PART 5
ANNOTATION OF THE PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS

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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:
Comment

5.1. The Preamble reflects the primary purpose of a Protocol to the Cape Town Convention, which is to adapt the Convention to the particular requirements of the industry sector affected while otherwise leaving it unchanged. The Space Protocol, like the Convention, is based on the policy of a high degree of party autonomy and the need to provide the creditor with adequate safeguards in the event of default, safeguards reinforced as regards space assets by the insertion of additional remedies and the modification of provisions of the Convention restricting the exercise of remedies. However, it also incorporates provisions enabling a Contracting State to balance its legal philosophy on key issues against the economic advantages of particular provisions and to make a declaration excluding such provisions, wholly or in part, where an opt-out is required, or to make no declaration, where an opt-in is required.

5.2. The fifth recital, concerning the pre-eminence of State Party rights and obligations, reflects the concern addressed by Article XXVI to ensure that States maintain their freedom of decision on matters relating to the grant, transfer or termination of government licences relating to the operation and use of space assets and that this freedom is not circumscribed by dealings between private parties.

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.
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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

(c) United Nations General Assembly Resolution 1721 (XVI) B of 20 December 1961.

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.

Comment

Definitions

5.3. The first point to note is that, except where the context otherwise requires, terms used in the Protocol have the same meanings as those used in
the Convention (Article I(1)). So the 40 Convention definitions have always to be borne in mind when reading the Protocol.

5.4. “debtor’s rights” – this definition covers any right to payment or other performance which the debtor has or may acquire in the future against any person with respect to the space asset. “Any person”, though literally including the creditor himself, in fact denotes a third-party obligor, as is apparent from Article XIV, which sets out the obligor’s duty to the creditor. Debtor’s rights will usually arise under contracts, e.g. with the manufacturer or supplier or with parties to whom the debtor grants rights of use under lease capacity agreements, or with an insurer of the space asset, but could include other rights, such as intellectual property rights not derived from contract or claims in tort or unjust enrichment. To qualify as debtor’s rights the rights in question must relate to the space asset. Rights unconnected to the space asset, e.g. to repayment of a loan or payment of the price of goods or services unconnected to the space asset, fall outside the definition, reflecting the fact that the Convention and Protocol are asset-based, so that the only way of preserving the priority of rights assigned by the debtor to the creditor is by recording the assignment against the registration of the international interest in the asset. Receivables are not in themselves uniquely identifiable and an assignment of them cannot be independently registered. Insurance proceeds payable under a policy taken out by the debtor which arise from loss of or damage to a space asset are a special case, because on the one hand they are debtor’s rights but on the other they are captured by the creditor’s international interest in the space asset, which extends to proceeds (Article 2(5)), so that as to these the creditor is not dependent on a rights assignment.

5.5. “guarantee contract”, “guarantor” – these terms cover not only suretyship guarantees and credit insurance, which are accessory to the principal contract, are dependent upon its validity and are triggered by the default of the principal debtor, but also guarantees which are issued as independent payment undertakings and are payable on written demand and presentation of any other specified documents irrespective of performance or default in performance of the underlying transaction, for example, documentary credits, demand guarantees and standby credits. A guarantor is an “interested person” within the definition of Article 1(m)(ii) of the Convention and as such is entitled to be given notice of an intended sale or lease by the creditor (Article 8(4)) and to discharge a security interest after default by the debtor (Article 9(4)) and be considered for protection by the court in proceedings for advance relief.
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(Article 13(2), (3)). The parties to a related guarantee contract may choose the law to govern their relations _inter se_ (Article VIII(2)).

5.6. “insolvency-related event” – an event which triggers the remedies of the creditor specified in alternative versions in Article XXI, which itself is dependent on the making of a declaration by the Contracting State concerned and can be excluded by agreement of the parties (Article XVI). There are two alternative limbs to the definition. The first is the traditional commencement of insolvency proceedings. For the meaning of this see Article 1(d) of the Convention and paragraph 4.10. The second, a declared intention to suspend payments, or actual suspension of payments, where a creditor may not commence proceedings or exercise Convention remedies by law or State action, also constitutes an insolvency-related event. This is required because, in certain systems, debtors in relation to space assets may not be eligible for insolvency proceedings (see Illustration 54, paragraph 5.17). More generally, the basic intent of the second limb of the provision is to trigger the starting of the time period in Article XXI of the Protocol (either Alternative) where there are financial problems and law or State action (whether made or taken before or after a declared intention to suspend payment) prevents or suspends the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention. Where the law preventing or suspending the right to institute insolvency proceedings is not in force and State action has not been taken at the time of the declaration of intention, the declaration becomes an insolvency-related event when such law comes into force or the requisite State action has been taken.

5.7. “licence” – any kind of permit or licence issued by government or a regulatory authority to manufacture, launch, control, use or operate a space asset, or relating to the use of orbital positions, etc. All such licences are given within both a national and an international legal framework. The definition is primarily relevant to the deemed location of the space asset for jurisdiction purposes when not on Earth (see Article I(4)), the provision of insolvency assistance (Article XXII(2)), and the preservation of the powers of a Contracting State over the transfer of licences (Article XXVI).

5.8. “obligor” – the person from whom payment or other performance of debtor’s rights is due.
ARTICLE I – DEFINED TERMS

5.9. “primary insolvency jurisdiction” – the Contracting State in which the centre of the debtor’s main interests (COMI) is situated. There is a rebuttable presumption that this is the place of the debtor’s statutory seat or, if none, the place where it is incorporated or formed. This last is a slightly different formulation from that used in Article 4(1)(a) of the Convention, which refers to the Contracting State “under the law of which” the debtor is incorporated or formed. In practice, this will almost invariably be the law of the place of incorporation or formation. The presumption does not cover all possibilities. In particular it does not apply to a natural person, and in this case the “centre of main interests” is presumably the debtor’s place of business or, if more than one, its principal place of business. The presumption in favour of the statutory seat is not necessarily as strong as that established by the jurisprudence of the European Court of Justice in favour of the registered office in determining the COMI for the purpose of the EC Insolvency Regulation, though obviously decisions of the ECJ on this issue constitute an important point of reference.

5.10. “rights assignment” – the conferment on the creditor of ownership of or an interest in debtor’s rights, whether by way of assignment or charge, as security for 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 are secured by or associated with the space asset. The effect of a rights assignment is to give the creditor additional collateral in the form of revenue to be derived from the space asset by the debtor as well as the debtor’s other rights under contracts, for example contracts relating to the maintenance of the space asset. Though the assignment must enable the debtor’s rights to be identified any description by which it can be seen that the rights fall within the scope of the assignment suffices, and this includes future rights (see Article XI and paragraph 5.48). An assignment of debts to a creditor who has not taken an international interest in the space asset falls outside the definition, because the International Registry is an asset-based registry covering tangible uniquely identifiable assets, so that receivables as such are not capable of independent registration, being neither tangible nor uniquely identifiable; their assignment can be protected only by recording against a registration of the international interest. This linkage between a rights assignment and a registered international interest is crucial to the concept of a rights assignment. Moreover, even if the debtor has given the creditor an international interest, the assignment will be a rights assignment only to the extent that it secures or goes in reduction or discharge of obligations to the creditor which are themselves secured by the space asset (in the case of a security agreement) or
associated with it (in the case of a title reservation agreement or a leasing agreement). If the debtor owes the creditor other obligations not secured by or associated with the space asset, then to the extent that the assignment is made as security for or in reduction or discharge of those unsecured obligations it is not a rights assignment.

5.11. “rights reassignment” – the onward transfer of debtor’s rights by the creditor or by an assignee to another assignee. This transfer may be effected by contract or automatically upon transfer of the international interest (Article XII(4)(a)). Transfer under a contractual assignment may be made wholly or in part. By contrast, automatic transfer covers all the rights of the creditor under the rights assignment.

5.12. “space” – this means outer space, including the Moon and other celestial bodies, as opposed to airspace. Only assets primarily designed for use in space are within the Protocol (Article II(3)). The Protocol does not attempt to define the point at which airspace ends and outer space begins.

5.13. “space asset” – any man-made uniquely identifiable asset in space or designed to be launched into space and falling within one or more of the three categories set out in Article I(2)(k). See paragraphs 3.15-3.21. The definition excludes aircraft objects (Article II(3)). See paragraph 3.22. Space assets when in space are either satellites, which orbit the Earth, or sub-orbital objects which travel to space but do not go into orbit, such as tourist spaceships and, more recently, manned and unmanned reusable research vehicles. The Protocol is not confined to assets already in space but extends to such assets while on Earth, an important feature, since most of the financing of a space asset is advanced prior to its launch. The Protocol will therefore apply to an object from the point in manufacture at which it can be identified as a space asset. The term is confined to man-made assets and therefore does not cover those existing naturally in outer space. The asset must be uniquely identifiable, but it should be borne in mind that the identification criteria that have to be satisfied for the constitution of the international interest under Article VII are much more flexible than those that will be required by regulations for the purpose of registration as provided by Article XXX. See paragraph 5.114. The first of the three categories is the entire spacecraft, of which examples are given: satellite, space station, space module, space capsule, space vehicle, reusable launch vehicle. For the meaning of these terms, see paragraphs 3.15 et seq. The second category is the payload, that is, whatever is carried on the bus (or platform) for
the accomplishment of the mission, e.g. telecommunications, navigation, surveillance. However, this falls within the definition only so far as capable of separate registration in accordance with the regulations. This helps to ensure that the payload is indeed uniquely identifiable. The third category is part of a spacecraft or payload. This too is a space asset only so far as capable of separate registration. Registrability is here required, first, to filter out those items of no independent use or value once incorporated – nuts, bolts, screws, motors, and other parts – and, secondly, to accommodate new kinds of space asset.

5.14. A space asset includes all installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto. Such items are therefore not space assets in themselves, merely a part of the space asset in which they are incorporated or to which they are attached. By contrast, a space asset installed on or attached to another space asset, for example, a set of transponders installed on a space vehicle, retains its identity as a space asset and ownership of or another right or interest in it is not affected by the installation or attachment (see Article III).

Deemed location of space asset when not on Earth

5.15. The location of a space asset is relevant to two particular sets of provisions of the Convention, the definition of “internal transaction” and the jurisdiction of courts. In order to apply these provisions to a space asset when not on Earth it is necessary to ascribe an artificial location to the space asset. The definition of “internal transaction” in Article 1(n) of the Convention requires, among other things, that the centre of main interests of the parties and the location of the relevant object (as specified in the Protocol) be located in the same Contracting State at the time of the agreement. Article I(3) provides that for this purpose 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 the 1967 Outer Space Treaty, the 1975 Registration Treaty or the 1961 UN Resolution 1721 (XVI). In general there should be only one such registration and therefore only one deemed location. For the purpose of the jurisdiction provisions, however, there can be a range of deemed locations and any one of these, if in a Contracting State, will satisfy the jurisdiction requirement. So under Article I(4) a space asset when not on Earth is deemed to be located in a Contracting State if it is within a Contracting State referred to in Article I(3)
just discussed or in a Contracting State which has issued a licence to operate
the space asset or a Contracting State on the territory of which a mission
control centre is located.

5.16. *Illustration 53*

Debtor grants Creditor an international interest in a satellite to secure the
repayment of advances. Debtor also assigns to Creditor (a) its rights to
payment and other performance under a lease capacity agreement entered into
with Lessee with respect to the space asset, and (b) its rights to repayment of
advances and payment of interest under a loan agreement with Borrower. The
lease capacity rentals are debtor’s rights and their assignment is a rights
assignment. The sums due under the loan agreement do not relate to the
space asset and do not constitute debtor’s rights, so that as to these the
assignment is not a rights assignment and is not protected by the Protocol.
The lease capacity agreement itself is not a leasing agreement and does not
create an international interest.

5.17. *Illustration 54*

Under the laws of State X, government-controlled space operators may not
be subject to insolvency proceedings. Operator 1 is a government-controlled
space operator, Operator 2 is an affiliate of Operator 1, which holds a 25%
interest in Operator 2, the remaining 75% interest being held by private
investors. On 2 January, Operator 1 declares its intent to suspend payments
to all creditors. On 15 January, Operator 1 declares its intent to suspend
payments to all creditors, and on 17 January State X, by presidential decree,
establishes a moratorium on legal actions against Operator 2. Under Article
I(2)(d) of the Protocol, an insolvency-related event has occurred on 2 January
with respect to Operator 1, and on 17 January with respect to Operator 2.

**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.

Comment

5.18. Paragraph 1, in extending the Convention to rights assignments and rights reassignments (see paragraphs 5.10-5.11), emphasizes the controlling power of the Protocol as provided by Articles 6 and 49 of the Convention. Paragraph 3 is designed to ensure that objects falling within the scope of the Aircraft Protocol are not also caught by the Space Protocol. It does this by limiting the scope of the Space Protocol objects to objects which, even if falling within the definition of “aircraft objects”, are designed primarily for use in space. Paragraph 4 reinforces this point by excluding from the Protocol an aircraft object designed to be only temporarily in space, for example, a spaceship which takes passengers briefly into outer space before returning to airspace (however, this will not be an aircraft object either unless falling within the definition in Article I(2) of the Aircraft Protocol). But objects designed primarily for use in space are covered by the Space Protocol even while on Earth or in airspace, so that an object becomes a space asset at the point in manufacture at which it is identifiable as a space asset and does not become subject to the Aircraft Protocol while in airspace and en route to 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.

Comment

5.19. Paragraph (a) and the first half of paragraph (b) of Article III are intended to avoid the application of rules of national law concerning accessions under which an object which becomes annexed to or incorporated in a larger object passes into the ownership of the larger object. So ownership of or another right or interest in a space asset is not affected either by its docking with another space asset in space or by its installation on another space asset. The second part of paragraph (b) deals with the converse case where a space asset forming part of a larger asset in which a creditor has an interest is removed from the larger asset. In this case the removal does not affect the creditor’s rights in the removed asset. Paragraph (c) makes it clear that ownership of or other right or interest in a space asset is not affected by its return from space.

5.20. Illustration 55

Creditor finances the construction and purchase of a satellite and takes and registers an international interest in the satellite given by Debtor. Installed on the satellite is a set of transponders. Some of these are subsequently sold by Debtor to Purchaser and removed. The sale and removal do not affect Creditor’s international interest in the transponders.

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.

Comment

5.21. The Space Protocol extends the Convention to outright sales and prospective sales but only so far as the Convention provisions are appropriate to these. The first part of this Article lists Articles which apply with the deemed substitution of a contract of sale, a sale, a prospective seller, the seller and the buyer. The second part of this Article designates the Articles or Chapters which
apply in full in relation to sales and prospective sales of space assets except as otherwise specified. The overall effect of the present Article is to place the Convention provisions into three categories as regards sales and prospective sales, namely those that are general in nature and thus apply as they stand in the Convention; those that apply with modifications; and those that do not apply. The provisions of the Convention that do not apply at all in relation to contracts of sale, sales and prospective sales, and the reasons for their exclusion, are:

- Articles 2 and 7: The interest of an outright buyer is not an international interest
- Chapter III: Asset-based default remedies do not feature in outright sales
- Article 29(3): An outright buyer of a space asset can register its interest
- Chapter IX: No rights to payment are secured on an outright sale
- Chapter XI: Its effect is provided by Article IV
- Article 43: Article 13 does not apply to outright sales
- Article 60: This is disapproved by Article XI(1).

These exclusions apply only in relation to sales and prospective sales. The Articles referred to above apply fully as regards international interests in space assets except to the extent stated elsewhere in the Space Protocol. Similarly, certain provisions in the Protocol, whether by the terms of the Protocol or by nature, apply exclusively in respect of international interests and do not apply to sales or prospective sales. These are Articles XVII-XXII, XXIV, XXV (except in relation to the debtor’s capacity of buyer) and XXVII.

5.22. It is necessary to be precise as to the equivalents prescribed by Article III and in particular to distinguish a contract of sale, which is merely an agreement to sell, from a sale, which is a transfer of ownership. The following is a table of equivalents:

<table>
<thead>
<tr>
<th>Agreement (as defined in Article 1(a) of the Convention)</th>
<th>Contract of sale</th>
</tr>
</thead>
<tbody>
<tr>
<td>International interest</td>
<td>Sale</td>
</tr>
<tr>
<td>Prospective international interest</td>
<td>Prospective sale</td>
</tr>
<tr>
<td>Debtor</td>
<td>Seller</td>
</tr>
<tr>
<td>Creditor</td>
<td>Buyer</td>
</tr>
</tbody>
</table>
The references to “contracts of sale” as regards Article 20(1) and the provisions set out in the last paragraph of Article IV are therefore inaccurate, since all those Articles, so far as they relate to international interests, deal with the international interest itself, not with the agreement under which it arises (indeed, contracts of sale which are not sales are outside the scope of the Convention altogether), and the equivalent under Article IV is not a contract of sale but a sale, as is clear from the opening lines of that Article. A similar comment applies to Article V(3). See paragraph 5.27.

5.23. It may seem odd to treat the buyer under a sale as the creditor rather than the debtor but this is correct because it is the buyer who, like the creditor under an agreement, is entitled to be registered. Moreover, the seller is in the same position as the debtor for other purposes. For example, the connecting factor which must be satisfied for the Convention to apply is that the debtor is situated in a Contracting State (Article 3) and in the case of a sale under the Space Protocol is, by virtue of the present Article, that the seller is situated in a Contracting State. This is appropriate since in both cases the connecting factor relates to the party who is granting or reserving an interest.

5.24. A sale involves the transfer of ownership pursuant to a contract of sale (see the definition of “sale” in Article 1(gg) of the Convention). A mere agreement to sell under which ownership has not yet passed to the buyer cannot be registered as a sale, but it can be registered as a prospective sale or, if it contains an express reservation of title, as a title reservation agreement. So also can a lease containing an option to purchase. Although the lease is not itself a contract of sale (see Article 1(g) of the Convention), exercise of the option to purchase results in a sale, so that the lessee is a prospective buyer. Accordingly the lessor registers its interest as lessor while the lessee can register a separate interest as prospective buyer. Exercise of the option to purchase extinguishes the lessor’s interest and entitles the lessee exercising the option to have this discharged and to be registered as buyer but this is not necessary if the lessee has already registered its interest as a prospective buyer in order to avoid being displaced by another buyer or prospective buyer to whom the lessor sells or agrees to sell the object and who might otherwise register first. If the option to purchase is not exercised or is extinguished by the lessor’s termination of the leasing agreement for default the lessor is entitled to have the lessee’s registration as prospective buyer discharged.
5.25. The provisions of the Convention that apply to sales and prospective sales are set out in the last part of Article IV(1). They include Chapter XII (except Article 43, which is not relevant to sales). Thus Article 42 of the Convention, in that Chapter, is the provision conferring jurisdiction on courts of a Contracting State selected by the parties and covering litigation relating to “any claim” brought under the Convention. Claims relating to sales or prospective sales are included. However, Article 60, relating to pre-existing interests, does not apply to sales, being disapplied by Article XL(1). Article IV(2) extends to buyers the provisions of the Protocol relating to debtor’s rights and rights assignments. Article IV(3) was inserted to meet the concerns of salvage insurers that their rights to title salvage or revenue salvage on paying out for damage to a space asset on a constructive total loss basis might be subordinate to Convention interests. The effect of Article IV(3) is that any conflict between salvage rights and a Convention interest is to be governed by the applicable law determined by the conflict of laws rules of the forum State.

5.26. A person may have a registrable interest in a space asset in two different capacities. For example, where a space asset is sold by a manufacturer or supplier to a buyer who agrees to sub-sell under a title reservation agreement, the buyer registers its rights as buyer and upon entering into the sub-sale agreement registers its separate international interest as conditional seller. The two registrations have separate functions; the first is to protect the buyer against the risk of a second disposal by the seller, the second to protect itself against an unauthorised disposal by the sub-purchaser. Registration of only one such interest does not protect the registrant against the consequences of failure to register the other. See paragraphs 3.114-3.117.

**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.

Comment

5.27. This Article is confined to contracts of sale which do not contain an express reservation of title, as opposed to title reservation agreements (see Article 1(g) of the Convention). While use of the phrase “contract of sale” is consistent with the reference in Article III to Article 20(1) of the Convention, the reference in Article V(3) to registration of a contract of sale is technically incorrect. The term “contract of sale” appears in the Convention only for the purpose of defining “sale”, which is a transfer of ownership pursuant to a contract of sale. Article 41 of the Convention extends its scope to the sale of an object as provided by the Protocol; it says nothing about contracts of sale. Moreover, the chapeau to Article III makes it clear that a contract of sale is equated with an agreement creating or providing for an international interest and that the equivalent of an international interest is a sale. Accordingly while Article V(1) correctly prescribes the formalities for a contract of sale in much the same way as Article 7 of the Convention does for an agreement, what is registrable in the International Registry is the sale, not the contract under which it is made. See also paragraph 5.22.

5.28. Paragraph 1 prescribes in relation to contracts of sale formalities which track the provisions of Article 7 of the Convention. Like an international interest and an assignment under the Convention, this paragraph provides for a *sui generis* sale which for the most part is not dependent upon or derived from national law and thus avoids the need for any reference to the *lex situs*. See the Comment to that Article, at paragraph 4.67 et seq.

5.29. The reason for the indefinite duration of the registration of a contract of sale is that, since title passes to the buyer outright, the seller has no residual interest of the kind that may, in the case of an agreement within the Convention, lead to the discharge of the registration.
PART 5

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.

Comment

5.30. This provision in effect permits a person to take any action under the Convention – entering into agreements, effecting registrations of any kind in the International Registry and asserting rights and interests – in a representative capacity, whether as agent, trustee or in some other representative capacity. Article VI, which applies both to disclosed and to undisclosed representation, reflects the central role of representation arrangements in space asset financing, where the sums involved often require syndicated lending and the conferment of representation powers on a trustee or agent. Whether the representative is entitled to take enforcement measures on behalf of the creditors is a matter governed by the agreement (usually an inter-creditor agreement) under which the representative is appointed, but the party against whom such measures are taken is precluded by this Article from contending that the representative has no locus standi. This Article also facilitates the co-ordination of fractional ownership interests.

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
ARTICLE VII – IDENTIFICATION OF SPACE ASSETS

(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.

Comment

5.31. It was during the Luxembourg diplomatic Conference on the draft Rail Protocol that it was first pointed out that unique identification of an object, though essential to an asset-based registration system, was not needed for the constitution of an international interest, which is based on the agreement of the parties and is not dependent on registration. In consequence the Space Protocol follows the Luxembourg Protocol in distinguishing the identification requirements for the constitution of an agreement, to which the present Article is directed, from the more stringent requirements for registration to be imposed by regulations under Article XXX, which will, of course, require identification unique to the particular space asset. Article VII(1) allows any method of description which enables the space asset to be identified to the agreement creating or providing for the international interest, whether the description is by item, by type or by a statement that the agreement covers all present and future space assets or all such space assets except for specified items or types. So a security interest can be taken over a satellite constellation, a set of transponders without individual identification and future space assets without the need for a new agreement every time an additional space asset is acquired. Article VII(2) dispenses with the necessity for a new, post-acquisition act of transfer by the debtor. Article VII as a whole derives its inspiration from Articles 5 and 7 of the 1988 UNIDROIT Convention on International Factoring. By necessary implication it also overrides that part of Article 2(2) of the Convention requiring that the object be uniquely identifiable.
PART 5

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.

Comment

5.32. The Convention makes no express provision for choice of law by the parties. That is left to the rules of private international law of the forum State, which in some jurisdictions may impose certain restrictions, as by excluding selection of the law of a State which has no connection with the parties or the transaction or by requiring that the choice be bona fide. Seeking commercial predictability, the Protocol refers a number of matters to the applicable law (see paragraph 3.31). The laws of some jurisdictions impose certain restrictions on party choice, as by excluding selection of the law of a State which has no connection with the parties or the transaction or where all the elements of the transaction are situated in a single State, so that the transaction is a domestic transaction. The present Article, which applies unless excluded by a Contracting State’s declaration under Article XLI(2)(a), allows the parties to an agreement or a related guarantee contract or subordination agreement or a contract of sale to choose a law governing their relations inter se without restrictions of this kind. States that are not prepared to permit an unqualified selection by the parties will opt out of this provision. The parties’ choice must be respected in all Contracting States that have made a declaration under Article XXX(1). The choice of law is effective to displace rules of the lex fori which are mandatory only in the sense that they cannot be excluded by agreement but which can be excluded by choice of a foreign law, but such
choice does not affect overriding mandatory (internationally mandatory) rules of the *lex fori*, that is, rules which are considered of such importance by the *lex fori* that they apply regardless of the applicable law. Such rules do not displace the applicable law except so far as inconsistent with it, they merely sit on top of the applicable law. Article VIII does not apply to the assignment of associated rights, so that the efficacy of a choice of law clause in such an assignment remains governed by the law applicable to the assignment.

5.33. The law selected is deemed to be the domestic law of the designated State, excluding its conflict of laws rules. This is in line with the usual conflict of laws approach in international conventions in relation to commercial transactions and avoids problems of *renvoi*. The reference to “law” requires that any choice by the parties be a national legal system, as opposed to the broader “rules of law”, which could encompass rules common to a number of States or accepted internationally or even the *lex mercatoria*.

5.34. Article VIII(3) deals with cases where the parties select the law of a territorial unit of a multi-unit State. Although, in contrast to Article 52(1) of the Convention, Article VIII(3) is not expressed to be limited to territorial units which have their own system of law, this is inherent in the Article, for otherwise there would be no distinct legal system to consider and the party choice would have to be interpreted as a reference to the law of the State itself. Article VIII(3) is not confined to federal States but applies wherever a State has territorial units with different systems of law.

5.35. In the relations between themselves the parties may apply the selected law to only part of their contract and, in consequence, may apply different laws to different parts or issues (*dépeçage*).

5.36. Party choice is limited to contractual rights and obligations. Proprietary rights prospectively affect third parties and rights of creditors on the debtor’s insolvency, and are outside the scope of this Article.

5.37. There is no requirement that the agreement on a choice of law be in writing, though in practice it almost invariably will be.

5.38. The ability to select the governing law on contractual matters applies not only to agreements constituting international interests but also to contracts of sale, guarantees and subordinations, as well as to other contracts.
incorporated by reference into any of the foregoing so as to become terms of them.

5.39. *Illustration 56*

Creditor brings proceedings before a court of competent jurisdiction in Ruritania for payment due to Creditor from Guarantor under a guarantee of Debito’s obligations under a loan agreement, the guarantee being expressed to be governed by Urbanian law. Debtor is a company having its sole place of business in Ruritania, while Creditor was incorporated and carries on business in Urbania. Both Urbania and Ruritania are Contracting States. Under Ruritania law (but not Urbanian law) such a guarantee is ineffective even as between the parties unless witnessed by a notary, and this is a requirement that cannot be waived by agreement of the parties to the guarantee. Urbania is the subject of economic sanctions by Ruritania and Urbanian law also contains a provision that any transactions by a Ruritanian national which are entered into with a national of Urbania without prior government approval are illegal and void.

The requirement of Ruritania law requiring the guarantee to be witnessed by a notary in order for it to be valid is a rule of domestic mandatory law which applies only to a contract governed by Ruritania law and therefore has no application to a guarantee governed by Urbanian law. However, the rule of Ruritania law rendering void a guarantee given to a national of Urbania without government approval is an overriding mandatory rule of the *lex fori* which applies regardless of the otherwise applicable law and in the absence of such approval the guarantee is void.

**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.

Comment

5.40. This Article deals with the transfer of debtor’s rights by assignment. Debtor’s rights may also be acquired by subrogation (see Article XII(1)). This will depend on the applicable law. For example in many legal systems a creditor who discharges the debtor’s obligations to a senior creditor to whom the debtor’s rights had been assigned under a rights assignment stands in the shoes of the former senior creditor and acquires the rights assignment by operation of law.

5.41. In order for a rights assignment to be constituted certain conditions must be satisfied. The assignment must be in writing. “Writing” is widely defined by Article 1(nn) of the Convention and includes authenticated teletransmissions. The assignment must enable the debtor’s rights the subject of the assignment to be identified. This means that the rights assignment must provide details identifying the obligors from whom payment or other performance is due and the particular rights to which the assignment relates or alternatively it must cover all the rights due from all present and future obligors if all were assigned. These may include future rights (Article XI). The assignment must also enable the space asset to which the rights relate to be identified and, in the case of a security assignment, must enable the obligations secured by the agreement (i.e. by the contract embodying the assignment) to be determined. Not all rights assignments are by way of security, as the definition also covers assignments in reduction or discharge of any existing or future obligations of the debtor to the creditor secured by or associated with the space asset.

5.42. Just as registration is not necessary for the constitution of an international interest, so also recording of the rights assignment is not an element required for its constitution, which concerns only the debtor and the creditor. Indeed, a rights assignment under this Article cannot be recorded unless the creditor-assignee also takes a transfer of the related international interest, for until this is done there is no registration against which the recording may be made.
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.

Comment

5.43. A rights assignment transfers to the creditor the debtor’s rights against the obligor which are the subject of the assignment but only to the extent permitted by the applicable law. The applicable law means the domestic rules of the law applicable by virtue of the rules of private international law of the forum State (Convention, Article 5(3)). In other words, it does not include the conflict of laws rules of the lex fori, so that renvoi is excluded.

5.44. The applicable law may restrict the efficacy of a rights assignment. Suppose, for example, that the contract creating the obligation contains a clause prohibiting assignment. Depending on the legal system this may produce any one of at least three alternative legal effects. The first is that the assignment is of no effect against the debtor but remains effective as between the debtor and the creditor, so that if the debtor becomes insolvent the creditor can claim the collected proceeds in the hands of the debtor’s insolvency administrator. The second is that the assignment is wholly void, even as between debtor and creditor. The third is that the no-assignment clause, though constituting a breach of the debtor’s contract with the obligor, has no effect on the creditor’s rights as assignee against the obligor.

5.45. The applicable law may also restrict the transfer of government licences, and such a restriction is unaffected by the Protocol (Article XXVI(2)).
5.46. The applicable law also determines the obligor’s defences and rights of set-off against the assignee. Under most legal systems the obligor will be able to assert against the creditor as assignee all defences that would have been available against the debtor, for example, failure to supply the services contracted for. However, rights of set-off are generally more restricted, in that the obligor will not normally be able to cut down the creditor’s rights by asserting set-off in respect of cross-claims arising after the debtor’s receipt of notice of the assignment.

5.47. The obligor’s ability to raise defences and rights of set-off may in any event be waived by an agreement in writing, except that the obligor cannot effectively waive defences arising from fraudulent acts of the creditor. The purpose of waiver clauses is to make claims more readily available, and the effect of Article X(3) is that, subject to the exception as regards fraud, the debtor’s waiver of defences and rights of set-off is effective even if it would not be recognised under the otherwise applicable law.

**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.

**Comment**

5.48. This Article is taken from Article 5(b) of the 1988 UNIDROIT Convention on International Factoring. It is not necessary that the future obligors be identified provided that when the future debtor’s rights come into existence they can be identified as falling within the scope of the rights assignment. So a rights assignment covering all future debtor’s rights suffices. Of course the creditor will need to know the identities of the obligors if it wishes to secure payment or other performance from them.
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.

Comment

5.49. This Article is confined to the assignment of debtor’s rights, that is, rights to payment or other performance due to the debtor from an obligor with respect to a space asset (for examples, see paragraph 3.37). A creditor cannot register a rights assignment or a subrogation to debtor’s rights independently of a registration of an international interest. This is because the Convention generally and the International Registry in particular are concerned with interests in uniquely identifiable physical assets, not in receivables as such, which are intangible and are not uniquely identifiable. But if the creditor has registered an international interest then on taking a rights assignment it can record this against the registration and thus secure priority for the rights assignment. This is the case whether the debtor’s rights are acquired by a rights assignment or by subrogation (see paragraph 5.40). Rights unrelated to the space asset are not debtor’s rights and their assignment is not a rights assignment and cannot be recorded even if the creditor also takes and registers an international interest.

5.50. A rights assignment can also be recorded against the registration of a prospective international interest, but the rights assignment is then treated as unrecorded until the international interest comes into existence, when the recording takes effect as from the time of the recording against the prospective international interest provided that the registration was still current immediately before the international interest was constituted (Article XIII(2)).

5.51. The rights assignment may be recorded either when the international interest is registered or subsequently. The record need not specify the assigned rights individually but may specify the acquisition of all or some of the debtor’s rights without further specification. The debtor’s rights the subject of the assignment will, of course, need to be identifiable
as falling within the scope of the rights assignment (Article IX(a)), whether specifically or because the rights assignment is expressed to cover all debtor’s rights, and if the record is not sufficiently specific for this purpose the searcher should obtain the necessary information from the creditor. Discharge of the registration also discharges any record of a rights assignment forming part of that registration (Article XII(5)). This is a further application of the general principle that a rights assignment cannot appear on the register independently of the registration of the international interest to which it relates.

5.52. Paragraph 2 incorporates by reference the provisions relating to the registration and discharge of an international interest and its effectiveness in the debtor’s insolvency. Paragraph 3 requires search certificates to include any recording of a rights assignment.

5.53. Paragraph 4 is concerned not with a rights assignment but with a rights reassignment and more properly belongs to Article XV. Where a rights assignment has been recorded then any transfer of the registered international interest transfers to the transferee the rights assignment and the right to be recorded as assignee in the registration of the assignment of the international interest. In this context, “assignee” means the “subsequent assignee” referred to in Article XV(1), i.e. the reassignee (Article XV(2)). As between the parties and vis-à-vis the debtor the automatic transfer of the rights assignment produces effects similar to those of a contractual rights reassignment under Article XV where the international interest is not transferred. However, whereas under Article XV(1), applying Article X(1), a contractual rights reassignment transfers rights only to the extent permitted by the applicable law, that is not the case with a rights reassignment under Article XII(4), which occurs automatically on transfer of the international interest whether or not it would have passed under the applicable law. But the transfer provisions take effect subject to Article XXVI.
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.

Comment

5.54. Article XIII tracks Article 29(1) of the Convention. The priority of competing rights assignments is governed by the order of their recording, not by the priority of the registered international interests against which they are recorded. So if A registers an international interest and takes an assignment of debtor’s rights and fails to record it and B subsequently registers an international interest and records an assignment of debtor's rights B has priority even though A's international interest was registered first. The fact that the competing rights assignments relate to different international interests rather than the same international interest is irrelevant.

5.55. A recorded rights assignment has priority over any other transfer of debtor’s rights, whether or not a rights assignment. So if creditor A takes from the debtor an assignment of the debtor's revenue stream from a satellite but does not register an international interest and subsequently the debtor gives creditor B an international interest and assigns the same revenue stream to B, who registers the international interest and records the assignment, creditor B has priority even though creditor A, having no international interest, could not have recorded the rights assignment in its favour. This is deliberate policy. Creditor A should have taken and
registered an international interest and recorded its assignment, otherwise creditor B has no way of knowing of the assignment. Furthermore, a prudent creditor would not take an assignment of the revenue from an asset without taking a security interest in the asset itself, since the debtor’s right to the revenue stream is dependent on the continuance of its interest in the asset from which the revenue is derived. If the revenue stream assigned does not derive from the space asset at all the assignment is not a rights assignment and cannot be recorded even if the creditor were to take and register an international interest.

5.56. The drafting of paragraph 1 is slightly less felicitous than its equivalent in Article 29(1) of the Convention, which provides that a registered interest has priority “over any other interest subsequently registered …”. By contrast, Article XIII(1) merely says that a recorded rights assignment does not have priority over a rights assignment previously recorded. This should, however, be construed as meaning that the subsequently recorded rights assignment will not merely not have priority over the previously recorded rights assignment but will be subordinate to it.

5.57. A rights assignment can be recorded in the registration of a prospective international interest but is to be treated as unrecorded until the international interest is constituted, at which point the rights assignment is deemed to have been recorded at the time of the registration of the prospective international interest if that registration is still current. This gives the same retrospective effect to a recording of the rights assignment as Article 19(4) of the Convention gives to the registration of an international interest previously registered as a prospective international interest. However, the Protocol contains no provision for the recording of a prospective rights assignment.

5.58. The Protocol does not deal with the priority of competing rights assignments where neither has been recorded. That is to be determined by the applicable law.

5.59. Insurance proceeds are a special case. Where the debtor has taken out insurance on a space asset any sum payable under the policy constitutes debtor’s rights and can be the subject of a rights assignment. However, the creditor’s international interest in the space asset extends to its insurance...
proceeds (Article 2(5)) and as regards these the creditor has the same priority as in the space asset itself (Article 29(6)). This means that as regards insurance proceeds the creditor is not dependent on the recording of the rights assignment since it has priority anyway, a point made clear by the fact that Article XIII(1) is expressed to be subject to Article 29(6).

5.60. Illustration 57

D is negotiating with C1 for a loan on the security of an identified set of transponders and meanwhile assigns to C rentals that will become payable to D from obligors under lease capacity agreements relating to the transponders. C1 registers its prospective international interest in the transponders and at the same time records its right to the rentals under the rights assignment. Subsequently D grants a security interest over the same transponders to C2, assigning the same rental rights, and C2 registers its international interest and records the assignment of the rentals. At that stage C2 has priority as to both the international interest and the assigned rentals, since C1 does not yet have an international interest and the rights assignment in C1’s favour must be treated as unrecorded (Article XIII(2)). But if on completion of its negotiations C1 acquires an international interest it will have priority as to that interest (Article 19(4), 29(1)) and as to the recorded rights assignment (Article XIII(2)), assuming that the registration of the prospective international interest was still current immediately before C1’s international interest was constituted.

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.

Comment

5.61. This Article, which tracks Article 33 of the Convention, sets out the conditions in which the obligor comes under a duty to make payment or give other performance to the creditor. It is to be read subject to the defences and rights of set-off available to the obligor under the applicable law, which, however, are subject to any waiver given by the obligor (see Article X(2), (3)). The debtor must have been given notice of the assignment in writing by or with the authority of the assignor and the notice must identify the debtor’s rights, which is particularly important where the obligor owes obligations to the debtor under different contracts.

5.62. An obligor who pays or performs when so required by paragraph 1 obtains a good discharge from liability. The obligor may also obtain a good discharge on payment or performance where the conditions of paragraph 1 have not been satisfied. For example, most legal systems allow the debtor to assert against the assignee any defences it could have asserted against the assignor and may also allow the debtor to set off against the assignee’s claim any cross-claim the debtor has against the assignor arising from dealings between the debtor and the assignor prior to the debtor’s receipt of notice of the assignment. The effect of paragraph 1 is simply that the obligor cannot be required to perform if the conditions of that paragraph have not been fulfilled. But this does not disable the obligor from performing in favour of the assignee in other cases, though if it is found that the person claiming to be the assignee does not have the best right to payment or performance the obligor may then have to perform again in favour of the person having the best right. An obligor who receives notices of
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.

Comment

5.64. This Article, which applies to reassignments, with appropriate modifications, the provisions governing assignments, must be read with Article XII(4), which deals with the transfer of a rights assignment, i.e. with a reassignment (see paragraph 5.53). A rights reassignment, like a rights assignment, can be recorded only by the holder of the related international interest (Articles XII(1), XV(1)), so a reassignee who does not also acquire the related international interest cannot record the reassignment. A transfer of the international interest automatically transfers any recorded rights assignment and entitles the reassignee to be shown in the record as “assignee under the...
rights assignment”, that is, “subsequent assignee” (Article XV(1)), i.e. reassignee (Article XV(2)).

5.65. **Illustration 58**

D grants an international interest in a spacecraft to C and assigns to C rights to the revenue stream derived from licences relating to the spacecraft. C records the rights assignment. Subsequently C transfers the international interest to A1 but makes no agreement for reassignment of the debtor’s rights to A1. C later reassigns the same debtor’s rights to A2. A1 has priority, even before recording the rights reassignment, because under Article XII(4) the transfer of the international interest also transfers all C’s rights under the rights reassignment and the right to be shown in the record as (re)assignee.

**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).

**Comment**

5.66. Article XVI enables the parties, by agreement in writing, to exclude the application of Article XXI altogether or, in their relations with each other, to derogate from or vary the effect of any of the provisions of the Protocol except Article XVII(1) and (2). “Writing” includes authenticated teletransmissions (Convention, Article 1(nn)). The exclusion of Article XXI by agreement of the parties is not, of course, necessary unless the Contracting State that is the primary jurisdiction has elected to make a declaration under Article XLI(4). Where this is the case then despite the absence of the word “other” before “provisions” it seems clear from the use of the word “exclude” in relation to Article XXI, in contrast to “derogate from or vary”, that the power of derogation or variation is not exercisable in relation to Article XXI and that the parties must either exclude the application of Article XXI in its entirety or adhere in full to the Alternative selected by the State that is the primary insolvency jurisdiction. This is logical because the question which, if
any, of the two alternatives is to be selected is a matter for the Contracting State that is the primary insolvency jurisdiction, not the parties, and the Contracting State cannot select part of Alternative A or Alternative B but must select either one of the alternatives in its entirety or make no declaration at all. Any exclusion agreement can be invoked by the insolvency administrator as well as the debtor.

5.67. The parties cannot derogate from the provisions of Article XVII(1) and (2), laying down certain conditions for the exercise of remedies and can derogate from or vary other provisions of the Protocol only in the relations between themselves and not so far as affecting third parties.

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.

Comment

5.68. Instead of the requirement of commercial reasonableness being confined to the exercise of remedies under Articles 8(1) and 13, Article XVII(1) extends the requirement to Convention remedies generally so far as they relate to the space asset. Like Article 8(3), this provision is mandatory and the parties cannot derogate from it by agreement (Article XVI). Normally “the Convention” would mean the Convention as extended by the Protocol (Article II), but, in contrast to the position as regards aircraft objects, there are no creditor’s remedies given by the Space Protocol relating to the space asset (see paragraph 5.69). So the requirement of commercial reasonableness extends to default remedies under Article 34 of the Convention (assignment by way of security where assignor defaults) and in exceptional cases repossession under Article 10 of the Convention (see paragraph 3.74). As under Article 8(3), a remedy is deemed to be exercised in a commercially reasonable manner where exercised in conformity with a provision of the agreement except where such a provision is “manifestly unreasonable.” This wording embodies a strong presumption in favour of the reasonableness of a contractual provision as to the mode of exercise of a remedy and is designed to encourage reliance on contract wording, particularly where the wording is customary in international space financing and leasing contracts.

5.69. This Article is confined to remedies (a) given by the Convention and (b) relating to the space asset. Accordingly it does not apply to additional remedies given by the agreement or the applicable law, as permitted by Article 12, or to remedies given by the Protocol relating to the enforcement of debtor’s rights acquired by the creditor under a rights assignment.
5.70. Paragraph 2 crystallises the meaning of “reasonable prior notice” in Article 8(4), relating to the notice of intended sale or lease to be given by a chargee to interested persons, so that the requirement is satisfied if at least 14 calendar days’ notice is given. It is open to the parties to agree a longer period but not a shorter one. Article IX(4) of the Aircraft Protocol prescribed a minimum of ten working days’ prior notice, but Article XVII(2) of the Space Protocol follows Article VII(4) of the Luxembourg Protocol in substituting a minimum of 14 calendar days’ notice to take account of the fact that what constitutes a working day varies from country to country and even from region to region within a given country, thus giving rise to uncertainty.

5.71. Paragraph 3 addresses the situation where enforcement of a remedy by a creditor in respect of a space asset in which that creditor has an international interest would impair or interfere with the operation of another physically linked asset in which a different creditor has either an international interest or rights as buyer under a sale. Technically this does not raise a priority issue, because the two interests are in different assets. Nevertheless the approach taken by Article XVII(3) is to apply a priority concept by specifying that unless otherwise agreed the enforcing creditor may not exercise a remedy so as to impair or interfere with the physically linked asset unless that creditor’s international interest was registered before the registration of the international interest or sale relating to that asset. Article XVII(3) does not affect enforcement of rights affecting a space asset which is not physically linked, e.g. a space asset in a satellite constellation, nor does it restrain the enforcement of debtor’s rights acquired by the enforcing creditor under a rights assignment. It should be noted that Article XVII(3) does not confer a positive right of enforcement on a creditor whose interest was registered first; it merely precludes such enforcement where the other interest was registered first. Accordingly even an enforcing creditor who was the first to register is not on that account immune from a claim by the other party in tort under the applicable law. In practice, the above issues may well be dealt with by an inter-creditor agreement, and Article XVII(3) takes effect subject to such an agreement.

5.72. In determining which of the two interests was registered first it is necessary to have regard to the second sentence of Article XVII(3), which constitutes a limited exception to the general rule in Article XI(2) that the Convention does not apply to pre-Convention rights or interests. Under this exception a pre-Convention sale or interest equivalent to an international
interest which is registered within three years from the effective date of the Convention is treated as registered at the time it was constituted. The effect, if both interests are registered within the three-year period, is that the creditor wishing to enforce its international interest will be bound by Article XVII unless that interest was constituted before that of the other party.

**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.

**Comment**

5.73. Article XVIII deals with the debtor's default under a rights assignment given by way of security for performance of the debtor's obligations to the creditor under the agreement creating or providing for the international interest. The Article applies to enforcement of the debtor's obligations under a rights assignment the same provisions of Chapter III of the Convention as apply to the enforcement of a security interest in relation to the space asset itself, though only so far as such provisions are capable of application to intangibles. In the case of documentary intangibles, such as
negotiable instruments, negotiable securities and documents of title, all the remedies applicable in relation to the space asset itself, including repossession, are available except the grant of a lease. In relation to pure intangibles such as the right of the creditor as assignee of the debtor’s rights to collect payment from the obligor the remedy of repossession is obviously not available but all other Convention remedies are exercisable apart from the grant of a lease. The remedial provisions of the Convention referred to in Article XVIII do not apply to Article 10, because this deals with the rights of a conditional seller or lessor, whereas Article XVIII is confined to a rights assignment given by way of security and thus to the provisions of the Convention relating to enforcement by a chargee.

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.

Comment

5.74. This Article deals with the placement of a command code in escrow with a third party with the intention that it should be available to the creditor in case of need and particularly in the event of the debtor’s default. A command code is an encryption giving control of a space asset. Related data and materials, including manuals, are also necessary elements in giving control. But this Article takes effect subject to Article XXVI, by which a Contracting State may apply its laws and regulations prohibiting or restricting, among other things, the placement of command codes (Article XXVI(2)(c)).
PART 5

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.

Comment

5.75. This Article strengthens the position of the creditor in certain respects as regards relief sought by the creditor under Article 13 of the Convention (relief pending final determination). However, it applies in a
Contracting State only if and to the extent that the Contracting State has made an affirmative declaration to that effect under Article XLI(3). For the purposes 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. A Contracting State which makes a declaration with respect to Article XX(2) is required by Article XLI(3) to specify a binding time-period within which the speedy relief sought is to be given. On the principle that a party cannot complain of matters caused by its own acts or omissions, a creditor will not have grounds for complaint if a court fails to give relief within the specified time because, for example, the creditor has not filed the correct documents or followed the proper procedures.

5.76. Paragraph 3 adds sale and application of the proceeds of sale to the speedy relief that can be sought under Article 13(1) of the Convention, subject, however, to the requirement that the debtor and the creditor “specifically agree”, that is, agree expressly (though not necessarily in writing) to the court’s ordering a sale and application of the proceeds of sale on the creditor’s application. This agreement may be made at any time. As a corollary, paragraph 4 of the Article adds provisions matching those of Article 9(5) of the Convention.

5.77. Article 13(2) of the Convention provides protection for the debtor but imposes transaction costs. In relation to space assets Article XX(5) enables that concern to be addressed by permitting the relevant parties to exclude Article 13(2) by an agreement in writing. This would not otherwise be allowed, since under Article 15 of the Convention Article 13(2) is a mandatory provision. Such agreement does not, however, exclude the debtor’s rights under the applicable law to pursue a claim against the creditor for failure to perform any of its obligations to the debtor under the Convention, nor does it preclude the debtor from exercising any right to damages or other relief given by the lex fori applicable (a) to the relief under Article 13 or (b) on final determination of the creditor’s claim, if the claim is dismissed and the debtor has suffered loss through the prior granting of relief under Article 13. For the meaning of “writing” see Article 1(nn) 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.

Comment

5.78. The adequacy of protection for the creditor upon the debtor's insolvency is a key factor in the assessment of certainty and risk, and experience under the Cape Town Convention and Aircraft Protocol has demonstrated its relevance to the cost of aircraft finance and credit insurance.

5.79. This Article, which modifies Article 30(3) of the Convention, is designed to provide in relation to space assets, and to a more limited degree debtor's rights, the same special insolvency regime as under the Aircraft Protocol to govern the creditor's rights where the debtor becomes subject to insolvency proceedings (as defined by Article 1(1) of the Convention) or an insolvency-related event (as defined by Article 1(2)(m) of the Protocol) has otherwise occurred. The underlying purpose is to reflect the realities of modern structured finance, in particular to facilitate capital market financing, by ensuring as far as possible that, within a specified and binding time-limit, the creditor either (a) secures recovery of the asset or (b) obtains from the debtor or the insolvency administrator, as the case may be, the curing of all past defaults and a commitment to perform the debtor's future obligations. Article XXI applies only where a Contracting State that is the primary insolvency jurisdiction as defined by Article 1(2)(n) (the “COMI Contracting State”) has made a declaration under Article XLI(4), and it may be excluded by the parties (Article XVI), though only in its entirety (see Article XLI(4)).

5.80. There are two alternative texts of this Article, Alternative A, the “hard”, or rule-based, version, and Alternative B, the “soft”, or discretion-based, version. A Contracting State considering making a declaration under Article XXI has a number of options. It may decide to make no declaration at all, in which case Article XXI will not apply and the Contracting State’s national insolvency law, in its current form, will continue to be applicable in this context. A Contracting State may opt to apply Article XXI to all types of insolvency proceeding or only to some, and it may apply Alternative A to some types of insolvency proceeding and Alternative B to others, or apply one of these alternatives to all or only some types of insolvency proceeding and make no declaration as to others. But to whatever type of insolvency proceeding
Alternative A or Alternative B is applied, it must be applied in its entirety. This is because each of the alternatives embodies a set of integrated provisions which make it impracticable to select one or more without the others.

5.81. Under Article XLI(5) of the Protocol the courts of Contracting States (i.e. Contracting States other than the COMI Contracting State) are required to apply Article XXI in conformity with the declaration made by the Contracting State which is the primary jurisdiction. So if there are secondary insolvency proceedings in another Contracting State relating to a space asset situated in that State the courts of that State must apply the version of Article XXI selected by a declaration of the Contracting State of primary jurisdiction.

5.82. Alternatives A and B both impose obligations on “the insolvency administrator or the debtor, as applicable”. The debtor itself will be the relevant party where there is no administrator, e.g. because the insolvency-related event is cessation of payments and insolvency proceedings cannot be opened or have not yet been opened or where there is a gap between the commencement of insolvency proceedings and the appointment of an administrator or the estate is being administered by a debtor in possession. Alternative A states expressly in paragraph 4 that references in this Article to the “insolvency administrator” are to that person in its official, not its personal, capacity. So duties are imposed on the insolvency administrator only in its capacity as such. This provision merely states what must be obvious anyway. It is not replicated in either of the other Alternatives but the same rule implicitly applies. Article XLI does not provide for the case where there are two or more holders of registered international interests relating to the same object. Where this occurs, the duties of the insolvency administrator are owed to the secured creditors successively in order of their priority, and only when the obligations owed to the first such creditor have been discharged does the next in line become entitled to invoke Article XLI. The insolvency administrator need not be a court-appointed official; any method of appointment authorized by law suffices.

Alternative A

5.83. Alternative A requires the insolvency administrator, by the end of the “waiting period” specified in the declaration of the relevant Contracting State or any earlier date on which the creditor would otherwise be entitled to possession or control under the applicable law, either (a) to give possession of
or control over the space asset and debtor’s rights covered by a rights assignment to the creditor or (b) to cure all defaults (other than a default constituted by the opening of insolvency proceedings, which, of course, is not capable of being cured) and to agree to perform all future obligations under the agreement, including obligations under other transaction documents (e.g. a loan agreement) which the debtor has, by virtue of their incorporation by reference, agreed to perform under such agreement (see paragraph 3.131 and Illustration 59, paragraph 5.92). The duties must be performed before the end of the waiting period if the creditor has previously become entitled to possession or control. The underlying premise is that the commencement of the insolvency proceedings produces a stay on the creditor’s right to possession. Where this is not the case or where any stay has been lifted the creditor becomes entitled to possession or control even if the waiting period has not expired. In other words, paragraph 2(b) is to be interpreted as if it read “would be entitled, or becomes entitled, to possession or control over the space asset notwithstanding the insolvency proceedings or other insolvency-related event”. Obviously possession cannot be given of debtor’s rights so far as they are pure intangibles (see paragraph 5.73) but there are various ways in which control can be given where such rights have not yet become enforceable against the obligor.

5.84. Unless and until the creditor is given the opportunity to take possession or control the insolvency administrator or the debtor, as applicable, must preserve the space asset and maintain its value in accordance with the agreement and, subject to this, may allow its use, while the creditor is entitled to apply for any other forms of interim relief available under the applicable law (see paragraph 3.135). The applicable law is determined by the lex fori. The forum is not necessarily the insolvency forum, since courts chosen by the parties have jurisdiction (Convention, Articles 42, 43(2)), as do courts of a Contracting State on the territory of which the debtor is situated where the interim relief is, by the terms of the order granting it, enforceable only in the territory of that Contracting State (Article 43(2)). Whereas paragraph 2(a) of Alternative B requires the insolvency administrator or the debtor, as applicable, to cure all defaults, and agree to perform all future obligations, under the agreement “and related transaction documents”, the latter phrase does not feature in paragraph 7 of Alternative A, which is confined to future obligations under “the agreement”, that is, the security agreement, title reservation agreement or leasing agreement. It is, however, open to the parties to
incorporate into that agreement obligations under other related transaction contracts, in which case paragraph 7 will apply to those obligations.

5.85. The duty of the insolvency administrator or the debtor under the Convention to preserve the space asset and its value comes to an end once the administrator or the debtor, as the case may be, has given the creditor the opportunity to take possession or control, whether or not the creditor avails itself of that opportunity. Thereafter, the duty to take care of the space asset is governed by the applicable law.

5.86. Alternative A further restricts the operation of the relevant insolvency law by precluding any order or action which prevents or delays the exercise of remedies after expiry of the waiting period or would modify the obligations of the debtor without the creditor’s consent (paragraphs 9 and 10). Moreover, no second waiting period may be imposed in respect of a breach of a commitment to perform future obligations. Accordingly, under this Alternative it would not, for example, be open to the insolvency courts of a Contracting State to suspend the enforcement of a security interest over a space asset or debtor’s rights, or modify the terms of the agreement, without the consent of the creditor, nor would provisions of national insolvency law providing for an automatic stay pending reorganisation be operative beyond the declared waiting period. The effect is to displace Article 30(3)(b) of the Convention. Similarly, any provisions of domestic law modifying or empowering a court to modify the debtor’s obligations must be disapplied where these would conflict with paragraph 10. The underlying rationale of Alternative A is to give space asset financiers and lessors the assurance of a clear and unqualified rule. Read literally, paragraph 10 precludes modification only of the debtor’s obligations under “the agreement”, that is, the security agreement, title reservation agreement or leasing agreement relating to the space asset, and says nothing about the debtor’s obligations under a security assignment of debtor’s rights. However, paragraph 10 must be read as applying to those obligations also. A typical modification under insolvency law would be to prolong the period allowed for repayment, but this would be inconsistent with paragraph 9, which applies to all remedies, not merely those available in relation to the space asset.

5.87. Alternative A presupposes that the creditor holds an international interest which is effective in the insolvency proceedings, either because it was registered in the International Registry prior to the commencement of those
proceedings or because it is otherwise effective under the applicable law (see Article 30(1) and (2) of the Convention and paragraphs 4.206 and 4.208).

**Alternative B**

5.88. Alternative B requires the insolvency administrator or the debtor, as the case may be, upon the request of the creditor, to notify the creditor within the time specified in a declaration by the Contracting State whether it will (a) cure all defaults and perform all future obligations under the agreement and related transaction documents or (b) give the creditor the opportunity to take possession of or control over the space asset, in the latter case subject to any additional step or the provision of any additional guarantee that the court may require as permitted by the applicable law. “Related transaction documents”, which does not feature in Alternative A, is not defined but includes promissory notes given as payment under the agreement or as security for payment, and documents which embody collateral contracts and undertakings forming part of the overall transaction between the parties. It does not, however, include undertakings which are given orally and not embodied in the agreement or some other document. The right to take possession may be given either by the agreement, in which case it is the law governing the agreement that will be the applicable law, or by the procedural rules of the forum, in which case the applicable law will be the *lex fori*. If the insolvency administrator or debtor does not either give the notice as to performance or give the creditor possession or control, the court may (but is not obliged to) permit the creditor to take possession or control on such terms as the court may order. In contrast to the position under Alternative A of Article XXI, the insolvency administrator or the debtor is not required to take any action unless and until required to do so by the creditor; accordingly any time-period specified in a declaration by a Contracting State as regards Alternative B should be expressed to commence not earlier than the time the insolvency administrator or the debtor receives the creditor’s request. Paragraph 5 of Article XXI of Alternative B does not deal with the case where the insolvency administrator or the debtor agrees to cure all defaults and to perform its future obligations but fails to do so. In that situation there seems no reason why the court should not be able to exercise its powers under paragraph 5.

5.89. Paragraph 4 of Article XXI of Alternative B requires the creditor to provide evidence of its claims and proof that its international interest has been registered. There is no similar provision in Alternative A. This is because
Alternative B, unlike Alternative A, involves an application to the court, and the evidence and proof are to be provided to the court. Again in contrast to Alternative A, the requirement to furnish proof that the international interest has been registered signifies that the creditor cannot invoke the provisions of Alternative B without first registering its international interest. This is despite the fact that such registration is only one of the methods of preserving the effectiveness of the international interest on the debtor’s insolvency, the other being its effectiveness under the applicable law (Article 30(2)). The latter is not sufficient to enable the creditor to invoke the provisions of Alternative B.

5.90. Paragraph 5 of Alternative B of Article XXI indicates that the creditor may not take possession pending the court’s decision, and paragraph 6 states that the space object may not be sold during that time. It would seem that the creditor’s ability to exercise other remedies is governed by the applicable insolvency law.

5.91. As stated earlier, Article IV(3) enables the parties, by agreement in writing, to exclude the application of Article XXI altogether or, in their relations with each other, to derogate from or vary the effect of any of the provisions of the Protocol except Article IX(2)-(4) (see Article XVI and paragraphs 5.66-5.67). For the meaning of “writing” see Article 1(nn) of the Convention.

5.92. **Illustration 59**

Celestial, the operator of satellite 1, leased it to DTV, a company situated in State X to provide digital television services. Celestial’s interest as lessor was not registered as an international interest. Celestial also financed DTV’s acquisition of satellite 2, taking a security interest in satellite 2 to secure DTV’s obligations to Celestial under both the financing agreement and the leasing agreement and registered this in the International Registry as an international interest. DTV filed for bankruptcy on 1 April. Under the law of State X, which is a Contracting State, the interest of a lessor is effective in the lessee’s bankruptcy without further formality. State X has declared Alternative A for all insolvency proceedings, with a 60-day waiting period. The law of State X requires debtors to return assets owned by third parties immediately, but freezes all action by secured creditors against insolvent debtors for six months. DTV must comply with the law of State X as regards satellite 1 and immediately give up control to Celestial. As regards satellite 2, the six-month
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, cooperate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XXI of this Protocol.

Comment

5.93. Article XXII is an opt-in provision requiring a declaration under Article XLI(2)(b). It seems clear that the only relevant declaration in any particular case is a declaration by a Contracting State falling within paragraph 2 the assistance of whose courts is invoked. Where such a declaration is made, foreign courts and foreign insolvency administrators applying Article XXI are entitled to call for maximum co-operation on the part of the courts of the declaring State. This, of course, is in addition to any entitlement to co-operation they may have under other law, for example from States that have adopted the UNCITRAL Model Law on Cross-Border Insolvency.
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.

Comment

5.94. The registration provisions of the Convention have been extended to cover outright sales of space assets, so that (in contrast to the position under the Convention itself) the buyer can register the sale in the International Registry. Accordingly, the special protection given to a buyer by Article 29(3) of the Convention is not appropriate to a buyer of space assets, which is why Article IV of the Space Protocol excludes Article 29(3) of the Convention.

5.95. Paragraphs 1 and 2 of the present Article extend the general priority rule in Article 29(1) to a sale registered in accordance with the Space Protocol, so that the buyer under a registered sale of a space asset takes free from an interest registered after the time of the buyer’s registration and from an unregistered interest but takes subject to a previously registered interest. The wording of paragraph 2 deviates slightly from that of the corresponding paragraph in the Aircraft Protocol to remove an inconsistency between the two paragraphs.

Article XXIV—Modification of assignment provisions

Article 33(l) 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.”
Comment

5.96. The effect of this Article is to make the debtor's consent to an assignment a precondition of the debtor's duty to make payment or give other performance to the assignee. This is a requirement not usually found in national laws governing the assignment of rights. The purpose is to avoid as far as possible a situation in which the debtor is faced with notices of assignment from competing assignees. However, the debtor's obligation is not unqualified. If, for example, the debtor has inadvertently consented to two assignments (and the consent may be given in advance and need not identify the assignee) it is inconceivable that it would be ordered by a court to make a double payment. In such a case, if the debtor is unable to secure agreement between the competing assignees as to which of them should be paid, the debtor's remedy is to invoke the local procedural law for dealing with such cases.

5.97. The debtor's consent is required only for the purpose of its duty of performance to the assignee; it is not a prerequisite of the effectiveness of the assignment as between assignor and assignee. An assignment registered before the commencement of insolvency proceedings against the assignor is effective against the insolvency administrator and general creditors whether or not the debtor consented to it. The same is true if the assignment, though not registered, is effective under the applicable law despite the absence of the debtor's consent.

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(l) 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.

Comment

5.98. Article XXV establishes a quiet possession regime which is based on transparency through use of the International Registry and is directly linked to the priority rule in Article 29(4); indeed, it can properly be regarded as itself a supplementary priority rule that can be varied by a subordination agreement between debtor and chargee registrable under Article 16(1)(e). It applies only where a debtor is not in default within the meaning of Article 11 of the Convention. That Article permits the parties to agree on what constitutes a default. Failing such agreement, the default must be substantial. Assuming no such default, a debtor is entitled to quiet possession, on the terms of the agreement, as against (a) its creditor, (b) the holder of any interest registered after that of the creditor, (c) any interest to which it would otherwise be subordinated where the holder of that interest agrees to the debtor’s quiet possession, and (d) any interest from which, in its capacity of buyer, it takes free under Article 29(4) of the Convention (see paragraphs 3.119 et seq.). Article XXV thus extends the protection of the conditional buyer and lessee to the debtor “in the capacity of buyer”, that is, an outright buyer given priority under Article XXXIII(1). Such a buyer is technically not a debtor at all but for ease of drafting is treated as a debtor for the purpose of Article XXV

5.99. Conversely, a debtor is not entitled to quiet possession as against the holder of any interest to which the debtor takes subject. Yet reflecting the principle of party autonomy, the foregoing rules may be varied by the agreement of the relevant parties.

5.100. Article XXV does not state which acts constitute a breach of the debtor’s right to quiet possession once it is in possession. In the relations
between the debtor and the creditor this is left to the agreement between them. Questions not dealt with by the agreement or arising in the relationship between the debtor and third parties are left to the applicable law. Exercise of control over the space asset by the creditor (in the absence of default) or by a lessor's chargee under a charge registered after registration of the lessor’s interest would clearly be an infringement of the right to quiet possession. So too would the taking of control, absent a default, by a third party at the request or by the authority of the creditor or chargee.

5.101. Quite independently of Article XXV, the debtor may have remedies against the creditor for any interference with the debtor’s possession which is a breach of the agreement under the applicable law.

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.

Comment

5.102. It is unusual to find an Article of this kind in a private commercial law convention. It has hitherto been taken for granted that such conventions do not affect regulatory law, the criminal law, export controls, or otherwise. Article XXVI is widely drawn to make it clear that nothing in the Protocol affects the regulatory powers of a Contracting State, whether over the transfer of licences, the use of orbital positions and frequencies or the placement of command codes or requires a Contracting State to recognise or enforce an international interest in a space asset conflicting with its laws or regulations over the export of controlled goods (by which is meant goods the export of which is subject to governmental control) or 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.

Comment

5.103. A Contracting State has an interest in ensuring that the exercise of a remedy by a creditor over a space asset does not result in a discontinuity in the provision of services needed for the provision of a public service. On the other hand, the creditor has a legitimate expectation that its asset will not continue to be available without payment. Article XXVII is designed to balance these interests.

5.104. Whether a service is a public service depends on whether its provision is recognised as such under the laws of the Contracting State in question (see Article XXVII(2)(a)). “Services” is not defined but means arrangements for the provision and maintenance of the space asset and related ground services and facilities that will provide the educational, navigational, military, surveillance or other services that fall within the meaning of “public service” as recognised by the applicable law.

5.105. The procedure laid down in this Article is as follows. The Article is triggered by the registration of a public service notice, which can be done only by agreement of the parties to the public service contract and the Contracting State. The creditor’s consent is not required but since there will be an agreement in place between the creditor and the debtor providing for the international interest (see paragraph 3.81) the creditor will be able to make contractual provision restricting the debtor’s right to consent to the registration of a public service notice. A public services provider is an entity of or designated by the Contracting State or recognised as a provider of public services under its laws. A public service notice is a notice describing the services to be performed under the public service contract. It is implicit in the provisions that the notice must relate to an existing and uniquely identifiable space asset and must enable the creditor who is the holder of the international interest affected by the notice to be identified, for since the International Registry is asset-based it will be necessary to link the public service notice to an existing registration of a specific international interest (see paragraph 3.81). Upon registration of the public service notice the creditor may not exercise remedies that
would make the space asset unavailable during the suspension period, which begins with the registration by the creditor of a notice (referred to below as a default notice) that it will or may exercise default remedies if the debtor does not cure its default within the suspension period. The creditor must promptly notify the debtor and the public services provider of the date of registration of its notice and of the date of expiry of the suspension period (Article XXVII(6)).

5.106. The suspension provisions do not affect those remedies of the creditor which have no impact on the availability of the space asset, such as collection of payments due from obligors under a rights assignment, or from the debtor itself so long as there is no recourse to the space asset, nor do they preclude the creditor, if so authorised by the relevant authorities, from operating or procuring the operation of the space asset temporarily where the debtor is not able to do so (Article XXVII(5)) or from instituting proceedings for the appointment of another operator in place of the debtor (Article XXVII(7)(c)).

5.107. The suspension period is such period, being not less than three nor more than six months after the date of registration of the default notice, as is specified in a declaration by the Contracting State at the time of ratification of the Protocol. This declaration is mandatory and is a prerequisite of acceptance by the Depositary of an instrument of ratification of the Protocol.

5.108. The underlying assumption of the suspension provisions is that the creditor will have not only obtained and registered an international interest but also have taken a rights assignment and recorded it against the registration of the international interest. Accordingly the creditor’s protection lies in its ability to collect the revenue stream coming from payment by obligors to the extent necessary to recover sums due from but unpaid by the debtor and future payments as these fall due. If, however, the public services provider fails to honour its obligations under the public service contract, thus jeopardising the creditor’s right to the income stream, the creditor becomes immediately entitled to exercise its default remedies under the agreement with the debtor (Article XXVII(8)).
5.109. Paragraph 9 of Article XXVII provides an exception to the suspension of remedies in the unusual case where the international interest is registered before the registration of the public service notice, the creditor had no knowledge of the public service contract and the public service notice is not registered within six months after the initial launch of the space asset.

5.110. Illustration 60

C enters into an agreement with D to advance funds for the purchase of a satellite which is to be used to disseminate information for educational purposes in Ruritania. D executes a charge in favour of C to secure the advance and C registers the agreement as an international interest. D then concludes a contract with E, a Ruritanian State entity responsible for providing educational programmes on the web under which E will pay for access to the satellite for the purposes of such programmes. Some months later D, E and Ruritania agree to E’s registration of a public service notice in the International Registry affecting the international interest created by the agreement between C and D. Soon afterwards D defaults in payment of sums due under the loan agreement. C is entitled to bring proceedings for recovery of the amount due but except as provided by Article XXVII may not exercise rights against the satellite which would disable it from fulfilling the requisite public service until the end of the suspension period beginning with the registration of the creditor’s default notice, this period being not less than three nor more than six months from that registration as specified in Ruritania’s declaration.

5.111. Illustration 61

The facts are as in Illustration 60 except that the international interest was registered by C without knowledge of the public service contract and before the registration of a public service notice. C is free to exercise its remedies against the satellite despite registration of the public service notice but ceases to be able to do so if the public service notice is registered within six months of the launch of the satellite.
PART 5

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.

Comment

5.112. Resolution No. 2 of the Berlin Diplomatic Conference invited the governing bodies of the International Telecommunications Union (ITU) to consider the matter of becoming Supervisory Authority upon or after entry into force of the Protocol and take the necessary action, as appropriate, and to inform the Secretary-General of UNIDROIT accordingly.¹ Resolution No. 1 resolved:

(1) to establish, pending entry into force of the Protocol, a Preparatory Commission, to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry for space assets, under the

¹ For the full text of the Resolution, see Appendix IV.
guidance of the General Assembly of UNIDROIT, such Preparatory Commission to be composed of persons, having the necessary qualifications and experience, nominated as provided by the resolution;

(2) to instruct the Preparatory Commission to carry out, under the guidance of the General Assembly of UNIDROIT, the various tasks allotted by the resolution in connection with the establishment of the international registration system;

(3) to invite the General Assembly of UNIDROIT, in the event of the governing bodies of the ITU deciding that it should not become the Supervisory Authority, to appoint another international Organisation or entity as Supervisory Authority on or after entry into force of the Protocol;

(4) to invite the Supervisory Authority to establish a Commission of Experts consisting of not more than 20 members from among persons nominated by the Signatory and Contracting States to the Protocol, having the necessary qualifications and experience, with the task of assisting it 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.

Comment

5.113. The regulations referred to are those to govern the operation of the International Registry.

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.
Comment

5.114. The specification of identification criteria proved more difficult for space assets than for aircraft objects, partly because new kinds of space asset might be developed for which fixed criteria might be unsuitable and partly because of the difficulty of framing in the Protocol criteria that could be applied to space assets already in space. Accordingly Article XXX leaves to the regulations the criteria necessary and sufficient to identify the space asset for the purposes of registration in the International Registry. In contrast to the flexibility governing identification of a space asset for the purpose of constituting the international interest under Article VII it will be necessary for the regulations to lay down criteria for the unique identification of a space asset.

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.

Comment

5.115. Article XXXI implements for space assets Article 18(5) of the Convention (see paragraphs 4.136-4.138). It is for each Contracting State to decide whether to make a declaration designating an entity as the entry point for the transmission of registration information to the International Registry. Any Contracting State is free to make a declaration under Article XXXI but in most cases this will have effect only in relation to space assets the operation of which is licensed by the declaring State (see paragraph 3.101).

5.116. The effect of not requiring use of a designated entry point, or merely permitting its use, is that registrations can be made directly with the International Registry. It is open to the licensing State to require use of a
ARTICLE XXX – ADDITIONAL MODIFICATIONS TO REGISTRY PROVISIONS

designated entry point for some classes of transaction only while leaving the
registration of other classes within the Protocol to be effected directly. It is
not, of course, open to a State to prohibit direct registration of categories of
transaction without allowing access to the designated entry point for such
categories. A Contracting State which designates an entity pursuant to this
Article will be free to add such additional requirements (including the payment
of fees) as it considers necessary for transmission of data to the International
Registry, though in doing so it will need to have regard to Article 26 of the
Convention.

5.117. Use of the entry point may be made optional or compulsory. However,
an entry point may not be designated for registration of a notice of a national
interest, or of a non-consensual right or interest, arising under the laws of
another State. Subject to this an entry point may be designated for any kind of
registration, whether of an international or prospective international interest, a
notice of a national interest, or a registrable non-consensual right or interest,
arising under the law of the State designating the entry point, an assignment or
prospective assignment, a subordination, or an amendment or discharge of a
registration.

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.
Comment

5.118. Article XXXII(1) adds a paragraph to Article 16 of the Convention to cover the additional items that can be entered on the International Registry under the Protocol.

5.119. The search criteria are expressed to be those specified in Article XXX but that Article does not itself lay down any criteria but simply leaves these to be specified in the regulations.

5.120. Paragraph 3 gives greater precision to the phrase “without undue delay” in Article 25(2), specifying a period no later than ten calendar days after the receipt of the demand for the discharge. But the obligation to procure the discharge within this time is not a strict one; all that is required is that the holder of the prospective international interest or the person in whose favour a prospective assignment is registered takes such steps as are within its power.

5.121. The Supervisory Authority is required to set and may from time to time amend fees. The basis of the fees is cost recovery. The International Registry is not intended to be a for-profit operation. In setting the fees the Supervisory Authority is entitled to charge for reasonable setting-up costs – which will thus be recouped over a period rather than falling on the States Parties to the Convention and Space Protocol – and the reasonable costs of establishing, operating and regulating the International Registry and of supervising the Registrar and performing the other functions of the Supervisory Authority. Such costs may obviously include provision for servicing of equipment, repair and replacement and maintenance of the system as a state-of-the-art registration system. But the Supervisory Authority is not entitled to fix fees on the basis of a profit to either the Registrar or itself. The cost of establishing and operating national entry points is not a matter for the Supervisory Authority and must be borne by the Contracting State in which the entry point is established. Similarly, the arrangements made for an entry point to transmit the information required for registration must be cost neutral to the International Registry. In other words, a Contracting State may not require arrangements that oblige the International Registry to incur costs unique to the relationship with the designated entry point and therefore in excess of the costs otherwise required to operate the International Registry.
5.122. The International Registry is required to provide its registration and search facilities on a 24-hour basis (Article XXXII(5)), and the intention of the provision is that the facility should be available seven days a week throughout the year, though it may be necessary from time to time to close the Registry for limited periods for maintenance, repair, upgrading of systems, technical security and the like. Obviously the Registry will seek to keep disruption to the service to a minimum. Contracting States providing national entry points are responsible for ensuring that these operate at least during working hours in their respective territories.

5.123. Paragraphs 6 of this Article leaves it to the regulations to determine the extent of the insurance or financial guarantee which the Registrar is obliged by Article 28(4) of the Convention to obtain against liability. Paragraph 7 allows the Registrar to obtain cover for events outside Article 28.

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.

Comment

5.124. The reason for this Article is that space assets may be owned or controlled by States or State entities, and while under the law of many States
it is considered an aspect of State sovereignty that a State can waive its immunity, this is not universally true. This Article makes it clear that a waiver of immunity is binding, though only where it is in a writing that describes the space asset. The waiver may relate to immunity from jurisdiction, enforcement or both. The instrument of waiver should make clear its extent. The general rule of international law, which is not affected by this Article, is that waiver of immunity from suit does not by itself constitute waiver of immunity from enforcement. Though Article XXXIII(2) says that the waiver must contain a description of the space asset, what is meant is not necessarily the waiver clause itself but the instrument of waiver, which will usually be the agreement containing the waiver clause. See paragraph 3.154.

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.

Comment

5.125. The 1988 UNIDROIT Leasing Convention provides for the rights of parties involved in an international financial leasing transaction, including the lessor, the lessee and the supplier. The lessee is given various direct rights against the supplier, in place of remedies against the lessor, in whose favour basic default remedies are specified. The lessor’s real rights are also protected in the event of the lessee’s bankruptcy. The effect of Article XXXIV is that as between two Contracting States which are Parties both to the Leasing Convention and the Cape Town Convention the latter supersedes the former in its entirety, not merely in cases of inconsistency.
PART 5

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.

Comment

5.126. This Article is self-explanatory. Information about current outer space treaties can be obtained from the United Nations Office for Outer Space Affairs and about instruments of the International Telecommunications Union from the ITU.

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.

Comment

5.127. A State may not become a Party to the Space Protocol without also becoming a Party to the Convention, which requires not only that the State is a Contracting State but that the Convention has entered into force. See further paragraph 2.244. The deposit of any instrument of ratification must, to be effective, be deposited with all relevant mandatory declarations, as to which see paragraph 3.173.

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.

Comment

5.128. This Article enables a Regional Economic Integration Organisation established by sovereign States and having competence over matters within the scope of the Protocol to adhere to the Protocol as if it were a Contracting State. For the corresponding provision in the Convention see Article 48 and paragraphs 4.305-4.307.

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.

Comment

5.129. Paragraph 1 deals with entry into force as regards the ten States whose ratification brings the Space Protocol into force. Paragraph 2 deals with States adhering to the Protocol thereafter. Sub-paragraph (b) of paragraph 1 is designed to ensure that the Protocol cannot come into force until the International Registry is operational. Its repetition in paragraph 2 is otiose because the Protocol will already have come into force under paragraph 1. The Convention does not come into force as regards space assets until the Space Protocol has been brought into force (see paragraph 3.7).

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.

Comment

5.130. This Article applies to the Space Protocol most of the provisions applicable to the Convention under Article 52, and reference should be made to paragraphs 4.318-4.320. However, whereas the equivalent provisions of the other two Protocols reproduced the effect of Article 52(5) of the Convention (see paragraph 3.179), the present Article substitutes a new paragraph 5 which addresses a different issue. References to the law in force in a Contracting State or the law of a Contracting State are to be construed as references to the law in force in the relevant territorial unit. This could, for example, be relevant to Article XXVI (preservation of powers of Contracting State) or Article XXVII (public service limitations) in cases where the relevant laws or regulations differ from one territorial unit to another (see paragraph 3.180). Provisions in the earlier Protocols equivalent to Article 52(5) of the Convention were in fact redundant and were rightly omitted from the Space Protocol. See paragraph 3.181. Article XXXIX(1) does not apply to the extent that the law is the same in all territorial units, whether because they have adopted uniform laws or because the law is federal law. Article XXXIX(3) is designed to make this clear as regards federal law.
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.

Comment

5.131. Article XL disapplies Article 60 of the Convention, under which the general rule is that the Convention does not apply to a pre-existing right or interest but a Contracting State can by declaration taking effect after the lapse of not less than three years extend the Convention to such interests. Article XL preserves the general rule in Article 60(1) of the Convention, with some additional wording by way of clarification, but contains no express provision for extension of the Convention to pre-existing rights or interests by declaration. However, a limited effect is given to such rights or interests by the second sentence of Article XVII(3) relating to remedies in relation to physically linked assets. For the meaning of “pre-existing right or interest” see Article 1(v) of the Convention and paragraph 4.343. See also paragraphs 4.343 et seq. as to the meaning of “the applicable law” and the cascade approach to determination of the debtor’s situation at the time the right or interest is created.
5.132. The phrase “created or arising before the effective date of the Convention” follows Article XXVI(a) of the Luxembourg Protocol in making explicit what was implicit in Article 60(2)(a) of the Convention. Article 60(2)(a) of the Convention is amended by Article XXVI of the present Protocol to make it clear that the right or interest will be a pre-existing right or interest if the debtor is not situated in a Contracting State at the time when the right or interest is created or provided for, even if the debtor later moves to a Contracting State and thereby establishes the effective date of the Convention for that debtor.

5.133. Subject to the second sentence of Article XVII(3), a pre-existing right or interest is outside the scope of the Convention and Protocol for all purposes (see paragraph 4.346). Where a pre-existing interest is assigned after the effective date of the Convention, the assignee stands in the position of the assignor, no new interest is created and the interest assigned remains a pre-existing interest and thus outside the scope of the Convention except as provided by the second sentence of Article XVII(3), as to which see paragraph 3.77.

5.134. *Illustration 62*

C1 is the holder of a right or interest in a satellite bus under a charge by D in C1’s favour made shortly after the effective date of the Convention in relation to D, and registered as an international interest in the International Registry. C2 is the holder of a charge on the payload carried on the bus, the charge being created shortly before the effective date of the Convention. Twelve months after the registration of C1’s international interest in the bus C2 registers its international interest in the payload. C1 wishes to move the bus to a new orbit, a move which would adversely affect the payload the subject of C2’s international interest. C2’s international interest is deemed to have been registered at the time it was constituted, thus preceding C1’s registration of its international interest in the bus. On D’s default under its agreement with C1, C1 cannot enforce its right to change the orbit of the bus without C2’s agreement.

*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.

Comment

5.135. For a description of the system of declarations, see paragraphs 2.266 et seq., 3.168 et seq.

5.136. Declarations under paragraph 1 applying Article XXVII(4) are mandatory. Declarations under paragraph 2(a) relating to Article XXII are opt-in declarations; declarations under paragraph 2(b) applying Article VIII are opt-out declarations.
5.137. For the various options open to a Contracting State when considering a declaration under Article XXI, see paragraph 5.80. A Contracting State making a declaration under paragraph 4 must apply the entirety of the selected Alternative; it cannot combine elements of one Alternative with elements of another (see paragraph 5.80). It may, however, select different Alternatives for different insolvency procedures.

5.138. Paragraph 4 requires a Contracting State to specify “the types of insolvency proceeding” to which it will apply, namely Alternative A or Alternative B. However, the intention is to cover both forms of insolvency-related event referred to in Article I(2)(d) and the second of these deals with the case where the creditor cannot pursue insolvency proceedings. Accordingly, paragraph 4 should be interpreted as enabling a Contracting State to specify the types of insolvency proceeding or other insolvency-related event to which Alternative A or Alternative B is to apply. Different alternatives may be applied to different procedures.

5.139. Paragraph 4 also requires that the declaration state the time-period required by Article XXI within which the debtor or the insolvency administrator has to give possession or cure all defaults and agree to perform all future obligations (Alternative A) or to give notice whether it will do so (Alternative B). Whereas under Alternative A of Article XXI the duty arises automatically upon the occurrence of an insolvency-related event, under Alternative B it arises only on request by the creditor. Accordingly any time-period specified by a declaration in relation to Alternative B should be expressed to commence not earlier than the date of receipt of the creditor’s request by the insolvency administrator or the debtor.

5.140. Paragraph 5 requires the courts of Contracting States to apply Article XXI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction, defined in Article I(2)(d). So if there are secondary insolvency proceedings in another Contracting State relating to a space asset situated in that State the courts of that State must apply the version of Article XI selected by a declaration of the Contracting State of primary 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.

Comment

5.141. This Article is arguably unnecessary but has the merit of making it clear that declarations under the Convention relating to specified provisions apply to any modification of those provisions by the Space Protocol. See further the annotations in Part 4 to the Articles listed.

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.

Comment


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
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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.

Comment


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.

Comment


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.

Comment

5.145. See paragraph 4.342.

5.146. It is open to a Contracting State which is Party to the Space Protocol and others to denounce that Protocol while continuing to adhere to the others. A Contracting State which is Party only to the present Protocol and denounces it without denouncing the Convention remains bound only by those final provisions of the Convention which are operative independently of the Space Protocol. See paragraph 4.311.

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.

Comment

5.147. See paragraphs 4.357-4.358.

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;

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

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

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

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

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

(d) perform such other functions customary for depositaries.

Comment

5.148. See paragraphs 4.359 et seq.

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.

Comment

5.149. See paragraph 4.364.