PART 1

A BRIEF HISTORY OF THE CONVENTION AND PROTOCOLS 1

1.1. Following a proposal by Mr. T.B. Smith QC, Canadian member of the UNIDROIT Governing Council, in 1988 and a study *International Regulation of Security Interests in Mobile Equipment* prepared by Professor Ronald C.C. Cuming of the University of Saskatchewan, the Governing Council of UNIDROIT set up a Restricted Exploratory Working Group in 1992 to ascertain the need for and feasibility of uniform rules governing security interests in cross-border transactions in mobile equipment, in particular, aircraft objects, railway rolling stock and space assets. The Group’s Report led to the establishment of a Study Group, a sub-committee of which was entrusted with the task of preparing a first draft. The sub-committee in turn established a Drafting Group to prepare the first set of draft articles. There were several further meetings of the sub-committee and Drafting Group over the ensuing years, and in 1996 a Registration Working Group was established under the chairmanship of Professor Cuming to examine the essential features of modern electronic registration, liability for errors, and the like, and make recommendations.

1.2. The text of a preliminary draft Convention was presented to the Governing Council of UNIDROIT at its 77th session in February 1998, at which the Council approved the text as suitable for submission to a committee of governmental experts and also endorsed its own provisional decision the previous year to approve a proposal that work should proceed along the lines of a base convention applicable to all three categories of equipment and equipment-specific protocols which would supplement and modify the Convention to meet the needs of the particular industry sector concerned. Thereafter work proceeded concurrently on the draft Convention and Protocols for aircraft objects, railway rolling stock and space assets, and three separate working groups, the Aviation Working Group (AWG), the Rail Working Group (RWG) and the Space Working Group (SWG) (see paragraph

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1 Appendix IX contains a chronology of the development of the Convention and Protocols and Appendix XI a list of key documents published by UNIDROIT in connection with the development of the Space Protocol.
1.4) were set up. The draft of the Aircraft Protocol was concluded in time for examination with the Convention itself, and the two instruments were opened for signature simultaneously on 16 November 2001 at a Diplomatic Conference held in Cape Town under the joint auspices of the International Institute for the Unification of Private Law (UNIDROIT) and the International Civil Aviation Organization (ICAO). The history of the Convention as regards aircraft objects is briefly described in the Official Commentary on the Convention and Aircraft Protocol and of the Convention (third edition, 2013).

1.3. Work on a Protocol for railway rolling stock proceeded in parallel, leading to the adoption of the draft text at a diplomatic Conference held in Luxembourg in February 2007. The Protocol was the product of close collaboration among UNIDROIT and OTIF as the sponsoring organisations and the RWG. The history of the Luxembourg Protocol is briefly depicted in the separate Official Commentary on the Convention and Luxembourg Protocol (revised edition 2013).

1.4. In 1997 the President of UNIDROIT invited Mr Peter Nesgos, a leading space finance lawyer and a partner in the New York office of Milbank, Tweed, Hadley & McCloy LLP, to form a Space Working Group, comprising experts from firms of manufacturers, financiers, users/operators and insurers of space assets, in close collaboration with the major international organisations engaged in outer space activity, such as the United Nations Office for Outer Space Affairs, the European Space Agency, the European Centre for Space Law and the International Bar Association, to formulate a first draft of the future Protocol to the Convention on Matters specific to Space Assets (hereinafter referred to as the Space Protocol). The Space Working Group, which was assisted by an ad hoc restricted informal group of experts, met five times in locations all across the world, its final meeting being held in January 2002, in order to generate a text that would take into account the myriad of concerns raised by both Governments and industry.

1.5. In September 2001 the Governing Council of UNIDROIT decided that the text should be reviewed by a Steering and Revision Committee, which met in February 2002. The resulting text was submitted to the Governing Council of UNIDROIT at its 82nd session, held in Rome in May 2003. The Governing Council authorised the President to convene the first meeting of the UNIDROIT Committee of governmental experts, to which the preliminary draft Space
Protocol was transmitted. This Committee, under the Chairmanship of Professor S. Marchisio (Italy), would meet twice in Rome, in December 2003 and October 2004, before it was decided that there were certain issues whose distinct nature would require intersessional work before the intergovernmental consultation process could be resumed. In this context, the UNIDROIT Secretariat organised two Government/industry meetings with a view to finding solutions to the key outstanding issues, the first of these meetings, hosted by the Royal Bank of Scotland, being held in London in April 2006 and the second, hosted by Milbank, Tweed, Hadley & McCloy LLP, being held in New York in June 2007. Based on the recommendations that emerged from these meetings, the UNIDROIT General Assembly, at its 61st session, held in Rome in November 2007, authorised the establishment of a Steering Committee to find solutions to the key outstanding issues facing the Space Protocol that would command consensus among the Committee of governmental experts, once reconvened.

1.6. The Steering Committee, also under the Chairmanship of Professor Marchisio, and its informal working groups - namely the informal working group on default remedies in relation to components and the informal working group on public service - would meet throughout 2008 and 2009, in Berlin and Paris respectively, culminating in the recommendation that the Committee of governmental experts be reconvened and that an alternative text of the preliminary draft Space Protocol, containing the solutions that emerged from the intersessional meetings, be laid before that Committee. At the same time, it was agreed that the time was ripe for the convening of a Sub-committee to examine certain aspects of the future international registration system for space assets. This Sub-committee, under the Chairmanship of Dr B. Schmidt-Tedd, Head of Legal Support, German Space Agency, met in Rome in October 2009.

1.7. The Committee of governmental experts was reconvened for its third session in December 2009, at which it adopted the alternative text that had emerged from the intersessional meetings. There were two more sessions of this Committee, meeting successively in Rome for a fourth and fifth session in May 2010 and February 2011. In addition, an intersessional meeting was held in October 2010, in conjunction with meetings of the informal working groups on default remedies in relation to components and on public service, in which members of the international commercial space, finance and insurance community were invited to participate, not least with a view to finding substantive solutions to the key outstanding issues still facing the Space
1.8. The work of all the participants taking part in the development of the preliminary draft Space Protocol, both in the Committee of governmental experts and all its working groups, bore fruit when, at the end of the fifth session of governmental experts, it was decided that the time was ripe to transmit the text of the draft Space Protocol to the Governing Council of UNIDROIT with a recommendation to convene a diplomatic Conference for adoption of the draft. The Chairman of the Committee of governmental experts conveyed this recommendation to the Governing Council, at its 90th session, held in Rome in May 2011, which duly authorised the convening of the Diplomatic Conference. Subsequently, the Government of the Federal Republic of Germany kindly offered to host the diplomatic Conference.

1.9. The diplomatic Conference was held in Berlin from 27 February to 9 March 2012, and at its conclusion the Conference adopted the Space Protocol, which was opened for signature on that date. The text was adopted in a single original in the English and French languages, both texts being equally authentic, and as with the Aircraft and Luxembourg Protocols the authenticity of the Space Protocol was to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within 90 days as to the consistency of the texts with one another. Accordingly the definitive texts are those promulgated as revised to ensure linguistic alignment.