

**UNITED NATIONS/THAILAND WORKSHOP ON SPACE LAW**  
**“ACTIVITIES OF STATES IN OUTER SPACE IN LIGHT OF NEW DEVELOPMENTS:**  
**MEETING INTERNATIONAL RESPONSIBILITIES AND ESTABLISHING NATIONAL**  
**LEGAL AND POLICY FRAMEWORKS”**

(jointly organised by the United Nations Office for Outer Space Affairs, the Government of Thailand and the European Space Agency and hosted by the Geo-Informatics and Space Technology Development Agency)

(Bangkok, 16-19 November 2010):

*THE PRELIMINARY DRAFT PROTOCOL*  
*TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT*  
*ON MATTERS SPECIFIC TO SPACE ASSETS*

*by Mr M.J. Stanford*  
*Deputy Secretary-General*  
*Unidroit<sup>1</sup>*

**I. THE CAPE TOWN CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT: CORE PRINCIPLES AND STATUS OF IMPLEMENTATION**

Those international Conventions in the commercial law field developed in the past by the International Institute for the Unification of Private Law (Unidroit) normally sought to harmonise the rules of national law on a given subject with a view to promoting international commercial intercourse in that field. The Convention on International Interests in Mobile Equipment, opened to signature in Cape Town on 16 November 2001,<sup>2</sup> marks a radical departure from that pattern: it seeks rather to promote and expand the availability of a particular financing technique, asset-based financing, in respect of a particular class of asset, high-value mobile equipment normally moving from country to country or beyond any national jurisdiction in the ordinary course of business. Such an effort was felt to be justified by the reduction in the cost of financing such assets likely to be made possible by:

(a) the creation of a new international interest in such assets, corresponding to the classic security interest, the conditional seller's interest under a title reservation agreement and the lessor's interest under a leasing agreement, coupled with

(b) the granting to the creditor of a range of basic default and insolvency-related remedies and, where there is evidence of default, a means of obtaining speedy interim relief pending final determination of its claim on the merits and

(c) the introduction of an electronic international registry for the registration of international interests, giving notice of the existence of such interests to third parties and enabling a creditor to preserve its priority against subsequently registered interests and against unregistered interests and the debtor's insolvency administrator, thus providing the creditor with the enhanced degree of legal certainty necessary to persuade it to grant asset-based financing facilities in respect of assets that it might otherwise have difficulty in repossessing or taking control of: the *lex rei sitae* (the law

---

<sup>1</sup> The writer acknowledges his debt of gratitude to Mr D.A. Porras, Associate Officer, Unidroit, for the invaluable research that went into the preparation of this paper.

<sup>2</sup> The text of the Cape Town Convention may be accessed at [www.unidroit.org](http://www.unidroit.org).

of the place where the asset is situated), the law generally recognised as applicable to proprietary rights, is particularly ill-suited to assets that are regularly moving across frontiers or, in the case of satellites and the like, are not on earth at all.<sup>3</sup>

The appeal of the new international regimen is amply borne out by the success enjoyed to date by the Convention and the Protocol to the Convention on Matters specific to Aircraft Equipment, also opened to signature in Cape Town on 16 November 2001. The Aircraft Protocol was the first Protocol to the Convention adopted, the Convention setting forth the general rules applicable to the taking of security in all classes of high-value mobile equipment and being designed to be implemented or completed regarding each such class of equipment, such as aircraft, by an equipment-specific Protocol, carrying the special rules needed to adapt the general Convention rules to the specific patterns of financing practised in respect of that class of equipment. As of to-day, 39 States and the European Community are Parties to the Convention and 33 States and the European Community are Parties to the Aircraft Protocol. A strong fillip towards implementation of the new regimen has been provided by the decision of the Export-Import Bank of the United States of America to reduce by one-third its exposure fee on the export financing of large commercial aircraft for buyers in Contracting States to the Convention and Aircraft Protocol. Moreover, the International Registry for those aircraft objects covered by the Aircraft Protocol, namely airframes, aircraft engines and helicopters, entered into operation on the same date as the Aircraft Protocol and, therefore, the Convention as applied to such aircraft objects entered into force, namely 1 March 2006; 236,470 international interests in aircraft objects had already been registered in the Registry against 76,930 aircraft objects as of 4 November 2010. It is significant to note that Aviareto, the Registrar of the International Registry for aircraft objects, has already served notice of its interest in also acting as Registrar of the future International Registry for space assets.

A second Protocol to the Convention, on Matters specific to Railway Rolling Stock, was opened to signature in Luxembourg on 23 February 2007. It has not yet entered into force, although four States and the European Community have signed it. The procedure for the establishment of the future International Registry for railway rolling stock is at an advanced stage.

## II. THE PLANNED SPACE ASSETS PROTOCOL TO THE CONVENTION

### (a) *The preparation of a draft Space Assets Protocol*

It is a special feature of the international instruments prepared by Unidroit that they must respond to the needs and expectations of the commercial parties involved in the activity envisaged by the instrument in question. Moreover, the preparation of the Aircraft Protocol had demonstrated the usefulness of a first draft being prepared by a working group made up essentially of leading manufacturers, operators and financiers of the types of aircraft object designed to be covered by that Protocol. The Aviation Working Group, jointly organised by Airbus and the Boeing Company, thus provided a first draft of what aviation and aviation finance circles considered, on the basis of practice, to be required to fit the intended Convention regimen to the particular patterns of aviation financing. This first draft proved to be of inestimable importance in the development not only of what was to become the Aircraft Protocol but also of the future Convention itself.

It was thus that it was decided by the President of Unidroit that a similar first draft of what was contemplated as a Protocol designed to extend the benefits of the Cape Town Convention regimen to space financing was entrusted to a working group made up of leading players in the space industry, notably manufacturers, operators, launch service providers, financiers and insurers. It was the preliminary draft Space Assets Protocol prepared by the Space Working Group, organised by Mr P.D.

---

<sup>3</sup> Cf. Professor Sir Roy Goode: Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Aircraft Equipment: Official Commentary (Revised edition), p. 14.

Nesgos, a leading figure in the commercial space financing world, which, following consideration by a Steering and Revisions Committee and the Unidroit Governing Council, provided the basis for the intergovernmental negotiations which got under way in December 2003. In keeping with the decision taken by the diplomatic Conference in Cape Town at which the Convention was opened to signature, the intergovernmental consultation process was opened up to include also member States of the United Nations Committee on the Peaceful Uses of Outer Space. To date, 54 States,<sup>4</sup> including a representative cross-section of the industrialised, emerging and developing worlds, including Thailand, our hosts here this week, and a considerable number of intergovernmental and international non-governmental Organisations, including, in particular, the United Nations Office for Outer Space Affairs, our co-host, as well as leading representatives of the commercial space and financial communities, have participated in the work of the Unidroit Committee of governmental experts. The Committee is chaired by Mr S. Marchisio (Italy), the three deputy Chairmanships being held by Mexico, South Africa and the Czech Republic.

A few issues have proven to be of particular difficulty and this is why there was a hiatus in the work of the Committee of governmental experts following its second session, held in October 2004. This hiatus was *inter alia* used to gather information on one of these particular issues, that of public service, and, in particular, the appropriate balance to be struck between the creditor's interest in being able to enforce his Convention remedies against a space asset performing a public service, on the one hand, and the interest of the public collectivity in guaranteeing the continuing performance of that public service, on the other. The time was also used to focus on issues specific to the future international registration system for space assets, notably the criteria necessary to identify such assets for registration purposes.

Following joint Government/industry meetings, which attracted wide and representative participation from all sectors of the commercial space industry and at which these and related issues were considered intensively, the Unidroit General Assembly decided upon the establishment of a Steering Committee to draw the conclusions from these consultations regarding the text of the preliminary draft Space Protocol having come out of the first session of governmental experts.

At the second such Steering Committee meeting, held in Paris in May 2009, it was considered that the progress made by the Steering Committee in building on the Government/industry meetings, notably regarding the key outstanding issues, was such that it was time to reconvene the Committee of governmental experts. This view was endorsed by the Unidroit Governing Council later that month and a third session of governmental experts was held in December 2009. An alternative version of the preliminary draft Protocol, reflecting the intersessional work carried out, provided the basis for the deliberations of the reconvened Committee of governmental experts. A fourth session was held in May 2010 and intersessional meetings were held last month, notably on public service and the issue of components; also held last month was a special meeting of consultations with representatives of the international commercial space and financial communities, convened in the spirit of Unidroit's commitment to the preparation of international instruments that may be expected to be commercially viable.

The success of the sessions of the reconvened Committee, which may be judged by the way in which all but a small number of provisions of the revised preliminary draft Space Protocol were able to be adopted at the May 2010 session,<sup>5</sup> taken together with the extremely positive outcome of the

<sup>4</sup> Albania, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burkina Faso, Canada, the People's Republic of China, Colombia, the Czech Republic, France, Germany, Greece, India, Indonesia, the Islamic Republic of Iran, Ireland, Italy, Japan, Kazakhstan, Kenya, Latvia, Luxembourg, Malaysia, Mexico, Morocco, Nicaragua, Nigeria, the Islamic Republic of Pakistan, Paraguay, Portugal, the Republic of Korea, Romania, the Russian Federation, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Spain, Sudan, Sweden, Syria, Thailand, Tunisia, Turkey, Ukraine, the United Kingdom, the United States of America, Uruguay and Venezuela.

<sup>5</sup> The text of the preliminary draft Space Protocol as amended by the Committee of governmental experts during its fourth session is reproduced in an appendix to this paper. It should be noted, however, that the provisions of the preliminary draft Protocol discussed at the intersessional meetings, dealing with the definition of space assets, default

intersessional meetings, lead the Unidroit Secretariat to take the view that there is every reason to believe that the Unidroit Governing Council at its 90<sup>th</sup> session, due to be held in May 2011, will consider the text of the preliminary draft Protocol to come out of the fifth session of the Committee, due to be held in Rome from 21 to 25 February 2011, as being ripe for submission, as a draft Protocol, to a diplomatic Conference, for adoption. The idea would be for such a diplomatic Conference to be held in Spring 2012.

(b) *The economic assumptions underpinning the initiative*

(i) Current and likely future rates of growth in the commercial space sector

In assessing the likely economic benefits to be reaped under the future Protocol, it is important, first, to focus on the extraordinary vibrancy of the commercial space sector, even in the midst of the current recession, and, secondly, the shift that is likely in the pattern of this sector's future development.

Looking first at the current rate of development of the commercial space sector, global space revenues grew by 7% in 2009 to total U.S.\$261.61 billion, with commercial satellite service revenues alone totalling U.S.\$90.58 billion, representing an increase of 8% over the previous year and 35% of the total revenue generated by global space activity, with the commercial space infrastructure sector (including manufacturing and launch-service providers) accounting for U.S.\$83.63 billion, representing a further 32%.<sup>6</sup>

Thinking, though, now in terms of future developments, it is worth noting that, while these figures are expected to continue growing, and in particular in emerging markets, such as South-East Asia, many experts have expressed concern that this rate of growth for manufacturers and launch service providers as a whole may be heading for a dip in the next four to five years, in that the leading operators that currently account for roughly 70% of the fixed satellite services market will have finished replacing their current fleets with second-generation satellites by around 2012,<sup>7</sup> thus ending a period of unusually high spending for operators and potentially considerably diminishing the number of commercial satellites being manufactured and launched annually, to the obvious detriment of the commercial space infrastructure sector.

Moreover, it is a feature of the current recession that banks are become increasingly hesitant about making high-risk investments and, of course, there are few investments riskier than space ventures. Many banks thus now find themselves faced with the option of either obtaining higher financial guarantees, of the sort provided by export credit agencies, such as Coface and Ex-Im Bank, or of simply turning away from the commercial space sector all together.

One symptom of the current reluctance of banks to get involved in space ventures is indeed the significant increase in the role of these export credit agencies, which have seen their activity increase significantly over the last year, jumping from an investment of U.S.\$300 million in 2008 to one of U.S.\$3 billion in 2009.<sup>8</sup> And it is interesting to note that, in the same way as the potential of asset-based financing continues to be greatly undervalued in the commercial space field, up until fairly recently this was also the case for export credit, in the past usually being reserved for weaker players looking to secure finance by alternative means. However, in the wake of the credit crisis, export credit has become a popular tool, even being employed by the cash-rich/low-debt players who would not ordinarily use such forms of finance.

---

remedies in relation to components and limitations on remedies, will carry footnotes to take account of the recommendations that emerged from those meetings in the version to be laid before the Committee at its fifth session.

<sup>6</sup> Cf. *The Space Report 2010: Executive Summary*, published by the Space Foundation, p. 6.

<sup>7</sup> Cf. J. Amos: *The big rockets jostle for market share*, B.B.C. News Blog: Spaceman, 10 September 2010.

<sup>8</sup> Cf. P.B. de Selding: *More Satellites Getting Built with Export Credit Backing*, SpaceNews, 8 September 2010.

Whilst allowing for the uncertainty that necessarily clouds the question as to when one may expect to see the recession end, it seems reasonable to anticipate that one significant result of this growing trend will be to diminish the ability of many manufacturers and launch service providers to respond to such new orders as there may be in the post-2012 period and another to restrict the chances of new market entrants finding the financing necessary to enter the commercial space market.

(ii) Parties most likely to benefit from the new international regimen

From the outset of its preparation of the planned Space Assets Protocol, Unidroit has always been aware that the planned Protocol may well not, at the present time, be seen as necessary by those triple A parties operating in the commercial space field for whom the obtaining of funding has not been, and continues not to be a problem. This was, after all, the experience we lived through in the preparation of the Aircraft Protocol, where certain major airlines all along took the attitude that the problem of funding for which the Protocol was designed to provide an answer was not in fact a problem for them.

It was always recognised that where the new asset-based financing regimen of the Cape Town Convention was needed was not among such triple A companies but rather among those start-up companies and smaller operators all too often deprived of access to the capital markets without which their chances of mounting a commercial venture were extremely limited. The goal of the new regimen was, as I mentioned earlier, to promote the asset-based financing technique in this area precisely because of its proven economic benefits, the essential element of which consists in the creditor's ability to go against the asset in the event of his debtor's default. It was interesting in this context to hear the representatives of the major airlines attend the annual aviation conference on the Cape Town regimen held in Fort Lauderdale in February 2008 complaining about the additional costs of that regimen and to realise that, again, it was the start-up airlines, like JetBlue, that recognised its full benefits.

Satellite industry analysts, moreover, take the view that the cost and quality of future global space-based services - including manufacturing, operating and launch services - will be largely influenced by emerging industry players. At the same time, one leading international analyst has expressed the opinion that "[t]he future competitive environment and trends in capacity prices will largely be defined by the number of operators in service, local regulations limiting market access, procurement decisions for new satellites and the emergence of local leading operators in most regions."<sup>9</sup> And nearly all analysts agree that "[t]he next generation of space activity will include non-traditional stakeholders, sometimes referred to as the 'NewSpace community': small private companies, new entrepreneurial space ventures, and non-profit Organisations."<sup>10</sup>

This puts policy-makers, and in particular States, in a unique position to provide incentives, through the creation of a conducive regulatory environment, for such new commercial space players. The planned Space Assets Protocol, it is submitted, has an important role to play in this process, given the substantial reduction that it is expected to produce in the costs faced by those new players wishing to enter the commercial space sector, through greater use of the asset-based financing technique.

(c) *Special features of the preliminary draft Space Assets Protocol*

As I have already mentioned, the Convention/Protocol structure of the Cape Town regimen is so conceived that each Protocol "implements"<sup>11</sup> and, therefore, completes or adapts the provisions of

<sup>9</sup> Cf. *Satellite sector revenue grows a record [since 2000] 11% despite economic crisis: strong but slowing revenue growth ahead for satellite operators*, Euroconsult EC, 28 July 2009.

<sup>10</sup> Cf. Futron's *2010 Space Competitiveness Index: A Comparative Analysis of How Countries Invest In and Benefit from Space Industry*, p. 107.

<sup>11</sup> Cf. the second clause of the preamble to the preliminary draft Protocol.

the Convention to fit the particular pattern of financing for the category of asset covered by that Protocol. I do not intend here to say anything about those several points on which the Convention is intended to be implemented by the future Space Protocol in a manner not specific to space assets, that is, for instance, those special rules of the future Space Protocol on speedy interim relief and insolvency modelled on those to be found in the Aircraft Protocol.<sup>12</sup>

(i) Substantive sphere of application

(a) *Definition of "space asset"*

The most important way in which the Convention is completed by each Protocol is in the definition of the types of asset covered. The way in which this decision comes out reflects, first and foremost, whether the future instrument should have a broader or narrower substantive sphere of application. Given the inevitable time-lag between the time when an international instrument is completed and the date of its entry into force, it is clearly desirable for its substantive sphere of application to be drawn as broadly as possible, consistently with the requirements of legal certainty. In the case of the revised preliminary draft Space Protocol, the decision has been taken to go for a reasonably broad sphere of application, anticipating future developments in the classes of space asset that may be the subject of separate financing. Thus, in the recommendation that came out of the intersessional consultations held just last month, it was agreed that the future Protocol should apply to any man-made uniquely identifiable asset in space or intended to be launched into space and, specifically, any "spacecraft", any payload or any part of a spacecraft or payload, such as a transponder. The term "spacecraft" is intended to cover any satellite, space station, space module, space capsule, space vehicle or other vehicle designed to operate in space or a reusable launch vehicle. The term "payload" is intended to cover any telecommunications, navigation, observation, scientific or other payload in respect of which a separate registration may be made in the International Registry, in accordance with regulations to be made from time to time, pursuant to the future Protocol, by the future Supervisory Authority. The significance of the specific coverage of payloads capable of separate registration lies in the growing use being made of hosted payloads. Again, the idea of the future Protocol applying to any part of a spacecraft or payload, such as a transponder, is posited on the premise that a separate registration may be made in respect of such a part in the International Registry, in accordance with regulations to be made by the Supervisory Authority.

(β) *Debtor's rights*

Under Article 8(1)(a) of the Cape Town Convention, one of the creditor's remedies in the event of default by his debtor is to take possession or control of any object charged to it. It has all along been recognised that, apart from the physical difficulties inherent in taking possession of an asset in outer space, it is not the value of a space asset as such that a creditor will be looking to in such a situation but rather the revenue stream generated by use of such an asset.<sup>13</sup>

The sphere of application of the Cape Town Convention, through the future Space Protocol, to space assets has, accordingly, been broadened to cover debtor's rights, understood as "rights to payment or other performance due or to become due to a debtor by any person with respect to a space asset",<sup>14</sup> with the creditor being entitled to record such rights as part of his international interest registered in the space asset in question.

<sup>12</sup> Cf. Articles XXI and XXII of the preliminary draft Protocol respectively.

<sup>13</sup> Cf. D.A. Panahy: *The preliminary draft Protocol on Matters specific to Space Assets: an overview of its objectives and key provisions*, (C.G.E. Space Pr./1/W.P.5), p. 4.

<sup>14</sup> Cf. Article I(2)(a) of the preliminary draft Protocol.

Upon taking control of a space asset, the creditor can, thus, be sure that this will not be a space asset generating revenue for a third party and this will reduce the amount of legal protection otherwise needed by potential creditors and enable them to pass on the resultant savings to their clients. This will, in turn, reduce the high cost of commercial space financing for those smaller, less established players who would ordinarily be disadvantaged by reason of the risk involved in extending credit to them.

It is true that this rather departs from the traditional system of remedies contemplated under asset-based financing transactions but it is, nevertheless, wholly in line with the underlying philosophy of the Cape Town regimen according to which the international interests on the International Registry must be linked to a physical asset.

(ii) Default remedies

(a) *Taking possession of, or control over a space asset*

As I have just mentioned, in the context of debtor's rights, the Convention remedy of taking actual possession is not what matters with a space asset: what matters rather will be for the creditor to be able to take constructive possession of, and, therefore, control of that asset, so as to have access to its economic value as represented by the revenue stream generated thereby.

Control in the context of a space asset means control of the access and command codes to that asset and the preliminary draft Protocol, accordingly, makes provision for the parties to the agreement creating or providing for the international interest to be able to agree for the placement of command codes and related data and materials with another person, in an escrow account, in order to afford the creditor the opportunity to take constructive possession of, or to establish control over or operate the space asset.<sup>15</sup>

(β) *Limitations on remedies*

(aa) Parts of spacecraft or payloads

As I have mentioned, the definition of "space asset" encompasses parts of spacecraft and payloads, such as a transponder, the idea being that this could be helpful in the sharing of costs for the manufacturing and launching of new satellites. However, this begs the question as to what should happen where two separately financed assets, such as a satellite and one of its transponders, are physically linked and a creditor holding an international interest in the satellite needs to exercise his Convention default remedies, as a result of which a non-defaulting third party's international interest in the distinct but physically linked transponder is likely to be adversely affected. It is true that, given the huge amounts of money involved, these matters will invariably be the subject of inter-creditor agreements. At the same time, there is a body of opinion that feels that it would be helpful for a default rule to be incorporated in the future Space Protocol for those situations where an inter-creditor agreement is not reached, while recognising the fact that such a rule should be subject to the freedom of contract of the parties. This is a matter that will, however, need further consideration at the next session of governmental experts.

(bb) Transfer of controlled goods, technology, data or services

Many space assets have a dual purpose, serving both military and civilian purposes. This explains the way in which many countries tend to restrict trade in certain space assets. It is clearly necessary for the future Space Protocol to reflect this reality and a Contracting State to the future Protocol may, accordingly, in accordance with its laws and regulations, restrict or attach conditions to the exercise of

<sup>15</sup> Cf. Article XX of the preliminary draft Protocol.

the default remedies of the Convention, as implemented by the future Protocol, including the placement of command codes, where the exercise of such remedies would involve or require the transfer of controlled goods, technology, data or services.<sup>16</sup>

(cc) Space assets performing a public service

One of the key outstanding issues concerns the extent to which the exercise of the creditor's remedies should be limited where the space asset being operated by the debtor in default is performing a public service. The basic dilemma here is to balance the interest of a Government or a public body in ensuring the continuity of such a public service and that of a financier in being able to recoup his investment. Clearly, for private financing to be available for commercial space activities, it is essential that the elements of predictability and transparency so important to a financier contemplating extending secured financing be satisfied from the very outset. Equally clearly, it would be egregious to imagine a solution that would prejudice the operation of a satellite performing a function of life-and-death importance.

There seems to be agreement on two elements of the desirable solution: first, that it would not be helpful to provide a definition of public service in the future Protocol, in that it would not be helpful to create a new international duty on this matter, and, secondly, that, whichever solution should ultimately be adopted, it should not worsen the situation currently obtaining under national law, as without such an assurance, there is little likelihood of it securing the necessary endorsements to enter into force.

Three proposals for dealing with the issue are currently under consideration by governmental experts and it is worth noting that the third of these, which emerged from the intersessional meetings held last month, was recognised by all those participating in those meetings as representing significant progress towards the finding of a solution capable of commanding broad consensus.

### III. CONCLUSIONS

Summing up, I think it is essential that we have clearly in mind the intended principal beneficiaries of the proposed new international regimen, namely the emerging and developing economies, start-up companies and smaller operators, although manufacturers and financiers should also see their markets significantly broadened as a result of the increased availability of asset-based finance as an alternative and, on balance, cheaper method of financing, and the enhanced transparency to be expected under the future International Registry. There can be no doubt that the range of space-based services the financing of which may be expected to be facilitated by the future Protocol is bound to have a quite extraordinary impact on those living in the more disadvantaged countries.

The broadly-based participation in the preparation of the planned Space Protocol of not only the Governments of nations at all levels of development but also leading representatives of the international commercial space and financial communities provides eloquent testimony of the potential benefits that may, it is to be expected, be reaped by all parties involved in commercial space activities. Moreover, it testifies to the determination of Unidroit to ensure that, in line with the procedure followed with the Cape Town Convention and the Aircraft Protocol, the future Space Assets Protocol will be duly responsive to the essential needs and requirements of business practice, whilst, at the same time, being in line with the United Nations Treaties and Principles on Outer Space, as well as other international instruments in force in this area.

It simply remains for me to urge member States of the United Nations Committee on the Peaceful Uses of Outer Space to continue their invaluable participation in the remaining stages of this

---

<sup>16</sup> Cf. Article XXVII(2) of the preliminary draft Protocol.



work, which is now, as mentioned, approaching the final stages. There can be no doubt that the participation of U.N./COPUOS member States to date has considerably broadened the representation of States from all levels of development and ensured the making of all efforts to guarantee conformity with the United Nations Treaties and Principles and other international instruments in force in this area.

**TEXT OF THE REVISED PRELIMINARY DRAFT PROTOCOL TO THE CAPE TOWN  
CONVENTION ON MATTERS SPECIFIC TO SPACE ASSETS**

*as it emerged from the fourth session of the UNIDROIT Committee of governmental experts for the preparation of a draft Protocol to the Cape Town Convention on Matters specific to Space Assets, held in Rome from 3 to 7 May 2010*

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it desirable to implement the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*) as it relates to space assets, in the light of the purposes set out in the preamble to the Convention,

MINDFUL of the need to adapt the Convention to meet the particular demand for and the utility of space assets and the need to finance their acquisition and use as efficiently as possible,

MINDFUL of the benefits to all States from expanded space-based services which the Convention and this Protocol will yield,

MINDFUL of the established principles of space law, including those contained in the international space treaties under the auspices of the United Nations,

MINDFUL of the continuing development of the international commercial space industry and recognising the need for a uniform and predictable regimen governing the taking of security over space assets and facilitating asset-based financing of the same,

HAVE AGREED upon the following provisions relating to space assets:

CHAPTER I – SPHERE OF APPLICATION AND GENERAL PROVISIONS

*Article I – Defined terms*

1. – In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.

2. – In this Protocol the following terms are employed with the meanings set out below:

(a) “debtor’s rights” means rights to payment or other performance due or to become due to a debtor by any person with respect to a space asset;

(b) “guarantee contract” means a contract entered into by a person as a guarantor;

(c) “guarantor” means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or standby letter of credit or other form of credit insurance;

(d) “insolvency-related event” means: (i) the commencement of the insolvency proceedings; or (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;

(e) “launch vehicle” means a vehicle used or intended to be used to transport persons or goods to or from space;

(f) “licence” means any permit, licence, authorisation, concession or equivalent instrument that is granted or issued by, or pursuant to the authority of, a national or intergovernmental or other international body or authority, when acting in a regulatory capacity, to manufacture, launch, control, use or operate a space asset, or relating to the use of orbits positions or the transmission, emission or reception of electromagnetic signals to and from a space asset;

(g) “obligor” means a person from whom payment or other performance of debtor’s rights is due or to become due;

(h) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor’s main interests is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat, or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise;

(i) “rights assignment” means a contract by which the debtor confers on the creditor an interest (including an ownership interest) in or over the whole or part of existing or future debtor’s rights to secure the performance of, or in reduction or discharge of, any existing or future obligation of the debtor to the creditor which under the agreement creating or providing for the international interest is secured by or associated with the space asset to which the agreement relates;

(j) “rights reassignment” means a contract by which the creditor transfers to the assignee, or an assignee transfers to a subsequent assignee, the whole or part of its rights and interest under a rights assignment;

(jj) “salvage interest” means title to, interest in, or right to funds derived from a space asset to which the insurer is or may be entitled by contract or operation of law upon payment of proceeds following a loss affecting the space asset];

(k) “space” means outer space, including the Moon and other celestial bodies; and

(l) “space asset” means any man-made uniquely identifiable asset [capable of being independently owned, used or controlled,] in space or intended to be launched into space without losing its distinct identity, such as a satellite, space station, satellite bus, transponder, module, space vehicle, launch vehicle or space capsule [including any such asset in course of manufacture or assembly], together with all installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating to its ownership, use or control.

[Alternative A

3. – In Articles 1(2)(n), 43 and 54(1) of the Convention and Article XXIII of this Protocol references to a Contracting State on the territory of which an object or space asset is located or situated or from which it is controlled shall, as regards a space asset when not on Earth, be treated as references to a Contracting State on the territory of which a mission operation centre for the space asset is located.]<sup>17</sup>

[Alternative B

3. – In Articles 1(2)(n), 43 and 54(1) of the Convention and Article XXIII of this Protocol references to a Contracting State on the territory of which an object or space asset is located or situated shall, as regards a space asset when not on Earth, be treated as references to a Contracting State from the territory of which the space asset may be controlled.]<sup>18</sup>

<sup>17</sup> It will be for the Committee of governmental experts at its next session to decide whether Alternative A, Alternative B or Alternative C or a combination of them should apply.

<sup>18</sup> It will be for the Committee of governmental experts at its next session to decide whether Alternative A, Alternative B or Alternative C or a combination of them should apply.

[Alternative C

3. – In Articles 1(2)(n), 43 and 54(1) of the Convention and Article XXIII of this Protocol references to a Contracting State on the territory of which an object or space asset is located or situated shall, as regards a space asset when not on Earth, be treated as references to a Contracting State on the registry of which the space asset is carried for the purposes 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, signed at London, Moscow and Washington, D.C. on 27 January 1967.]<sup>19</sup>

*Article II – Application of the Convention as regards space assets and debtor's rights*

1. – The Convention shall apply in relation to space assets, rights assignments and rights reassignments as provided by the terms of this Protocol.

2. – The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to space assets.

3. – A space asset shall not constitute an aircraft object for the purposes of the Convention as applied to aircraft objects, whether it is on Earth or in air or space.

*Article III – Return of a space asset*

The return of a space asset from space does not affect an international interest in that asset.

*Article IV – Application of the Convention to sales and salvage interests*

1. - The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

Articles 3 and 4;  
 Article 16(1)(a);  
 Article 19(4);  
 Article 20(1) (as regards registration of a contract of sale or a prospective sale);  
 Article 25(2) (as regards a prospective sale); and  
 Article 30.

2. - The provisions of this Protocol applicable to rights assignments also apply to a transfer to the buyer of a space asset of rights to payment or other performance due or to become due to the seller by any person with respect to the space asset as if references to the debtor and the creditor were references to the seller and the buyer respectively.

3. - In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XXIV), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) shall apply to contracts of sale and prospective sales.

---

<sup>19</sup> It will be for the Committee of governmental experts at its next session to decide whether Alternative A, Alternative B or Alternative C or a combination of them should apply.

4. - For the purposes of this Protocol, title to a space asset acquired by an insurer as a salvage interest is treated as if acquired by way of sale.

5. - For the purposes of the Convention, when an insurer makes a payment to a creditor of insurance proceeds for a covered loss of an insured space asset in which the creditor has an international interest, the insurer shall, to the extent of the insurer's salvage interest, have the right of subrogation to the creditor's associated rights and related international interest in the space asset and to any debtor's rights assigned to the creditor under a rights assignment or rights reassignment recorded as part of the registration of that international interest. This right of subrogation shall be in addition to and shall not affect any right of subrogation the insurer may have under national law or the insurance policy.

*Article V – Formalities, effects and registration of contracts of sale*

1. – For the purposes of this Protocol, a contract of sale is one which:

- (a) is in writing;
- (b) relates to a space asset of which the seller has power to dispose; and
- (c) enables the space asset to be identified in conformity with this Protocol.

2. – A contract of sale transfers the interest of the seller in the space asset to the buyer according to its terms.

3. – Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

*Article VI – Representative capacities*

A person may, in relation to a space asset, enter into an agreement or a contract of sale, effect a registration as defined by Article 16(3) of the Convention and assert rights and interests under the Convention in an agency, trust or representative capacity.

*Article VII – Identification of space assets*

1. – For the purposes of Article 7(c) of the Convention and Article V of this Protocol, a description of a space asset is sufficient to identify the space asset if it contains:

- (a) a description of the space asset by item;
- (b) a description of the space asset by type;
- (c) a statement that the agreement covers all present and future space assets; or
- (d) a statement that the agreement covers all present and future space assets except for specified items or types.

2. – For the purposes of Article 7 of the Convention, an interest in a future space asset identified in accordance with the preceding paragraph shall be constituted as an international interest as soon as the chargor, conditional seller or lessor acquires the power to dispose of the space asset, without the need for any new act of transfer.

*Article VIII – Choice of law*

1. – This Article applies unless a Contracting State has made a declaration pursuant to Article XL(1).

2. – The parties to an agreement a contract of sale, a rights assignment or rights reassignment or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part.

3. – Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

*Article IX – Formal requirements for rights assignment*

A transfer of debtor's rights is constituted as a rights assignment where it is in writing and enables:

- (a) the debtor's rights the subject of the rights assignment to be identified;
- (b) the space asset to which those rights relate to be identified; and
- (c) in the case of a rights assignment by way of security, the obligations secured by the agreement to be determined, but without the need to state a sum or maximum sum secured.

*Article X – Effects of rights assignment*

1. – A rights assignment made in conformity with Article IX transfers to the creditor the debtor's rights the subject of the rights assignment to the extent permitted by the applicable law.

2. – Subject to paragraph 3, the applicable law shall determine the defences and rights of set-off available to the obligor against the creditor.

3. – The obligor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph other than defences arising from fraudulent acts on the part of the creditor.

*Article XI – Assignment of future rights*

A provision in a rights assignment by which future debtor's rights are assigned operates to confer on the creditor an interest in the assigned rights when they come into existence without the need for any new act of transfer.

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

1. – The holder of an international interest or prospective international interest in a space asset who has acquired an interest in or over debtor's rights under a rights assignment or by subrogation may, when registering the international interest or prospective international interest or subsequently by amendment to such registration, record the rights assignment or acquisition by subrogation as part of the registration. Such record may identify the rights so assigned or acquired either specifically or by a

statement that the debtor has assigned, or the holder of the international interest or prospective international interest has acquired, all or some of the debtor's rights, without further specification.

2. – Articles 18, 19, 20(1) – (4) and 25(1), (2) and (4) of the Convention apply in relation to a record made in accordance with the preceding paragraph as if:

- (a) references to an international interest were references to a rights assignment;
  - (b) references to registration were references to the recording of the rights assignment;
- and
- (c) references to the debtor were references to the obligor.

3. – A search certificate issued under Article 22 of the Convention shall include the particulars recorded.

4. – Where a rights assignment has been recorded as part of the registration of an international interest which is subsequently transferred in accordance with Articles 31 and 32 of the Convention, the transferee of the international interest acquires:

- (a) all the rights of the creditor under the rights assignment; and
- (b) the right to be shown in the record as assignee under the rights assignment.

5. – Discharge of the registration of an international interest also discharges any record forming part of that registration under paragraph 1.

#### *Article XIII – Priority of recorded rights assignment*

1. – Subject to paragraph 2, a recorded rights assignment has priority over any other transfer of debtor's rights (whether or not a rights assignment) except a rights assignment previously recorded.

2. – Where a rights assignment is recorded in the registration of a prospective international interest it shall be treated as unrecorded unless and until the prospective international interest becomes an international interest, in which event the rights assignment has priority as from the time it was recorded.

#### *Article XIV – Obligor's duty to creditor*

1. – To the extent that the debtor's rights have been assigned to the creditor under a rights assignment, the obligor is bound by the rights assignment and has a duty to make payment or give other performance to the creditor, if and only if:

- (a) the obligor has been given notice of the rights assignment in writing by or with the authority of the debtor; and
- (b) the notice identifies the debtor's rights.

2. – For the purposes of the preceding paragraph, a notice given by the creditor after the debtor defaults in performance of any obligation secured by a rights assignment is given with the authority of the debtor.

3. – Irrespective of any other ground on which payment or performance by the obligor discharges the obligor from liability, payment or performance shall be effective for this purpose if made in accordance with paragraph 1.

4. – Nothing in this Article shall affect the priority of competing rights assignments.

*Article XV – Rights reassignment*

1. – Articles IX to XIV apply to a rights reassignment by the creditor or a subsequent assignee as if references to the creditor or holder were references to the assignee or subsequent assignee.

2. – A rights reassignment relating to an international interest in a space asset may be recorded only as part of the registration of the assignment of the international interest to the person to whom the rights reassignment was made.

*Article XVII – Derogation*

The parties may, by agreement in writing, exclude the application of Article XXII and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article XVIII(2)-(3).

CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

*Article XVIII – Modification of default remedies provisions as regards space assets*

1. – Article 8(3) of the Convention shall not apply to space assets. Any remedy given by the Convention in relation to a space asset shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.

2. – A chargee giving ten or more working days' prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing "reasonable prior notice" specified in Article 8(4) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

[3. – Insert any provision as regards enforcement against a space asset physically linked to another space asset in which another creditor has an interest].

*Article XIX – Default remedies as regards rights assignments and rights reassignments*

1. – In the event of default by the debtor under a rights assignment by way of security, Articles 8, 9 and 11 to 14 of the Convention apply in the relations between the debtor and the creditor (and in relation to debtor's rights apply in so far as those provisions are capable of application to intangible property) as if references:

(a) to the secured obligations and the security interest were references to the obligations secured by the rights assignment and the security interest created by that assignment;

(b) to the object were references to the debtor's rights.

2. – In the event of default by the assignor under a rights reassignment by way of security, the preceding paragraph applies as if references to the assignment were references to the reassignment.



*Article XX – Placement of data and materials*

The parties to an agreement may specifically agree for the placement of command codes and related data and materials with another person in order to afford the creditor the opportunity to take possession of, establish control over or operate the space asset.

*Article XXI – Modification of provisions regarding relief pending final determination*

1. – This Article applies only where a Contracting State has made a declaration to that effect under Article XL(3) and to the extent stated in such declaration.

2. – For the purposes of Article 13(1) of the Convention, “speedy” in the context of obtaining relief means within such number of working days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.

3. – Article 13(1) of the Convention applies with the following being added immediately after sub-paragraph (d):

“(e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom”,

and Article 43(2) applies with the insertion after the words “Article 13(1)(d)” of the words “and (e)”.

4. – Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor’s international interest has priority under the provisions of Article 29 of the Convention.

5. – The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.

*Article XXII – Remedies on insolvency*

1. – This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XL(4).

*Alternative A*

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of or control and operation over the space asset to the creditor no later than the earlier of:

(a) the end of the waiting period; and

(b) the date on which the creditor would be entitled to possession of or control and operation over the space asset if this Article did not apply.

3. – For the purposes of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

4. – References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.

5. – Unless and until the creditor is given possession of or control and operation over the space asset under paragraph 2:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the space asset and maintain it and its value in accordance with the agreement; and

(b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

6. – Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the space asset under arrangements designed to preserve the space asset and maintain it and its value.

7. – The insolvency administrator or the debtor, as applicable, may retain possession of or control and operation over the space asset where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

8. – No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.

9. – No obligations of the debtor under the agreement may be modified without the consent of the creditor.

10. – Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

11. – No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests.

12. – The Convention as modified by Article XVIII of this Protocol shall apply to the exercise of any remedies under this Article.

#### *Alternative B*

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XL(4) whether it will:

(a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or

(b) give the creditor the opportunity to take possession of or control and operation over the space asset, in accordance with the applicable law.

3. – The applicable law referred to in sub-paragraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.

4. – The creditor shall provide evidence of its claims and proof that its international interest has been registered.

5. – If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 2, or when it has declared that it will give the creditor the opportunity to take possession of or control and operation over the space asset but fails to do so, the court may permit the creditor to take possession of or control and operation over the space asset upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

6. – The space asset shall not be sold pending a decision by a court regarding the claim and the international interest.

*Article XXIII – Insolvency assistance*

1. – This Article applies only where a Contracting State has made a declaration pursuant to Article XL(1).

2. – The courts of a Contracting State: (i) in which the space asset is situated; (ii) from which the space asset may be controlled; (iii) in which the debtor is located; or (iv) otherwise having a close connection with the space asset, shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XXII.

*Article XXIV – Modification of priority provisions*

1. – The buyer of a space asset under a registered sale acquires its interest in that asset free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.

2. – The buyer of a space asset under a registered sale acquires its interest in that asset subject to an interest previously registered.

*Article XXV – Modification of assignment provisions*

Article 33(1) of the Convention applies with the following being added immediately after sub-paragraph (b):

“and (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.”

*Article XXVI – Debtor provisions*

1. – In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the space asset in accordance with the agreement as against:

(a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4)(b) of the Convention or, in the capacity of buyer, Article XXIV(1) of this Protocol, unless and to the extent that the debtor has otherwise agreed; and

(b) the holder of any interest to which the debtor's right or interest is subject pursuant to Article 29(4)(a) of the Convention or, in the capacity of buyer, Article XXIV(2) of this Protocol, but only to the extent, if any, that such holder has agreed.

2. – Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to space assets.

*Article XXVII – Limitations on remedies*

1. – This Article applies only where a Contracting State has made a declaration pursuant to Article XL(1).

2. – A Contracting State, in accordance with its laws and regulations, may restrict or attach conditions to the exercise of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol, including the placement of command codes and related data and materials pursuant to Article XX, where the exercise of such remedies would involve or require the transfer of controlled goods, technology, data or services, or would involve the transfer or assignment of a licence, or the grant of a new licence.

3. – In this Article, “controlled” means that the transfer of the goods, technology, data or services is subject to governmental restrictions.

*[Article XXVII bis – Limitations on remedies in respect of public service*

[Alternative A

1. – A State has the right to object to the exercise of default remedies, as provided in Chapter III of the Convention and Articles XVIII to XXIII of this Protocol, in respect of a space asset needed for the provision or maintenance of a public service which is in the vital interest of that State if the exercise of those remedies would cause interruption in the provision or maintenance of that service.

2. – Within twenty days from the date on which the State has notified the creditor of its objection to the exercise of remedies under the preceding paragraph, the creditor may exercise the right to step in and assume responsibility for the provision or maintenance of the relevant service in the State concerned or appoint a substitute entity for that purpose, with the consent of that State and of the licensing State.

3. – If the creditor chooses not to exercise its rights under the preceding paragraph, the State that objects to the exercise of default remedies by the creditor under paragraph 1 shall have the option of:

(a) curing the default by the debtor by paying to the creditor all sums outstanding for the entire period of default; or

(b) taking or procuring possession, use or control of the space asset and assuming the debtor’s obligations by stepping into the obligations of the debtor for the provision of a public service in the State concerned.

4. – A State that objects to the exercise of default remedies by the creditor under paragraph 1 shall exercise its rights under the preceding paragraph within ninety days. After such period, the creditor shall be free to exercise any of the remedies provided in Chapter III of the Convention and in Articles XVIII to XXIII of this Protocol, in respect of the relevant space asset.

5. – A State may only invoke the right to object to the exercise of default remedies in accordance with this Article if it has registered in the International Registry a notice recording that the space asset is used for providing a public service in the vital interest of that State prior to the registration of an international interest in that space asset by a creditor [or if it has registered such

notice within six months of the launch of a space object, even if after the registration of an international interest by the creditor].<sup>20</sup>

[Alternative B

*Concept*

Contractual obligations for the provision of public services should be maintained both where a creditor is exercising its rights under the Convention as applied to space assets and where the ownership of a space asset is being transferred.

*Two technical approaches to achieve this goal*

I. Rights approach

*Article ...*

1. – A lease of a space asset for the provision of public services which is so acknowledged by the parties may be registered by notice in accordance with Article 16 of the Convention.

2. – The registration of a notice of a public services lease made within a six-month period after the date of launch of a satellite prevails over other rights previously registered.

3. – Any transfer of ownership of a space asset, either through a sale or through the exercise of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol, is subject to the previously registered lease notice. The transferee is bound by the obligations of the lessor under the lease.

4. – Any lease registered by notice under paragraph 2 which is in breach of a previously registered financing contract may be struck from the International Registry at the request of the creditor.

II. Remedies approach

*Article ...*

1. – The creditor may not exercise the remedies provided in Chapter III of the Convention and Articles XVIII to XXIII of this Protocol in respect of a space asset which is used for the provision or maintenance of a public service, to the extent that this could interfere with the contractual obligations of the debtor concerning the provision or maintenance of the public service.

2. – The preceding paragraph shall only apply if a notice is registered in the International Registry recording that the debtor is contractually obliged to provide or maintain public service through that space asset

(a) prior to the registration of the international interest in that space asset by the creditor exercising remedies or

(b) within [six months] from the date of launch of the space asset, even if after the registration of the international interest by the creditor.

---

<sup>20</sup> Alternative A constitutes a discussion proposal that emerged from the Informal Working Group of the Committee of governmental experts on limitations on remedies at the third session of that Committee, held in Rome from 7 to 11 December 2009.

Such a notice can be registered by the parties to the contract or by the State to which the public service is provided.]<sup>21</sup> ]

### CHAPTER III – REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN SPACE ASSETS

#### *Article XXVIII – The Supervisory Authority*

1. – The Supervisory Authority shall be designated at the Diplomatic Conference to Adopt a Space Assets Protocol to the Cape Town Convention, provided that such Supervisory Authority is able and willing to act in such capacity.

2. – The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.

3. – The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.

#### *Article XXIX – First regulations*

The first regulations shall be made by the Supervisory Authority so as to take effect on the entry into force of this Protocol.

#### *Article XXX – Identification of space assets for registration purposes*

1. – With respect to a space asset that has not been launched, a description of the space asset that contains the name of its manufacturer, its manufacturer's serial number, and its model designation, and satisfies such other requirements as may be established in the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry. After launch of the space asset the creditor may add to its registration data all or any of the additional data specified in paragraph 2 but failure to do so or the addition of incorrect data shall not affect the validity of the registration.

2. – With respect to a space asset that has been launched, a description of the space asset that contains the date and time of its launch, its launch site, the name of its launch provider and [ ... ] and satisfies such other requirements as may be established in the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry.

#### *Article XXXI – Additional modifications to Registry provisions*

1. – For the purposes of Article 19(6) of the Convention, the search criteria for space assets shall be the criteria specified in Article XXX of this Protocol.

2. – For the purposes of Article 25(2) of the Convention, and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective

---

<sup>21</sup> Alternative B constitutes a discussion proposal that emerged from the Informal Working Group of the Committee of governmental experts on limitations on remedies at the fourth session of that Committee.

assignment of an international interest shall take such steps as are within its power to procure the discharge of the registration no later than five working days after the receipt of the demand described in such paragraph.

3.– The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers and discharge of the duties contemplated by Article 17(2) of the Convention.

4. – The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis.

5. – The insurance or financial guarantee referred to in Article 28(4) shall cover the liability of the Registrar under the Convention to the extent provided by the regulations.

6. – Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

#### CHAPTER IV – JURISDICTION

##### *Article XXXII – Waiver of sovereign immunity*

1. – Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to a space asset under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

2. – A waiver under the preceding paragraph must be in writing and contain a description, in accordance with Article VII, of the space asset.

#### CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS

##### *Article XXXIII – Relationship with the UNIDROIT Convention on International Financial Leasing*

The Convention as applied to space assets shall supersede the *UNIDROIT Convention on International Financial Leasing* in respect of the subject matter of this Protocol, as between States Parties to both Conventions.

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

The Convention as applied to space assets does not affect State Party rights and obligations under the existing United Nations Outer Space Treaties or instruments of the International Telecommunication Union.

[CHAPTER VI – FINAL PROVISIONS <sup>22</sup>*Article XXXV – Signature, ratification, acceptance, approval or accession*

1. – This Protocol shall be open for signature in ... on ... by States participating in the Diplomatic Conference to Adopt a Space Assets Protocol to the Cape Town Convention held at ... from ... to ... . After ..., this Protocol shall be open to all States for signature at ... until it enters into force in accordance with Article XXXVII.

2. – This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.

3. – Any State which does not sign this Protocol may accede to it at any time.

4. – Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

5. – A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

*Article XXXVI – Regional Economic Integration Organisations*

1. – A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. – The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. – Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

*Article XXXVII – Entry into force*

1. – This Protocol enters into force between the States which have deposited instruments referred to in sub-paragraph (a) on the later of:

---

<sup>22</sup> It is envisaged that, in line with practice, draft Final Provisions will be prepared for the diplomatic Conference at such time as the Committee of governmental experts has completed its work. The draft Final Provisions set out in Chapter VI are in no way intended to prejudge that process. They are based on the Final Provisions contained in the Aircraft and Luxembourg Protocols.



(a) the first day of the month following the expiration of three months after the date of the deposit of the [fifth] instrument of ratification, acceptance, approval or accession, and

(b) the date of the deposit by [the Secretariat] with the Depository of a certificate confirming that the International Registry is fully operational.

2. – For other States this Protocol enters into force on the first day of the month following the later of:

(a) the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession; and

(b) the date referred to in sub-paragraph (b) of the preceding paragraph.

#### *Article XXXVIII – Territorial units*

1. – If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. – Any such declaration shall state expressly the territorial units to which this Protocol applies.

3. – If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.

4. – Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. – If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:

(a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;

(b) any reference to the location of the space asset in a Contracting State refers to the location of the space asset in a territorial unit to which the Convention and this Protocol apply; and

(c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply.

#### *Article XXXIX – Transitional provisions*

In relation to space assets Article 60 of the Convention shall be modified as follows:

(a) in paragraph 2(a), after "situated" insert "at the time the right or interest is created or arises";

(b) replace paragraph 3 with the following:

“3. – A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when Articles 29, 35 and 36 of the Convention as modified or supplemented by the Protocol will become applicable, to the extent and in the manner specified in the declaration, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in that State. Any priority of the right or interest under the law of that State, so far as applicable, shall continue if the right or interest is registered in the International Registry before the expiration of the period specified in the declaration, whether or not any other right or interest has previously been registered.”

*Article XL – Declarations relating to certain provisions*

1. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare:

- (a) that it will not apply Article VIII;
- (b) that it will apply either or both of Articles XXIII and XXVII.

2. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article XVIII [wholly or in part].

3. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article XXI wholly or in part. If it so declares with respect to Article XXI(2), it shall specify the time-period required thereby.

4. – A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XXII and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XXII.

5. – The courts of Contracting States shall apply Article XXII in conformity with the declaration made by the Contracting State that is the primary insolvency jurisdiction.

*Article XLI – Declarations under the Convention*

Declarations made under the Convention, including those made under Articles 39, 40, 53, 54, 55, 57, 58 and 60 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

*Article XLII – Reservations and declarations*

1. – No reservations may be made to this Protocol but declarations authorised by Articles XXXVIII, XL, XLI and XLIII may be made in accordance with these provisions.

2. – Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

*Article XLIII – Subsequent declarations*

1. – A State Party may make a subsequent declaration, other than the declaration made in accordance with Article XLI under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. – Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declaration had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

*Article XLIV – Withdrawal of declarations*

1. – Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XLI under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. – Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal of declaration.

*Article XLV – Denunciations*

1. – Any State Party may denounce this Protocol by notification in writing to the Depositary.

2. – Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

*Article XLVI – Review Conferences, amendments and related matters*

1. – The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regimen established in the Convention as amended by the Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. – At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

(a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the assets covered by its terms;

(b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3. – Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States Parties which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by [five] States Parties in accordance with the provisions of Article XXXVII relating to its entry into force.

*Article XLVII – Depositary and its functions*

1. – Instruments of ratification, acceptance, approval or accession shall be deposited with ..., which is hereby designated the Depositary.

2. – The Depositary shall:

(a) inform all Contracting States of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Protocol;

(iii) each declaration made in accordance with this Protocol, together with the date thereof;

(iv) the withdrawal or amendment of any declaration, together with the date thereof; and

(v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;

(b) transmit certified true copies of this Protocol to all Contracting States;

(c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and

(d) perform such other functions customary for depositaries.]