at the end of 2007 or at the beginning of 2008 (to be hosted and, accordingly, funded by a member State, if possible with support from the private sector)
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Recommendations/ Guidance sought/ Decisions to be taken/ Alternatives?	Depending on success of special Royal Bank of Scotland Forum, reconvening of the Committee of governmental experts with a firm timetable for completion of the project and the allocation of the necessary resources. Place (temporarily) on hold only if RBS Forum unsuccessful or other dramatic change in assessment.
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BACKGROUND

(a) *Problems holding up prosecution of intergovernmental consultation process*

1. At its 84th session, the Governing Council was informed of the problems that threatened to hold up progress on a project that has excited considerable interest among Governments from all over the world, some forty of which participate in the UNIDROIT Committee of governmental experts for the preparation of a draft Protocol to the Cape Town Convention on Matters specific to Space

Assets (hereinafter referred to as *the Committee*). These problems essentially consisted in, first, the need to find the active support from representatives of the international commercial space and financial communities necessary to enable the UNIDROIT Space Working Group to respond adequately to the large body of assignments given to it by the Committee at its second session, held in October 2004, as indeed over the remainder of the intergovernmental consultation process, secondly, the failure to date by Governments, apart from a relatively small number of exceptions, to provide the responses on the vexed question of “public service” requested of them by the Committee at that session and, thirdly, the almost total failure by Governments to participate in the work, by electronic means, of the Sub-committee of the Committee on the future international registration system for space assets established by the Committee at its second session.

2. These problems have been exacerbated by the general unavailability of Mr Stanford to deal with these problems in the manner that was required during the last quarter of 2004 and the whole of 2005 whilst he was acting as Acting Deputy Secretary-General. And there can be no doubt that the uncertainty caused by his unavailability to devote himself to these problems greatly contributed to the failure by Governments either to respond on the question of “public service” or to participate in the Sub-committee.

(b) Continuing interest in project

3. The interest generated by this project has, however, in no way abated in the interim. The member Governments most interested in the project have been conspicuous in their pressure for it to continue as expeditiously as possible. The project has featured prominently at international space law conferences organised in both Africa (the United Nations/Nigeria Workshop on “Meeting international responsibilities and addressing domestic needs”, held in Abuja in November 2005) and Asia (the Space Law Conference 2005, held in Bangalore in June 2005). Although the Secretariat was unable to be represented in person at any of these conferences, owing to the pressure on Mr Stanford’s time, he nevertheless submitted papers and ensured that qualified experts were on hand to speak there. In fact, there was a silver lining in the cloud represented by his inability to attend the Abuja Workshop, in the sense that it enabled the Secretariat to make practical use of a loyal Nigerian correspondent to represent it on that occasion.

(c) Proposed solution to problems

4. Mr Stanford has, moreover, pursued his efforts not only to attract new support from the international commercial space and financial communities for the Space Working Group but also to secure renewal of existing sponsorships of the latter, something that was particularly difficult at a time of almost total stasis in the project. One particularly felicitous development resulted from his meeting Mr Donal Boylan, Head of Aerospace and Defence in the Structured Finance Department of the Royal Bank of Scotland, who, through his involvement in the development of the International Registry for aircraft objects, recognised the great potential of the preliminary draft Space Protocol and, as a token of RBS becoming a sponsor of the Space Working Group, agreed to host a one-day forum to discuss the most effective means of enabling the international commercial space and financial communities to benefit from the Cape Town Convention through a more active participation in the Space Working Group. This represents a major breakthrough in the sense not only of one of the leading banks in the world coming out in favour of the preliminary draft Protocol (alongside BNP Paribas, an existing sponsor) but also of its being prepared to place its reputation on the line for the sake of the project.

5. The RBS Forum is to be held in London on 24 April 2006. All the key players in the international commercial space and financial communities have been invited, along with certain key Governments and members of the Space Working Group. The Forum has been structured in such a

way as to permit representatives of these Governments and Space Working Group members to illustrate the importance of the preliminary draft Protocol from their different perspectives and thus to call upon the representatives of the international commercial space and financial communities present to put their weight behind the project in such a way as to permit it to be completed timeously. The afternoon session, the co-moderator of which is intended to be Mr Sergio Carbone, will be entirely given over to open discussion designed to achieve the necessary breakthrough regarding support for the Space Working Group.

6. The Secretariat is reasonably confident of a good turn-out at the Forum and would hope thereby to be in a position to reconvene the Committee for early December 2006. However, if those present in London are to be persuaded of the need to come on board, it is to be expected that this will only be on the clear understanding that there needs to be a reasonably firm timetable for completion of the project. Conscious of this, the Secretariat intends to propose that the project be completed by the end of 2007 or, at the latest, towards the beginning of 2008.

7. In order to make this feasible, however, the Secretariat is bound to inform the Governing Council that the human resources devoted to this project, which at present are limited to Mr Stanford, will need to be reinforced if the Secretariat is not going to default virtually at once on the timetable that it proposes setting itself. One person alone cannot at the same time guarantee the daily follow-up to the RBS Forum with representatives of the international commercial space and financial communities that will be necessary to garner the new resources that will permit the Space Working Group to resume its part in the process and get Governments moving sufficiently fast, on both the "public service" and the Sub-committee fronts (the Secretariat and the Sub-committee are required to report back to the Committee on the "public service" issue – in the light of Government responses – and on the international registration system issues respectively), in time to permit a reconvening of the Committee in December 2006. Yet this is essential if the Space Working Group – and, through it, the Committee - is to benefit from the support of the international commercial space and financial communities. In the light of the failure of virtually all Governments to take advantage of the special web forum placed at the disposal of the Sub-committee by the International Telecommunication Union and conversations that the Secretariat has had with key Governments, the Secretariat believes that it will, in particular, be necessary to convene an actual meeting of the Sub-committee prior to the next session of the Committee if its work is to be done. The Secretariat is seeking external support for the realisation of these aims but the results of these efforts are not going to materialise much before October 2006, on even the most optimistic scenario.

ACTION TO BE TAKEN

8. *It would, accordingly, invite the Council, subject to confirmation as to the success of the RBS Forum, to approve the reconvening of the Committee, on the basis of an accelerated timetable for completion of the project and the convening of a meeting of the Sub-committee prior to that session of the Committee.*