Transfer of possession and control under the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets

by M.J. Stanford
Deputy Secretary-General
Opening to signature

- Protocol to the Cape Town Convention on Matters specific to Space Assets (Space Protocol) opened to signature in Berlin on 9 March 2012 at a diplomatic Conference for the adoption of the draft Protocol prepared by a Unidroit committee of governmental experts, attended by 40 States
- Signed by three States: Burkina Faso, Saudi Arabia and Zimbabwe
Transfer of possession and control

- Space Protocol does not give effect to transfer of ownership, which must be done in accordance with applicable law of relevant States.
- Space Protocol facilitates transfer of possession or control of a space asset, pending the transfer of ownership.
The Cape Town regimen

• Cape Town Convention provides general rules governing taking of security in high-value mobile assets
• Protocols adapt Convention to special patterns of financing for different classes of such asset (e.g. space assets)
• Establishes priority of security and analogous interests in such assets through electronic registries set up pursuant to each Protocol
Debtor’s rights

• Defined as “all rights to performance or payment due to a debtor by any person with respect to a space asset”
• Recognition of the crucial economic importance for the creditor of the revenue stream generated by the space asset
• Space Protocol extends the sphere of application of the Convention to these rights *without interfering with State Authority over such rights*
Related rights

• Concept defined as “any permit, licence, authorisation, concession or equivalent instrument that enables a party to manufacture, launch, control and use or operate a space asset”, albeit only to the extent that such rights were capable of being transferred or assigned under the applicable law

• Not seen as an appropriate issue to be dealt with by the Space Protocol because of the potential for interference with State policies and domestic laws

• Concept ultimately left out of the Space Protocol
Placement of data and materials

• Permits the placing of command codes and other materials with a third party in order to give a creditor the opportunity to take possession of, or control over the space asset in question

• *This provision is subject to applicable law*, notably in respect of rules regarding the placing of sensitive information in escrow
Preservation of powers of contracting States

• Space Protocol does not affect a Contracting State’s ability to exercise its authority over space assets in accordance with its domestic laws and policies

• “Nothing in this Protocol shall be construed so as to require a Contracting State to recognise or enforce an international interest in a space asset when … such interest would conflict with its laws or regulations concerning:
  – the export of controlled goods, technology, data and services; or
  – national security.”
Conclusions

• Space Protocol was always delimited by reference to the applicable law
• This is a limitation that affects all forms of commercial space financing
• Space Protocol assures States that ratification will in no way limit their control over those commercial space activities
Thank you