

# UNIDROIT SPACE ASSETS PROTOCOL

A developing Country perspective

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**This presentation is intended to give an overview of the benefits that the adoption of the Cape Town Convention and the Space Assets protocol can hold for space industry in the developing countries. In order to fulfil this objective, an analysis of the African context in terms of space assets development, practical experiences from the Convention and the Aircraft Protocol will be discussed.**

# Background and context

- o The Cape Town Convention and Aircraft Equipment Protocol were adopted at Diplomatic Conference in Cape Town, 2001;
- o Convention came into effect in 2003 and Aircraft Protocol in 2006 and **Space Assets Protocol in 2012**;
- o Convention is a “**multi equipment**” treaty which can interface with separate asset/equipment protocols i.e , Aircraft Equipment, Rolling stock, and Space Assets
- o Convention has **general rules**, with the each equipment protocol containing requirements specific to particular business sector.

# Essential Features

- Creation of an international legal framework for the creation and enforcement of security interests in space assets;
  - Establishment of an international registry where security interests in space assets are registered;
  - Convention and Protocols provide certainty in the international legal regime governing secured asset financing;
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## The “use of space technologies presents extensive opportunities” for South Africa and the rest of Africa...

- o The continent is beset with major environmental and social challenges
- o With a burgeoning population in a widely dispersed geographical area
- o It boasts vast natural and mineral resources the exploitation of which has not translated in improved standard of living for the majority of the people
- o Space-based systems can play a key enabling role in the attainment of sustainable development objectives and contribute to the monitoring of the environment and climate change.
- o Access to space creates a variety of opportunities and would guarantee a heightened pace for continental development
- o The major challenge is that the financing for the development of these satellites is primarily government-based and geared towards governmental agencies with the assistance of international partners
- o A major limitation for those nations with ambitions to own space assets.

The new international regime presented by the UNIDROIT Draft Space Assets Protocol to the Cape Town Convention on International Interests in Mobile Equipment (Space Assets Protocol), seeks to address this challenge through asset-based financing so that start-up companies with no real credit history and no assets to offer as collateral other than a satellite can be in a position to access financial assistance. **The nature and extent to which this is practical is a matter of discussion.**

# Importance of Space technologies



Space and satellite technologies provide the most cost effective and efficient means to bridge the divide in delivering basic services to the people. It is a fact that Africa embraces and deploys new technology at unprecedented levels.

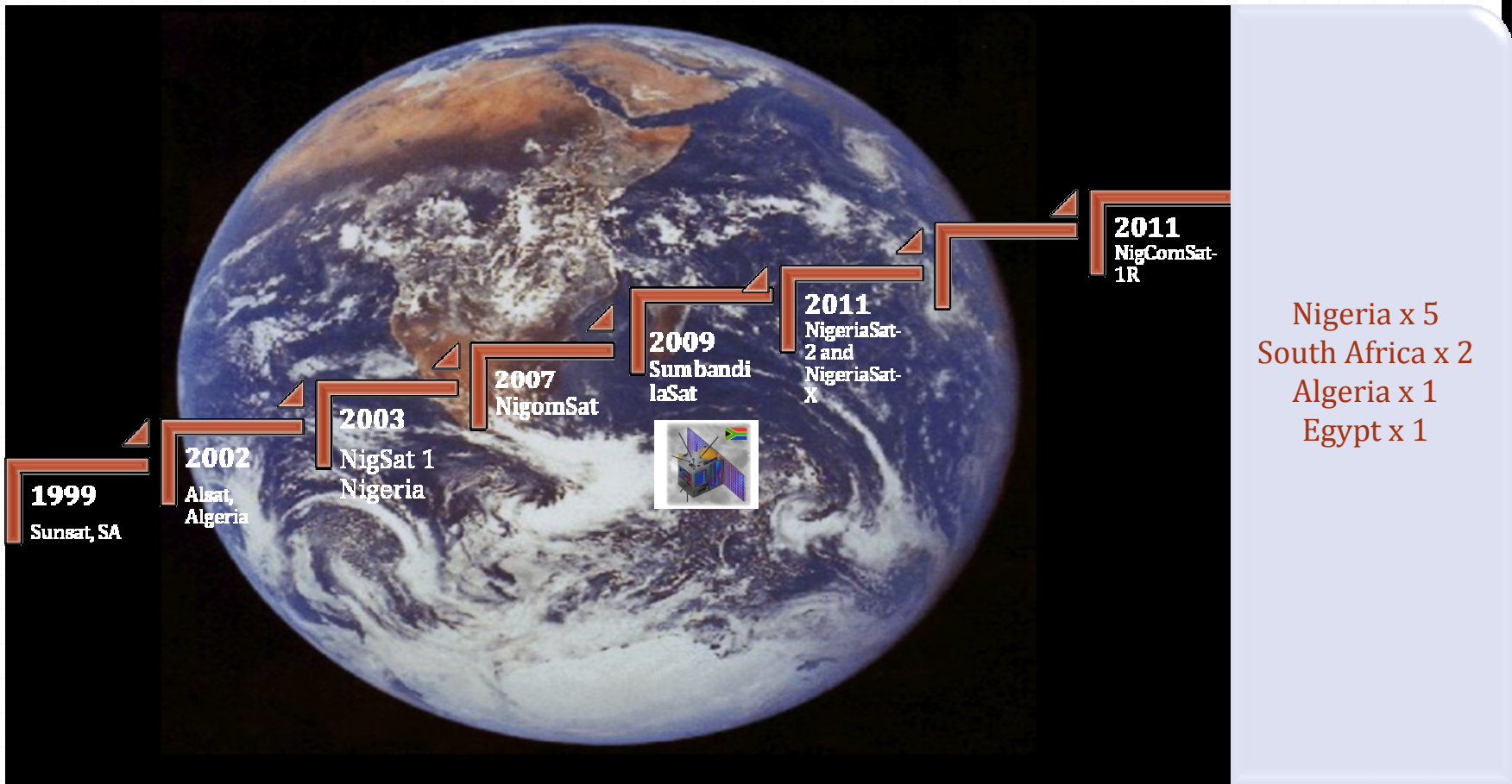
The African experience in satellite communications, earth observation, navigation and space sciences in general points to a greater need for a coordinated approach at regional and continental level to harness economies of scale in deployment of space technologies.

So far only a few African Countries have space programmes



- South Africa
- Nigeria
- Algeria
- Egypt
- Tunisia
- Kenya

With the growing trend towards the commercialisation of space that is being observed from the developed countries, **Africa has a long way to go.**



All Government financed and owned space assets



# Key trends/commonalities can be observed...

- o The projects are funded by government and / or Agencies , with a public use aim and not commercialisation;
- o They rely on international partnerships when developing their space programs.
- o No launch capability , except for testing facilities in some countries;
- o Limited local capability for satellite manufacturing and therefore ;
- o The main driver for the development and launch of satellites, is access to earth observation data for end users
  - o Notable exception of NigeriaComSat and Egyptian sat

If they are government led projects for public use, would this encourage the private companies to develop their own space assets and seek financing?

# The Space Assets protocol, “facilitating finance in space assets” ...

## AIM

- To increase the availability of asset-based financing for high-value mobile equipment which move beyond the national jurisdiction of any one country.
- To reduce the cost of financing by:
  - the creation of a new international security interest in such assets vested in the conditional seller's interest under a title reservation agreement and the lessor's interest under a leasing agreement;
  - granting a creditor a wide range of default and insolvency-related remedies and easier means of obtaining speedy interim relief; and
  - the establishment of an electronic international registry for the registration of such international interests. This serves as a notice to third parties about the existence of such security interests.
- The legal certainty for creditors
  - Ensures and facilitates granting of financing outside the traditional spheres of operation for major financier of space business. The alluded benefits are crucial for less financially endowed and start-up entrepreneurial space commerce entities.
  - Less developed countries will be able to secure space assets where assurances are provided that remedies are available and enforceable in cases of default.

# Creditor's Rights

o A creditor would enjoy variety of rights and benefits under the Space Asset Protocol:

- o Registered interests enjoy priority rights as against unregistered interests and subsequently registered ones;
- o In cases of default:
  - i. Access to debtor's rights, including the revenue stream or any performance by any person generated by the space asset;
  - ii. Possession or control of the space asset;
  - iii. Assistance by the Courts in various jurisdictions;
  - iv. Rights in physically-linked assets preserved.

# State's Rights Not Compromised (Article XXXIV)

- o The Space Asset Protocol specifically provides that the rights and obligations of States under existing United Nations treaties on outer space are not affected in respect of:
  - o Authorisation on launches and operation of space assets;
  - o Regulation of transfers;
  - o Use of orbital slots or radio frequencies;
  - o Control of command codes;
  - o Conflicts with export or national security regulation;
  - o Right to receive public service for at least six months when the debtor seeks to remedy the default.

# PERCEIVED SHORTCOMINGS

## Benefits to Debtors Not Defined

- o The Space Asset Protocol does not contain any provision that illustrates any benefits to debtors.
- o To cure defect,
  - o the Diplomatic Conference adopted Resolution 4 to the Protocol to the effect that Contracting States, international, national as well as private financing institutions are encouraged “to assist developing Contracting States by providing them with reasonable discounts or rebates on any exposure rates or similar charges levied by financing institutions”.
- o The implementation of this Resolution will, in the main,
  - o convince most of developing countries that there is merit in the assertions that the Protocol will be beneficial to them.
  - o At the moment, the Protocol is geared towards assuring creditors’ rights and protecting such. There is a need for assuring debtors as well.

# South African Experiences in Implementing The Convention

- o South Africa ratified both the Convention and the Aircraft protocol
  - o Incorporated into domestic law Act of Parliament CIIME Act
  - o **Exclusion from Economic Benefits Flowing the Convention System;**
  - o South Africa is not on the Cape Town List :
    - o The OECD requires adherence to a strict framework to determine whether a country is fully implementing the Cape Town Convention in its national laws in order to qualify for discounts on financing rates..
    - o Present Legal uncertainty whether the country is fully implementing the Convention;
    - o Inconsistency between the provisions contained in the Declarations made by the South African Government when ratifying the Convention and provisions of some domestic legislation relating to:
      - o Self-Help Remedies vs Sec 23 (right of access to court)
      - o Timely Remedies vs Insolvency Proceedings under Companies Act (moratorium when business rescue in process)
- Deeming Provisions of the Convention means the Space Asset Protocol is subject to these Declarations

# Interrelation between the Protocols

- o It is the inherent feature of the Cape Town Convention system that the Convention and the Protocols are interrelated with the latter expounding upon the general principles laid out in the former to the specific class of assets under consideration. The consequence is that:
  - o The whole of the Convention is applicable when dealing with a specific Protocol;
  - o **Declarations made under the Convention** are deemed to have been made under the Protocol unless the contrary is stated.
- o The practical result of this interrelation is that for South Africa, the implementation of the Space Asset Protocol will be hindered by the declarations made under the Convention and Aircraft Equipment Protocol in respect of constitutional validity, the insolvency issues and business rescue provisions of the Companies Act.

# Domestic Requirements for implementation of the Space Assets Protocol

- o A conventional practice is for the State to consult with Industry prior to ratifying an international agreement -
  - o Obtain input from their domestic space industry on the desirability and relevance of the Protocol; and
  - o Carefully assess whether the terms and conditions of the Convention and Protocol are compatible with their existing domestic legislative framework
  - o Follow legislative process for incorporating the international agreement into domestic law which may require amending other domestic Acts to cater for the unique legal framework contained in the Convention/Protocol.
  - o As indicated, South Africa is presently assessing these processes in light of the issues raised in the implementation of the Aircraft Equipment Protocol which have a direct bearing on the Space Assets Protocol
  - o We hope for a positive Outcome!!!



# THANK YOU FOR YOUR ATTENTION

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