The UNIDROIT Protocol to the CAPE Town Convention on Matters Specific to Space Assets

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The third and latest Protocol to the Convention on International Interests in Mobile Equipment (generally known as the Cape Town Convention), on Matters specific to Space Assets, was opened to signature in Berlin on 9 March 2012, at the conclusion of a diplomatic Conference. The new Protocol will enter into force - and with it the Cape Town Convention as applied to space assets - on the later of the date of the deposit of the tenth instrument of ratification, acceptance, approval or accession and the date of the deposit by the Supervisory Authority of the future International Registry for space assets with the Depositary of a certificate confirming that said Registry is fully operational. In this article the author, who was the person within Unidroit responsible from the very start for the development of the Protocol, first, introduces the Convention/Protocol structure of the Cape Town Convention and its key features, secondly, recounts the development of the Protocol - and in particular the way in which it brought together representatives of Governments of nations at all levels of development and leading representatives of the commercial space, financial and insurance communities - thirdly, provides an overview of the key features of the Protocol - in the process explaining the principal topics discussed at the diplomatic Conference - fourthly, explains the next steps to be taken in respect of the Protocol and, finally, essays a number of preliminary conclusions, referring in particular, on the one hand, to the benefits that it is hoped the Protocol may bring to not only emerging and developing economies, start-up companies and small operators but also manufacturers and financiers, as these see their markets broadened as a result of the increased availability of asset-based finance as an alternative and, on balance, cheaper method of financing, and, on the other, the way in which the authors of the Protocol ensured its full compatibility with the United Nations Treaties and Principles on Outer Space and other international instruments in force in this area.

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1 Introduction

The modern secured financing rules embodied in the Convention on International Interests in Mobile Equipment, opened to signature in Cape Town on 16 November 2001 (hereinafter the "Convention"), were from the outset designed to be capable of application to all categories of high-value asset moving regularly across or beyond national frontiers in the ordinary course of business.
Article 2(3)(c) of the Convention specifically makes the Convention applicable to international interests constituted in "space assets". The term "space assets" was adopted in preference to the more usual term "space objects" so as to distinguish the Space Protocol's application from that of the United Nations space law treaties, which employ the term "space object".
The application of the Convention has been extended to space assets by the Protocol to the Convention on Matters specific to Space Assets (hereinafter the "Space Protocol") adopted in Berlin on 7 March 2012 at a diplomatic Conference hosted by the Government of Germany[1] and opened to signature two

1 The diplomatic Conference was attended by the representatives of 40 States (Albania, Brazil, Burkina Faso, Canada, the People's Republic of China, Colombia, the Czech Republic, Denmark, France, Germany, Ghana, India, Indonesia, Iraq, the Islamic Republic of Iran, Ireland, Italy, Japan, Latvia, Luxembourg, Madagascar, Malawi, Mexico, Moldova, Nigeria, the Islamic Republic of Pakistan, Portugal, the Republic of Korea, the Russian Federation, Saudi Arabia, Senegal, Slovenia, South Africa, Spain, Sudan, Turkey, the United Kingdom, the United States of America, Yemen and Zimbabwe), one Regional Economic Integration Organisation (the European Union), four intergovernmental. Organisations (the European Space Agency, the Intergovernmental Organisation for International Carriage by Rail (OTIF), the International Civil Aviation Organization (ICAO) and the International Telecommunication Union (ITU)), five international non-governmental Organisations (the Aviation Working Group (AWG), the European Satellite Operators Association, the International Bar Association, the International Institute of Space Law (IISL) and the Rail Working Group) and a certain number of technical advisers (Mr H. Baumann (Munich Re Insurance Company), Mr M. Borello (Thales Alenia Space), Mr S. Devouge (Marsh SA), Mrs C. Dubreuil (Astrium), Ms N.J. Eskenazi (SES SA), Mr O. Heinrich (BHO Legal), Ms M. Leimbach (Legal Risk Consultants), Mr M. Lemaire (Eutelsat Communications), Ms P. Meredith (Zuckert Scoutt Rasenberger LLP), Ms M. Petitjean (Eutelsat Communications), Mr B. Schmidt-Tedd (German Space Agency) and Mr J.-C. Vecchiatto (EADS)), as well as a number of special invitees of the Government of Germany (Mr U. Grude (Norddeutsche Landesbank Girozentrale), Mr J. Meincke (Association of German Pfandbrief Banks), Mr M. Reuleaux (Norddeutsche Landesbank Girozentrale) and Ms A. Richter-Mendau (Association of German Pfandbrief Banks)) and Mr R .Cowan, Managing Director of Aviareto Limited, the Registrar of the International Registry for aircraft objects. The President of the Conference was Mr J.H.E. Kronke (Germany). The Vice-Presidents of the Conference were Mr H.S. Burman (United States of America), Mr M. Gourdault-Montagne (France), Mr I.E. Manylov.

days later, at the closing ceremony of the Conference, on which occasion it was signed by three States (Burkina Faso, Saudi Arabia and Zimbabwe).[2]
The Protocol will remain open for signature at the seat of Unidroit, in Rome,[3] until its entry into force.[4] The Protocol will enter into force on the later of, first, the first day of the month following the expiration of three months after the date of the deposit of the tenth instrument of ratification, acceptance, approval or accession and, secondly, the date of the deposit by the Supervisory Authority with the Depositary of a certificate confirming that the International Registry for space assets is fully operational.[5]

2 The Cape Town Convention Regimen

(a) Structure

The Convention on International Interests in Mobile Equipment, opened to signature in Cape Town on 16 November 2001 (hereinafter the "Convention"), provides the general rules governing the taking of security in those classes of high-value mobile equipment by their nature moving regularly across or beyond national frontiers. Originally, it was intended that the Convention would embody all the rules governing such classes of equipment. However, at the third session of the Unidroit Study Group for the preparation of uniform rules on international interests in mobile equipment, held in Rome from 15 to 21 January 1997, it became clear that considerably more time would be needed to develop the rules specific to those classes of equipment other than airframes, aircraft engines and helicopters, whereas the aviation community was already reasonably clear as to the rules specific to aircraft objects that would need to be embodied in the future Convention. It was, therefore, decided to establish a dual structure for the future international regimen comprising, on the one hand, a Convention to carry the general rules applicable to all those classes of equipment which it covered and, on the other, equipment-specific Protocols to carry the special additional rules that would be needed to adapt these general rules to the specific pattern of financing for each such class of equipment.

(Russian Federation), Rev. M. Stofile (South Africa) and Mr Tang Wenhong (the People's Republic of China). The Chairman of the Commission of the Whole was Mr S. Marchisio (Italy). The Deputy Chairman of the Commission of the Whole was Mr V. Kopal (Czech Republic). Sir Roy Goode (United Kingdom) was appointed Reporter. The Chairperson of the Final Clauses Committee was Ms N. Chadha (India). The Chairman of the Credentials Committee was Mr E. Zoungrana (Burkina Faso). The Chairman of the Drafting Committee was Mr M. Deschamps (Canada). Mr J.A. Estrella Faria, Secretary-General of Unidroit, acted as Secretary-General of the Conference.

2 The text of the Space Protocol is reproduced in an appendix to this paper.
3 Unidroit was designated Depositary under Article XLVIII(1) of the Protocol.
4 Cf. Article XXXVI(1) of the Protocol.
5 Cf. Article XXXVIII(1) of the Protocol.

The first such Protocol, on Matters specific to Aircraft Equipment (hereinafter the "Aircraft Protocol"),[6] was opened to signature in Cape Town on 16 November 2001, at the same time as the Convention, with the other two Protocols contemplated by Article 2(3) of the latter, on Matters specific to Railway Rolling Stock (hereinafter the "Rail Protocol") and on Matters specific to Space Assets falling to be finalised subsequently: the Rail Protocol was opened to signature in Luxembourg on 23 February 2007. Moreover, under Article 51(1) of the Convention, it is open to Unidroit, as Depositary, to propose the preparation of additional Protocols.[7]

(b) Key Features of the Convention

The Convention may be summed up as: (i) creating a new international interest in high-value mobile 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; (ii) granting to the creditor 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 (iii) introducing 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 generally recognised as applicable to proprietary rights, being 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.

3 The Space Protocol

(a) Development

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. And the preparation of the Aircraft Protocol demonstrated the usefulness of a first draft being prepared by a working group made up essentially of leading manufacturers,

6 At the time of writing (14 September 2012), the Convention counted 52 Contracting Parties and the Aircraft Protocol 46. As of 31 December 2011, approximately 321,000 registrations had been made in the International Registry for aircraft objects since its entry into operation (on 1 March 2006).

7 Unidroit is currently considering the case for preparing a fourth Protocol, on Matters specific to Agricultural, Construction and Mining Equipment; see Resolution No. 5 passed by the diplomatic Conference for the adoption of the Rail Protocol.

operators and financiers of the types of aircraft object Aviation Working Group ("AWG"), jointly organised by Airbus and the Boeing Company, 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 Convention itself.

It was thus that it was decided by the President of Unidroit that the task of preparing a similar first draft of what was contemplated as a Protocol designed to extend the benefits of the Convention regimen to space financing should be entrusted to a working group made up of leading players in the space industry, notably manufacturers, operators, launch service providers, financiers and insurers, as well as the relevant international Organisations.[8] It was the preliminary draft Space Assets Protocol prepared by the Space Working Group, organised by Mr P.D. Nesgos, a leading expert in the commercial space financing world,[9] which, following consideration by a Unidroit Steering and Revisions Committee,[10] provided the basis for the intergovernmental negotiations which got under way in December 2003. In keeping with Resolution No 3 adopted by the Cape Town diplomatic Conference, the intergovernmental consultation process was opened up to include also member States of the United Nations Committee on the Peaceful Uses of Outer Space (U.N./COPUOS).[11]

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8 The Space Working Group brought together representatives of such major players as Alcatel, Alenia Spazio, ANZ Investment Bank, Argent Group, Arianespace, Assicurazioni Generali, Astrium, BNP Paribas, the Boeing Company, Crédit Lyonnais, Deutsche Morgan Grenfell, DIRECTV, EADS, FiatAvio, GE American Communications, Hughes Electronics Corporation, Hughes Space & Communications Company, ING Lease International Equipment Finance, Lockheed Martin Finance Corporation, Lockheed Martin Global Telecommunications, the Long Term Credit Bank of Japan, the Mitsubishi Trust and Banking Corporation, Motorola Satellite Communications Group, PanamSat, La Réunion Spatiale, Space Systems/Loral, SpaceVest and TelecomItalia.

9 Cf. Study LXXIIJ – Doc. 9.

10 Cf. Study LXXIIJ – Doc. 10 rev.

11 U.N./COPUOS has, moreover, played a most important role in continuing to monitor the draft Protocol throughout its development by the Committee, notably through its Legal Subcommittee. The primary focus of this monitoring has, of course, been the ensuring of full compatibility with the United Nations Treaties and Principles on Outer Space. Initially, though, the Legal Subcommittee also examined the case for the United Nations assuming the role of Supervisory Authority of the international registration system for space assets to be established under the Space Protocol (cf. Report on the 41st session of the Legal Subcommittee (Vienna, 2/12 April 2002) (A/AC.105/787), §§ 108-112 and Annex III (Conclusions of the consultations undertaken through the *ad hoc* consultative mechanism); Report on the 42nd session of the Legal Subcommittee (Vienna, 24 March/4 April 2003) (A/AC.105/805), §§ 105-120 and Annex III (Report of the Chairman of the Working Group); Report on the 43rd session of the Legal

57 States,[12] representing a cross-section of the industrialised, emerging and developing worlds, and a considerable number of intergovernmental and international non-governmental Organisations, as well as leading representatives of the commercial space, financial and insurance communities,[13] participated in the work of the Unidroit Committee of governmental experts (hereinafter the "Committee").[14] The Committee was chaired by Mr S. Marchisio (Italy), the three deputy Chairmanships being held by Mexico, South Africa and the Czech Republic. A few issues proved to be of particular difficulty and this is why there was a hiatus in the work of the Committee following its second session, held in October 2004. This hiatus was *inter alia* used to gather information on one of these particular issues, namely public service.[15] The time was

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Subcommittee (Vienna, 29 March/8 April 2004) (A/AC.105/826), §§ 74-89 and Annex III (Report of the Chairman of the Working Group); Report on the 44th session of the Legal Subcommittee (Vienna, 4/15 April 2005) (A/AC.105/850), §§ 86-90, 92, 94-103, 111-114 and Annex II (Report of the Chairman of the Working Group) Report on the 45th session of the Legal Subcommittee (Vienna, 3/13 April 2006) (A/AC.105/871), §§ 111-113, 115, 117-119 and 124-125; Report on the 46th session of the Legal Subcommittee (Vienna, 26 March/5 April 2007) (A/AC.105/891), §§ 114-115 and Report on the 48th session of the Legal Subcommittee (Vienna, 23 March/3 April 2009) (A/AC.105/935), §§ 107-108). However, while there was considerable support within the Legal Subcommittee for this idea, consensus could not be reached, notably because it was felt that such a proposal would be incompatible with the United Nations' fundamental mandate.

12 Albania, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burkina Faso, Canada, the People's Republic of China, Colombia, the Czech Republic, France, Germany, Greece, Hungary, 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, Peru, the Philippines, 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.

13 Alcatel, Arianespace, the Boeing Capital Corporation, Calyon, EADS, EADS Astrium, EADS Space Transportation, Eutelsat Communications, the German Space Agency, Groupe Crédit Agricole, Hermes, Intelsat, JSAT Corporation, KfW, Marsh SA, Munich Reinsurance Company, SES SA, SpaceX, Telespazio, Thales Alenia Space and Thuraya Satellite Telecommunications, as well as law firms advising such parties, including Baker & McKenzie, BHO Legal, Herbert Smith, Lovells, Milbank, Tweed, Hadley & McCloy, Mizrack & Gantt, White & Case and Zuckert Scoutt & Rasenberger.

14 The Committee held five sessions, the first held in Rome from 15 to 19 December 2003, the second in Rome from 26 to 28 October 2004, the third in Rome from 7 to 11 December 2009, the fourth in Rome from 3 to 7 May 2010 and the fifth in Rome from 21 to 25 February 2011.

15 Report on the second session of the Committee (C.G.E./Space Pr./2/Report) § 41.

also used to focus on criteria necessary to identify such assets for registration purposes.[16]

Following joint Government/industry meetings,[17] which attracted representative participation from the Governments of the leading space-faring nations[18] and all sectors of the commercial space, financial and insurance communities[19] and at which these and related issues were considered in depth, the Unidroit General Assembly at its 61st session, held in Rome in November 2007, decided upon the establishment of a Steering Committee to draw conclusions from these consultations regarding the text of the preliminary draft Space Protocol having come out of the first session of the Committee.[20]

At the second such Steering Committee meeting,[21] it was considered that the progress issues specific to the future international registration system for space

16 *Ibid* § 51.

17 The first such meeting, "The crucial role of industry in finalising an expansion of the Cape Town Convention to cover space assets", was hosted by the Royal Bank of Scotland in London on 24 April 2006, the second, "The views of industry and Government on how best to finalise an expansion of the Cape Town Convention to cover space assets", by Milbank, Tweed, Hadley & McCloy in New York on 19 and 20 June 2007.

18 The People's Republic of China, France, Germany, India, Italy, Japan, Mexico, Nigeria, the Republic of Korea, the Russian Federation, Spain, the United Kingdom and the United States of America.

19 ABN Amro Bank NV, Alcatel Alenia Space France, Alcatel Alenia Space Italia, Arianespace, BNP Paribas, the Boeing Capital Corporation, Calyon Groupe Crédit Lyonnais, Commerzbank AG, Crédit Agricole, SA, EADS, EADS Astrium, the European GNSS Supervisory Authority, Eutelsat Communications, the Galileo Joint Undertaking, the German Space Agency, HellasSat SA, Hispasat, JSAT Corporation, ManSat, Marsh USA Inc, the Royal Bank of Scotland, SES Astra, SES Global, Space Systems/Loral Inc, SpaceX, Telespazio and Virgin Galactic (as well as representatives of the following law firms advising such clients: Baker & McKenzie, Brödermann & Jahn, Freshfields Bruckhaus Deringer, Lovells, Milbank Tweed Hadley & McCloy, Herbert Smith, White & Case and Zuckert Scoutt & Rasenberger).

20 Report on the session (A.G. 61 (8)).

21 The Steering Committee held two meetings, the first, at the invitation of the Government of Germany, in Berlin from 7 to 9 May 2008 and the second, under the auspices of the European Centre for Space Law, in Paris on 14 and 15 May 2009. It attracted participation from the Governments of Canada, the People's Republic of China, France, Germany, Greece, Italy, Japan, Mexico, Nigeria, the Russian Federation, South Africa, Spain, the United Kingdom and the United States of America and, representing the commercial space, financial and insurance communities, Arianespace, the Boeing Capital Corporation, Coface, Commerzbank AG, Crédit Agricole SA, EADS, EADS Astrium, the European GNSS Supervisory Authority, Finmeccanica, the German Space Agency, JSAT Corporation, ManSat, Marsh SA, SCOR Global P&C, Sky Perfect JSAT Group, Space Communication Corporation, SpaceCo, SpaceX, Telespazio SpA, Thales Alenia Space France, Thales Alenia Space Italia, as well as representatives of the following law firms advising such clients: Baker & McKenzie, Gide Loyrette Nouel, Heinrich Kanzlei and Zuckert Scoutt & Rasenberger.

assets, notably the made by the Steering Committee in building on the conclusions reached by the Government/industry meetings, notably regarding the key outstanding issues, was such that it was time to reconvene the Committee. This view was endorsed by the Unidroit Governing Council[22] and it was thus that the third session of the Committee 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.[23]

A fourth session was held in May 2010[24] and, following intersessional meetings – at which significant progress was made on the definition of the term "space asset" and the issues of public service[25] and components[26] – and consultations with representatives of the commercial space and financial communities,[27] all held in October 2010, the Committee at its final session, held in February 2011, established the text of a preliminary draft Protocol with the recommendation that the Unidroit Governing Council authorise the transmission of this text to a diplomatic Conference, for adoption.[28]

At its 90th session, held in Rome in May 2011, the Unidroit Governing Council endorsed the conclusion reached by the Committee at its final session, that the draft Protocol as improved during that session was ripe for such adoption. All Unidroit member States were invited to the diplomatic Conference, as well as, pursuant to Resolution No. 3 adopted by the Cape Town diplomatic Conference, all member States of the United Nations. Invitations were also extended, as observers, to the relevant international Organisations and, as technical advisers, to those representatives of the commercial space, financial and insurance communities having participated in the development of the draft Protocol.

(b) Key Features

(i) Sphere of Application

(α) "Space Asset"

The most important way in which the Convention is completed by each asset-specific Protocol is in the definition of the types of asset covered. The way in which this decision has come out in each case reflects, first and foremost, an

22 Report on the 88th session of the Governing Council (C.D. (88) 17)), § 138.
23 Report on the third session of the Committee (C.G.E./Space Pr./3/Report).
24 Report on the fourth session of the Committee (C.G.E./Space Pr./4/Report).
25 Report on the intersessional meeting of the Informal Working Group of the Committee on limitations on remedies (C.G.E./Space Pr/5/W.P. 6).
26 Report on the intersessional meeting of the Informal Working Group of the Committee on default remedies in relation to components (C.G.E./Space Pr./5/ W.P. 5).
27 Report on the intersessional consultations with representatives of the international commercial space and financial communities (C.G.E./Space Pr./5/W.P. 4).
28 Report on the fifth session of the Committee (C.G.E./Space Pr./5/Report) § 134.

assessment as to whether the particular Protocol 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 Space Protocol, the decision was 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. However, at the same time there was concern lest any high-value component, such as a transponder – as indeed any other component deemed bankable at the time – should be capable of falling within the definition. In particular, it was felt important that low-value components, in particular those not deemed bankable, should be excluded from the sphere of application of the Space Protocol so as to avoid the future International Registry being cluttered up with countless registrations of international interests in simple nuts and bolts.

The term "space asset" as employed in the Space Protocol covers, in general, any man-made uniquely identifiable asset in space or designed to be launched into space and, specifically, any "spacecraft", "payload" or part of a spacecraft or payload, such as a transponder.[29] The term "spacecraft" is intended to cover any satellite, space station, space module, space capsule, space vehicle or 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 accordance with regulations to be made by the future Supervisory Authority.[30] The application of the Space Protocol to any part of a spacecraft or payload is likewise posited on the premise that a separate registration may be made in respect of such a part in the International Registry in accordance with the regulations. The requirement of separate registrability for parts is notably designed to deal with the concern adverted to above, namely avoiding the Registry being cluttered up with registrations of international interests in mere nuts and bolts.

(β) Debtor's Rights

Under Article 8(1)(a) of the 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 him. 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

29 Cf. Article I(2)(l) of the Space Protocol.

30 The particular significance of the coverage of payloads lies in the growing use being made of hosted payloads. Cf. in this connection M Buzdugan, "Satellite financing through hosted payloads: benefits and challenges" in *Air and Space Law* 2011, 139, 140 and 160 and "Australian defence force extends hosted payload contract on Intelsat 22" in *Wireless Satellite and Broadcasting Newsletter* 1 May 2010.

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.[31]
The sphere of application of the Convention, through the 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",[32] with the creditor being entitled to record such rights as part of his international interest registered in the space asset in question.
Upon taking control of a space asset, the creditor can, through an assignment to it of the debtor's claims against third parties, 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.
It is true that this rather departs from the traditional system of remedies contemplated under asset-based financing transactions and, indeed, may be considered to take the Space Protocol into the realm of project financing 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.

(γ) Demarcation Between the Space Protocol and the Aircraft Protocol
Concern was voiced during the intergovernmental negotiations regarding a potential overlap between the Space Protocol and the Aircraft Protocol, especially in view of the broad application already enjoyed by the latter. The solution found in the Space Protocol was to provide, on the one hand, that the latter would not in principle apply to objects falling within the definition of "aircraft objects" given in the Aircraft Protocol except in cases where such objects were primarily designed for use in space, in which cases the Space Protocol would apply even while the objects in question were not in space[33] and, on the other, that the Space Protocol would not apply to a particular aircraft object merely because it was designed to be temporarily in space.[34]

(δ) Physically Linked Space Assets
In the light of the decision to include high-value components, such as transponders, in the definition of "space asset", it was necessary to decide what should be done in those situations where conflicts of interests might arise at the time of a creditor's exercise of its default remedies in respect of a space asset that was physically linked to another asset belonging to a non-defaulting third party, such as a transponder, potentially impacting negatively on that third party.

31 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) 4.
32 Cf. Article I(2)(a) of the Space Protocol.
33 Cf. Article II(3) of the Space Protocol.
34 Cf. Article II(4) of the Space Protocol.

There had long been a division of opinion within the Committee as to the most appropriate solution to this problem: on the one hand, there were those arguing that this was an issue on which the draft Protocol should be silent, with the issue being left to be resolved by inter-creditor agreements, and, on the other, those who claimed that, whilst it was right that inter-creditor agreements should, in principle, govern such potential conflicts, a default rule should be provided for those cases where no inter-creditor agreement was actually made.
However, on the basis of negotiations in the run-up to the Conference, the two delegations that had been principally involved in the discussions on this issue were able to lay a joint proposal before the Conference for a new Article XVII(3), a proposal that was accepted.[35] Under this proposal, what the parties agreed on the issue in their inter-creditor agreements would in all cases prevail but, in the event of the parties failing to reach such agreements, a creditor would not be able to enforce a security interest in a space asset that was physically linked with another space asset so as to impair or interfere with the operation of the other space asset if an international interest or sale had been registered with respect to the other space asset prior to the registration of the security interest being enforced.
It is important to note that this substantive rule was thus only intended to serve as a fall-back rule in what was generally recognised to be the unlikely event of the parties failing to make inter- creditor agreements on this issue.

(ε) Limitations on Remedies
1. Preservation of Powers of Contracting States
From the beginning, those preparing the Space Protocol had been clear in their minds that nothing in the Protocol was intended to affect the exercise by Contracting States of their authority to issue licences, approvals, permits or authorisations for the launch or operation of space assets.
However, at the final session of the Committee, one Government put forward a proposal for amending the provision of the draft Protocol under which Contracting States were permitted, through the lodging of a declaration, to restrict or attach conditions to the exercise of default remedies where such exercise 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 granting of a new licence.[36]
Intensive negotiations during the Conference produced a redrafting of the provision in question, as a result of which it is now made explicit in the Protocol, first, that the it does not affect the exercise by Contracting States of their authority to issue licences, approvals, permits or authorisations for the launch or operation of space assets or the provision of any service through the use, or with the support of space assets and, secondly, that it is not to be read as

35 Cf. DCME-SP – Doc. 17.
36 Cf. C.G.E./Space Pr./5/W.P. 14 rev.

requiring Contracting States to recognise or enforce an international nterest in a space asset where such recognition or enforcement would conflict with its laws or regulations concerning the export of controlled goods, technology, data and services or national security.[37]

2. Public Service

Another problem that dogged the intergovernmental negotiations right up until the diplomatic Conference concerned how to strike the most appropriate balance between, on the one hand, the interests of a creditor seeking to exercise remedies against a space asset performing a "public" service in the event of its debtor's default, and, on the other, those of one or more organs of the State anxious to ensure the continuity of the performance of the particular "public" service notwithstanding that default.

The kernel of a solution to this problem was found at the final session of the Committee when it was agreed that any creditor seeking to exercise a default remedy that would interrupt a service designated in the future International Registry as a public service would have to give six months' notice of its intention to exercise such remedy to the affected Government or Government agency, with the Government or Government agency during that time being invited to be directly involved in any proceedings of the regulatory authority of the licensing State of the asset that the defaulting debtor might also take part in, whether or not the creditor or debtor was located within that State.

Differences of opinion, however, were evidenced at the diplomatic Conference as to the appropriate length of the notice to be given by the creditor of its intention to exercise its remedies. On the one hand, some Governments felt that to extend this period of time beyond three months would have the effect of limiting the availability of credit, whilst, on the other, a significant number of States, particularly those hailing from the developing and emerging worlds, indicated that three months would simply not be long enough necessary for the for the putting in place of the arrangementsmaintenance of the public service in question.

Again on the basis of negotiations in the run-up to the Conference, the two delegations principally involved in the discussion of these issues, were able to lay a joint proposal before the Conference for a new Article XXVII(3) and (4), which, as amended, met with unanimous approval.[38]

Under this solution, the length of the period of notice was made subject to a declaration the lodging of which would be incumbent on each Contracting State at the time of ratification, acceptance, approval or accession. Each State would thus be able to specify the time-period that it preferred, with this period, however, neither exceeding six months from the time of the creditor's indication of its intention to exercise its remedies nor being less than three months from the same date.

37 Cf. Article XXVI of the Space Protocol.

38 Cf. DCME-SP – Doc. 18.

(ζ) Identification Criteria for Space Assets

1. Identification for Registration Purposes

The international registration system to be established pursuant to the Convention as applied, through the Space Protocol, to space assets being asset-based in nature, a space asset, in order to be registrable in the future International Registry for space assets, needs to be uniquely identifiable.

Given that it proved difficult during the intergovernmental negotiations to work out such unique identification criteria for all the different categories of space asset potentially covered by the Space Protocol - not least because it emerged that serial numbers were not always used on space assets - it was ultimately decided to follow the Rail Protocol and provide maximum flexibility by leaving the unique identification criteria for each category of space asset to be established in the regulations to be promulgated by the Supervisory Authority.[39]

2. Identification for Constitution of International Interests

Again like the Rail Protocol, the Space Protocol removes the specificity required for the constitution of an international interest, allowing an agreement creating or providing for an international interest to identify space assets by item, by type or by a statement that the agreement covers all present and future space assets or all such assets with the exception of specified items or types.[40]

A new security agreement will not, therefore, be needed each time the debtor acquires a new space asset. Security will in particular, as a result, be able to be given not only over individual satellites but also over satellite constellations.

(η) Relationship with the U.N. Space Treaties and Instruments of the I.T.U.

The authors of the Space Protocol were at all times conscious of the need to make it absolutely clear that the Convention as applied to space assets was not intended to affect State Party rights and obligations under the existing U.N. space treaties or instruments of the I.T.U. And this principle is spelled out in the Space Protocol.[41]

Moreover, this idea is reinforced by the Preamble, which reaffirms the pre-eminence, for the carrying out of the transfers contemplated by the Space Protocol, of State Party rights and obligations under the United Nations space treaties by which the States Parties concerned were bound.[42]

4 Next Steps

(a) Preparatory Commission for the Establishment of the International Registry for Space Assets

The Berlin diplomatic Conference decided to establish, pending the entry into force of the Space Protocol, a Preparatory Commission to act with full authority

39 Cf. Article XXX of the Space Protocol.
40 Cf. Article VII of the Space Protocol.
41 Cf. Article XXXV of the Space Protocol.
42 Cf. fifth clause of the Preamble to the Space Protocol.

as Provisional Supervisory Authority for the establishment of the future International Registry for space assets.[43]
In view of the uncertainty regarding the identity of the future Supervisory Authority – and in particular whether the governing bodies of the I.T.U. decide to accept the Conference's invitation to that Organisation[44] – the Conference felt that the technical and financial implications of this decision were such as to make it necessary that the operations of the Preparatory Commission be under the control of States: it was, therefore, decided that the Preparatory Commission should operate under the guidance of the Unidroit General Assembly.
In line with the proportion of negotiating States fixed for an analogous purpose by the Cape Town diplomatic Conference, the Conference, in Resolution No. 2, decided that the Preparatory Commission should be composed of experts nominated by one-third of the negotiating States in Berlin. It will be for the Unidroit Secretariat, in consultation with the President of the Conference, to make the appropriate choice as regards the composition of the Preparatory Commission, notably bearing in mind the desirability of ensuring appropriate geographical representation.
I.T.U., the International Civil Aviation Organization – as Supervisory Authority of the International Registry for aircraft objects – the Intergovernmental Organisation for International Carriage by Rail – as the Secretariat to the future Supervisory Authority of the International Registry for railway rolling stock – and representatives of the space industry and other interested parties will be invited to participate in the work of the Preparatory Commission, as observers.
In the event of the governing bodies of I.T.U. deciding that the latter should not become Supervisory Authority, it will be for the General Assembly of Unidroit to appoint another international Organisation or entity to serve as Supervisory Authority upon or after the entry into force of the Protocol.

(b) Preparation of Official Commentary on the Space Protocol

In line with the success enjoyed by the Official Commentaries on the Convention and Aircraft Protocol and on the Convention and Rail Protocol prepared by Sir Roy Goode, the diplomatic Conference invited the latter to prepare an Official Commentary on the Convention and Space Protocol.[45]

5 Conclusion

It is true that some States attending the Berlin Conference echoed the concerns voiced by certain sectors of the space industry that the draft Protocol was not needed, that it would create an unnecessary layer of supranational law and that it would raise, rather than lower the costs of commercial space financing,

43 Under Resolution No. 1 adopted by the diplomatic Conference on 8 March 2012.
44 Under Resolution No. 2 adopted by the diplomatic Conference on 8 March 2012.
45 Under Resolution No. 5 adopted by the diplomatic Conference on 8 March 2012.

principally by reason of the complexity of the text,[46] arguing that the draft Protocol was not, therefore, ripe for finalisation. However, the vast majority of delegations represented at the Conference made clear their conviction that the draft Protocol was to be expected in general to benefit developing and emerging markets[47] and in particular to assist smaller operators and start-up companies, as well as to broaden access to the commercial space market. And it is significant that, once the decision to go ahead and finalise the draft Protocol had been taken, all delegations worked constructively together toward the production of the best possible text.[48]

It has been pointed out by one industry analyst that "[a] stable business environment underpinned by clearly codified legal guidelines and regulatory transparency is essential for the successful development of commercial space products, services and spin-offs" and "[s]upportive regulation reduces uncertainty, which helps attract investment".[49] In the aviation industry, this is exactly the reason why the Convention and the Aircraft Protocol have already made such a difference to the increased availability of asset-based financing for aircraft objects. And the Space Protocol too is designed to contribute to the creation of just such an environment, through not only the clear and certain substantive legal rules that it embodies but also the enhanced degree of transparency that the establishment of the future International Registry will bring to commercial space financing transactions.

There is good reason, moreover, to believe that the Space Protocol stands to benefit not only what are perceived as its principal beneficiaries, namely the emerging and developing economies, start-up companies and smaller operators, but manufacturers and financiers too, as these 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, not to mention the enhanced transparency just referred to. This would seem to be especially important at a time when there is an increasing demand for the

46 Cf. DCME-SP – Doc. 6, pp. *5 et seq*.

47 It no doubt reflected the broad participation in the Conference of developing and emerging economies that Resolution No. 4 adopted by the Conference on 8 March 2012 encouraged all Contracting States and international, national and private financing institutions to assist developing Contracting States by providing them with reasonable discounts or rebates on exposure rates or similar charges levied by such financing institutions. The importance attached to this Resolution by the developing and emerging economies at the Conference acknowledges the considerable part played 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 the Aircraft Protocol.

48 For an account of the economic assumptions underpinning the Space Protocol, cf. the author's aforementioned article in the *Cape Town Convention Journal*, at pp. 117-120.

49 Cf. *The Space Report 2011* (Space Foundation 2011), 29.

deployment of space assets in Africa, Latin America and South-East Asia. At the same time, though, it is important to be clear that the Space Protocol is, in no way, intended to change the forms of commercial space financing currently available, rather seeking simply to provide prospective debtors, the world over, with an additional financing option, the credentials of which are so well-proven in an area as influential on the development of space practice as aviation.

The broadly-based participation in the preparation of the Space Protocol of not only the Governments of nations at all levels of development but also leading representatives of the commercial space, financial and insurance communities provides, it is submitted, eloquent testimony of the benefits that may 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 Convention and the Aircraft Protocol, the Space Protocol be duly responsive to the essential needs and requirements of business practice, whilst, at the same time, being in line with the U.N. Treaties and Principles on Outer Space, as well as other international instruments in force in this area.

APPENDIX

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

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,

CONSCIOUS 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,

TAKING INTO CONSIDERATION the benefits to all States from expanded space-based services and financing which the Convention and this Protocol may yield,

MINDFUL of the principles of space law, including those contained in the international space treaties of the United Nations and the instruments of the International Telecommunication Union,

RECALLING, for the carrying out of the transfers contemplated by this Protocol, the pre-eminence of State Party rights and obligations under the international space treaties of the United Nations by which the States Parties concerned are bound,

RECOGNISING the continuing development of the international commercial space industry and contemplating the expected benefits of a uniform and predictable regimen governing interests in space assets and in related rights 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) "licence" means any permit, 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 orbital positions or the transmission, emission or reception of electromagnetic signals to and from a space asset;
   (f) "obligor" means a person from whom payment or other performance of debtor's rights is due or to become due;
   (g) "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;

(h) "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;

(i) "rights reassignment" means:

(i) 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; or

(ii) a transfer of debtor's rights under Article XII(4)(a) of this Protocol;

(j) "space" means outer space, including the Moon and other celestial bodies; and

(k) "space asset" means any man-made uniquely identifiable asset in space or designed to be launched into space, and comprising

(i) a spacecraft, such as a satellite, space station, space module, space capsule, space vehicle or reusable launch vehicle, whether or not including a space asset falling within (ii) or (iii) below;

(ii) a payload (whether telecommunications, navigation, observation, scientific or otherwise) in respect of which a separate registration may be effected in accordance with the regulations; or

(iii) a part of a spacecraft or payload such as a transponder, in respect of which a separate registration may be effected in accordance with the regulations, together with all installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto.

3. For the purposes of the definition of "internal transaction" in Article 1(n) of the Convention, a space asset, when not on Earth, is deemed located in the Contracting State which registers the space asset, or on the registry of which the space asset is carried, as a space object under one of the following:

(a) 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;

(b) the Convention on Registration of Objects Launched into Outer Space, signed at New York on 14 January 1975; or 1961.

(c) United Nations General Assembly Resolution 1721 (XVI) B of 20 December

4. In Article 43(1) of the Convention and Article XXII of this Protocol, references to a Contracting State on the territory of which an object or space asset is situated shall, as regards a space asset when not on Earth, be treated as references to any of the following:

(a) the Contracting State referred to in the preceding paragraph;

(b) a Contracting State which has issued a licence to operate the space asset; or

(c) a Contracting State on the territory of which a mission control centre for the space asset is located.

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

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. This Protocol does not apply to objects falling within the definition of "aircraft objects" under the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment except where such objects are primarily designed for use in space, in which case this Protocol applies even while such objects are not in space.

4. This Protocol does not apply to an aircraft object merely because it is designed to be temporarily in space.

Article III – Preservation of rights and interests in a space asset

Ownership of or another right or interest in a space asset shall not be affected by:

(a) the docking of the space asset with another space asset in space;

(b) the installation of the space asset on or the removal of the space asset from another space asset; or

(c) the return of the space asset from space.

Article IV – Application of the Convention to sales; salvage

1. Article XL of this Protocol and 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.

   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 XXIII of this Protocol), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) of the Convention shall apply to contracts of sale and prospective sales.

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. Nothing in the Convention or this Protocol affects any legal or contractual rights of an insurer to salvage recognised by the applicable law. "Salvage" means a legal or contractual right or interest in, relating to or derived from a space asset that vests in the insurer upon the payment of a loss relating to the space asset.

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 Articles V and IX 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 XLI(2)(a) of this Protocol.
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 of this Protocol 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 recording 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), 25(1), (2) and (4) and 30 of the Convention apply in relation to a recording 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 under paragraph 1.
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 recording forming part of that registration under paragraph 1.

Article XIII – Priority of recorded rights assignment

1. Subject to Article 29(6) of the Convention and paragraph 2 of the present Article, 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 provided that the registration was still current immediately before the international interest was constituted as provided by Article 7 of the Convention.

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 deemed 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 of this Protocol apply to a rights reassignment by the creditor or a subsequent assignee. Where those Articles so apply, any references made to the creditor or holder are 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 XVI – Derogation

The parties may, by agreement in writing, exclude the application of Article XXI of this Protocol and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article XVII(1) and (2).

CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article XVII – 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 fourteen or more calendar 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. Unless otherwise agreed, a creditor may not enforce an international interest in a space asset that is physically linked with another space asset so as to impair or interfere with the operation of the other space asset if an international interest or sale has been registered with respect to the other space asset prior to the registration of the international interest being enforced. For the purposes of this paragraph, a sale or an interest equivalent to an international interest made or arising before the effective date of the Convention, as defined in Article XL of this Protocol, which is registered within three years from that date is deemed to be an international interest or a sale registered at the time of the constitution of the international interest or the sale, as the case may be.

Article XVIII – 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:
   (a) references to the secured obligations and to the security interest were references to the obligations secured by the rights assignment and to the security interest created by that assignment;
   (b) references 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 XIX – Placement of data and materials

Subject to Article XXVI of this Protocol, 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 an opportunity to take possession of, establish control over or operate the space asset.

Article XX – 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 XLI(3) of this Protocol 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 calendar 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):

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

   and Article 43(2) of the Convention applies with the substitution of "Article 13" for the words "Article 13(1)(d) or other interim relief by virtue of Article 13(4)".
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 XXI – 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 XLI(4) of this Protocol.

Alternative A

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 8 and to Article XXVI(2) of this Protocol, give possession of or control 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 over the space asset if this Article did not apply.
3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 8 and to Article XXVI(2) of this Protocol, give possession of or control over the debtor's rights covered by a rights assignment 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 over the debtor's rights covered by the rights assignment.
4. 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.
5. References in this Article to the "insolvency administrator" shall be to that person in its official, not its personal, capacity.
6. Unless and until the creditor is given possession of or control over the space asset under paragraph 2 or the debtor's rights under paragraph 3:
   (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.

7. 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.

8. The insolvency administrator or the debtor, as applicable, may retain possession of and control over the space asset and the debtor's rights covered by a rights assignment where by the time specified in paragraph 2 or paragraph 3 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.

9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2 or paragraph 3.

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

11. 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.

12. 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. This provision shall not derogate from the provisions of Article XXVI(2) of this Protocol.

13. The Convention as modified by Article XVII 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 XLI(4) of this Protocol 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 XXII – Insolvency assistance

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XLI(2)(b) of this Protocol.

2. The courts of a Contracting State: (i) in the territory of which the space asset is situated; (ii) from the territory of which the space asset may be controlled; (iii) in the territory of

which the debtor is located; (iv) in the territory of which the space asset is registered; (v) which has issued a licence in respect of the space asset; or (vi) 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 XXI of this Protocol.

Article XXIII – 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 XXIV – 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 XXV – 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 XXIII(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 XXIII(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 XXVI – Preservation of powers of Contracting States

1. This Protocol does not affect the exercise by a Contracting State of its authority to issue licences, approvals, permits or authorisations for the launch or operation of space assets or the provision of any service through the use or with the support of space assets.
2. This Protocol further does not:
   (a) render transferable or assignable any licences, approvals, permits or authorisations which, in accordance with the laws and regulations of the granting Contracting State or the contractual or administrative provisions under which they are granted, may not be transferred or assigned;
   (b) limit the right of a Contracting State to authorise the use of orbital positions and frequencies in relation to space assets; or
   (c) affect the ability of a Contracting State in accordance with its laws and regulations to prohibit, restrict or attach conditions to the placement of command codes and related data and materials pursuant to Article XIX of this Protocol.
3. Nothing in this Protocol shall be construed so as to require a Contracting State to recognise or enforce an international interest in a space asset when the recognition or enforcement of such interest would conflict with its laws or regulations concerning:
   (a) the export of controlled goods, technology, data and services; or
   (b) national security.

Article XXVII – Limitations on remedies in respect of public service

1. Where the debtor or an entity controlled by the debtor and a public services provider enter into a contract that provides for the use of a space asset to provide services that are needed for the provision of a public service in a Contracting State, the parties and the Contracting State may agree that the public services provider or the Contracting State may register a public service notice.
2. For the purposes of this Article:
   (a) "public service notice" means a notice in the International Registry describing, in accordance with the regulations, the services which under the contract are intended to support the provision of a public service recognised as such under the laws of the relevant Contracting State at the time of registration; and
   (b) "public services provider" means an entity of a Contracting State, another entity situated in that Contracting State and designated by the Contracting State as a provider of a public service or an entity recognised as a provider of a public service under the laws of a Contracting State.
3. Subject to paragraph 9, a creditor holding an international interest in a space asset that is the subject of a public service notice may not, in the event of default, exercise any of the remedies provided in Chapter III of the Convention or Chapter II of this Protocol that would make the space asset unavailable for the provision of the relevant public service prior to the expiration of the period specified in a declaration by a Contracting State as provided by paragraph 4.
4. A Contracting State shall at the time of ratification, acceptance, approval of, or accession to this Protocol specify by a declaration under Article XLI(1) a period for the purposes of the preceding paragraph not less than three months nor more than six months from the date of registration by the creditor of a notice in the International Registry that the creditor may exercise any such remedies if the debtor does not cure its default within that period.
5. Paragraph 3 does not affect the ability of a creditor, if so authorised by the relevant authorities, temporarily to operate or ensure the continued operation of a space asset during the period referred to in that paragraph where the debtor is not able to do so.
6. The creditor shall promptly notify the debtor and the public services provider of the date of registration of its notice under paragraph 3 and of the date of expiry of the period referred to therein.
7. During the period referred to in paragraph 3:
   (a) the creditor, the debtor and the public services provider shall co-operate in good faith with a view to finding a commercially reasonable solution permitting the continuation of the public service;
   (b) the regulatory authority of a Contracting State that issued a licence required by the debtor to operate the space asset that is the subject of a public service notice shall, as appropriate, give the public services provider the opportunity to participate in any proceedings in which the debtor may participate in that Contracting State, with a view to the appointment of another operator under a new licence to be issued by that regulatory authority; and
   (c) the creditor is not precluded from initiating proceedings with a view to the replacement of the debtor by another person as operator of the space asset concerned in accordance with the rules of the licensing authorities.
8. Notwithstanding paragraphs 3 and 7, the creditor is free to exercise any of the remedies provided in Chapter III of the Convention or Chapter II of this Protocol if, at any time during the period referred to in paragraph 3, the public services provider fails to perform its duties under the contract referred to in paragraph 1.
9. Unless otherwise agreed, the limitation on the remedies of the creditor provided for in paragraph 3 shall not apply in respect of an international interest registered by a creditor prior to the registration of a public service notice pursuant to paragraph 1, where:

(a) the international interest was created pursuant to an agreement made before the conclusion of the contract with the public services provider referred to in paragraph 1; and

(b) at the time the international interest was registered in the International Registry, the creditor had no knowledge that such a public services contract had been entered into.

10. The preceding paragraph does not apply if such public service notice is registered no later than six months after the initial launch of the space asset.

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

Article XXVIII – The Supervisory Authority

1. The Supervisory Authority shall be designated at, or pursuant to a resolution of, the diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets, 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 shall establish a commission of experts, from among persons nominated by the negotiating 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

A description of a space asset in accordance with the criteria for identification provided by the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry.

Article XXXI – Designated entry points

A Contracting State may at any time designate an entity or entities in its territory as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or a right or interest under Article 40 of the Convention in either case arising under the laws of another State.

Article XXXII – Additional modifications to Registry provisions

1. Article 16 of the Convention applies with the following being added immediately after paragraph 1:

"1 *bis* The International Registry shall also provide for:

(a) the recording of rights assignments and rights reassignments; (b) the recording of acquisitions of debtor's rights by subrogation;

(c) the registration of public service notices under Article XXVII(1) of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets; and

(d) the registration of creditors' notices under Article XXVII(4) of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets.".

2. 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.
3. 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 assignment of an international interest or the person in whose favour a prospective sale has been registered shall take such steps as are within its power to procure the discharge of the registration no later than ten calendar days after the receipt of the demand described in such paragraph.
4. 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.
5. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis.
6. The insurance or financial guarantee referred to in Article 28(4) of the Convention shall cover the liability of the Registrar under the Convention to the extent provided by the regulations.
7. 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 XXXIII – 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 of the space asset in accordance with Article VII of this Protocol.

CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS

Article XXXIV – 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 XXXV – Relationship with the United Nations outer space treaties and instruments of the International Telecommunication Union

The Convention as applied to space assets shall 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

Article XXXVI – Signature, ratification, acceptance, approval or accession

1. This Protocol shall be open for signature in Berlin on 9 March 2012 by States participating in the diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets held in

Berlin from 27 February to 9 March 2012. After 9 March 2012 this Protocol shall be open to all States for signature at Rome until it enters into force in accordance with Article XXXVIII.

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 XXXVII – 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 in writing 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", "Contracting States", "State Party" or "States Parties" in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

Article XXXVIII – 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:
   (a) the first day of the month following the expiration of three months after the date of the deposit of the tenth instrument of ratification, acceptance, approval or accession; and
   (b) the date of the deposit by the Supervisory Authority with the Depositary 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 XXXIX – Territorial units

1. If a Contracting State has two or more 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 signature, ratification, acceptance, approval or accession, make an initial declaration 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. In relation to a Contracting State with two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, any reference to the law in force in a Contracting State or to the law of a Contracting State shall be construed as referring to the law in force in the relevant territorial unit.
6. If a Contracting State has a federal system where the federal legislative power has competence over matters governed by this Protocol, that Contracting State shall have the same rights and obligations over those matters as those Contracting States which do not have a federal system.

Article XL – Transitional provisions

1. Article 60 of the Convention shall not apply in relation to space assets.
2. Subject to the second sentence of Article XVII(3) of this Protocol, the Convention does not apply to a right or interest of any kind in or over a space asset created or arising before the effective date of the Convention, which retains the priority it enjoyed under the applicable law before the effective date of the Convention.
3. For the purposes of this Protocol:
   (a) "effective date of the Convention" means in relation to a debtor the time when the Convention enters into force or the time when the State in which the debtor is situated at the time the right or interest is created or arises becomes a Contracting State, whichever is the later; and
   (b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if it has no place of business, its habitual residence.

Article XLI – Declarations relating to certain provisions

1. A Contracting State shall, at the time of ratification, acceptance, approval of, or accession to this Protocol, make a declaration pursuant to Article XXVII(4) of this Protocol.
2. 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 Article XXII.
3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article XX wholly or in part. If it so declares with respect to Article XX(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 XXI 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 XXI.
5. The courts of Contracting States shall apply Article XXI in conformity with the declaration made by the Contracting State that is the primary insolvency jurisdiction.

Article XLII – Declarations under the Convention

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

Article XLIII – Reservations and declarations

1. No reservations may be made to this Protocol but declarations authorised by Articles XXXIX, XLI, XLII and XLIV may be made in accordance with these provisions.
2. Any declaration, subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

Article XLIV – Subsequent declarations

1. – A State Party may make a subsequent declaration 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 XLV – Withdrawal of declarations

1. Any State Party having made a declaration under this Protocol 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 XLVI – 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 XLVII – 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 this 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 ten States Parties in accordance with the provisions of Article XXXVIII relating to its entry into force.

Article XLVIII – Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), 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; date thereof;
      (iii) each declaration made in accordance with this Protocol, together with the thereof; and
      (iv) the withdrawal or amendment of any declaration, together with the date
      (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.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Berlin, this ninth day of March, two thousand and twelve, in a single original in the English and French languages, both texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the consistency of the texts with one another.