



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

**DIPLOMATIC CONFERENCE FOR THE ADOPTION
OF THE DRAFT PROTOCOL TO THE CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT ON MATTERS SPECIFIC TO
SPACE ASSETS**

Berlin, 27 February / 9 March 2012

UNIDROIT 2012
DCME-SP – Doc. 32
Original: English/French
6 March 2012

**REPORT BY THE DRAFTING COMMITTEE
TO THE COMMISSION OF THE WHOLE**

(presented by the Chairman of the Drafting Committee)

INTRODUCTION

1. At its third meeting, held on 28 February 2012, the Conference established the Drafting Committee in the following composition: Canada, China, France, Germany, Japan, Nigeria, Pakistan, the Russian Federation and the United States of America.
2. The Reporter to the Commission of the Whole was an *ex officio* member of the Drafting Committee.
3. The Drafting Committee has held 6 meetings to date, on 29 February, 2, 3, 5, and 6 March 2012.
4. At its first meeting, Mr Michel Deschamps (Canada) was elected Chairman of the Drafting Committee, on a proposal moved by France.
5. The amendments made by the Drafting Committee to the substantive provisions of the draft Protocol submitted to the Conference in the document DCME-SP – Doc. 3 are highlighted (with deletions being struck through and additions underlined) in the version of the draft Protocol annexed hereto.

Annex

**DRAFT 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,

~~MINDFUL-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 ~~as efficiently as possible~~,

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

MINDFUL of the ~~established~~ 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 treaties of the United Nations by which the States Parties concerned are bound,

~~MINDFUL of~~ RECOGNISING the continuing development of the international commercial space industry and ~~recognising-contemplating the expected benefits of the need for~~ a uniform and predictable regimen governing interests in space assets and in related rights and facilitating asset-based financing of the same,

HAVE AGREED upon the following provisions relating to space assets:

CHAPTER I – SPHERE OF APPLICATION AND GENERAL PROVISIONS*Article I – Defined terms*

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

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

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

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

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

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

(e) “licence” means any permit, authorisation, concession or equivalent instrument ~~[in conformity with the applicable law]~~ 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) ~~“revenue salvage” means an interest in debtor’s rights which has become vested in the insurer of the related space asset by contract or operation of law upon payment of proceeds following a constructive total loss of the space asset;][‡]~~

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

~~{(j)}~~ “rights reassignment” means:

~~(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; ~~and~~

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

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

~~{(l)}~~ “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 ~~[in respect of which a registration may be effected in accordance with the regulations]~~, 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

[‡] ~~————— This provision is in square brackets so as to permit the checking of its drafting once a decision is taken on the text of Article IV(5).~~

(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~~;~~ ~~and~~.

~~(m) "title salvage" means title to a space asset which has become vested in the insurer of the space asset by contract or operation of law upon payment of proceeds following a constructive total loss of the space asset].²~~

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 of 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 provided 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 operation centre for the space asset is located.

~~3. - In Article[s] [1(n) and] 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) a Contracting State which registers the space asset, or on the registry of which the space asset is carried, for the purposes of:~~

~~_____ (i) 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;~~

~~_____ (ii) the Convention on Registration of Objects Launched into Outer Space, signed at New York on 14 January 1975; or~~

~~_____ (iii) United Nations General Assembly Resolution 1721 (XVI) B of 20 December 1961;~~

~~_____ (b) the Contracting State which is the State granting a licence to operate the space asset; or~~

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

² _____ This provision is in square brackets so as to permit the checking of its drafting once a decision is taken on the text of Article IV(5).

*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. – Nothing in this Protocol affects the application of the Protocol to the Convention on Matters specific to Aircraft Equipment to an object designed predominantly for use in air space. An object which is designed predominantly for use in outer space does not constitute an aircraft object for the purposes of the latter Protocol.]~~³

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

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

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

~~The return of a space asset from space does not affect an international interest in that asset. Ownership of or another right or interest in a space asset shall not be affected by:~~

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

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

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

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

1. – The following provisions of the Convention and of Article [] of this Protocol 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.

³— The text of this provision as originally proposed provided that nothing in this Protocol was to affect the application of the Aircraft Protocol to aircraft objects. However, this raised concerns both in the Drafting Committee of the Committee of governmental experts and in the Committee of governmental experts itself that it might inhibit development of space financing by unintentionally covering objects which, though designed predominantly for use in outer space, could fall within the definition of an airframe or an aircraft engine. The second sentence is intended to meet these concerns.

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

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

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

~~[4.—For the purposes of this Protocol, the vesting of a space asset by way of title salvage is treated as if it were a sale.]⁴~~

~~[5.—[Nothing in the Convention or this Protocol affects any rights of an insurer under the applicable law to revenue salvage.]as against the holder of an interest registered or a rights assignment recorded after the time when the salvage vests in the insurer under the applicable law. This paragraph does not affect the application of Article 9(5) of the Convention in relation to ownership or any other interest derived from or passing to a chargee whose interest was registered or an assignee whose interest was recorded prior to the time of such vesting.]]~~

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

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

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

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

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

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

⁴—This provision is in square brackets so as to permit the checking of its drafting once a decision is taken on the text of Article IV(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.

Article VII – Identification of space assets

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

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

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

Article VIII – Choice of law

1. – This Article applies unless a Contracting State has made a declaration pursuant to Article [\[...X\(1\)\]](#) of this Protocol.

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

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

Article IX – Formal requirements for rights assignment

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

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

Article X – Effects of rights assignment

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

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

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

Article XI – Assignment of future rights

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

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

1. – The holder of an international interest or prospective international interest in a space asset who has acquired an interest in or over debtor's rights under a rights assignment or by subrogation may, when registering the international interest or prospective international interest or subsequently by amendment to such registration, record the rights assignment or acquisition by subrogation as part of the registration. Such record may identify the rights so assigned or acquired either specifically or by a statement that the debtor has assigned, or the holder of the international interest or prospective international interest has acquired, all or some of the debtor's rights, without further specification.

2. – Articles 18, 19, 20(1) – (4), 25(1), (2) and (4) and 30 of the Convention apply in relation to a record made in accordance with the preceding paragraph as if:

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

3. – A search certificate issued under Article 22 of the Convention shall include the particulars recorded [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 record forming part of that registration under paragraph 1.

Article XIII – Priority of recorded rights assignment

1. – Subject to [Article 29\(6\) of the Convention and](#) paragraph 2 [of the present Article](#), a recorded rights assignment has priority over any other transfer of debtor's rights (whether or not a rights assignment) except a rights assignment previously recorded.

2. – Where a rights assignment is recorded in the registration of a prospective international interest it shall be treated as unrecorded unless and until the prospective international interest becomes an international interest, in which event the rights assignment has priority as from the time it was recorded [provided that the registration was still current immediately before the international interest was constituted as provided by Article 7 of the Convention](#).

Article XIV – Obligor's duty to creditor

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

(a) the obligor has been given notice of the rights assignment in writing by or with the authority of the debtor; and

(b) the notice identifies the debtor's rights.

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

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

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

Article XV – Rights reassignment

1. – Articles IX to XIV of this Protocol apply to a rights reassignment by the creditor or a subsequent assignee. [Where those Articles so apply, any as-if](#) references to the creditor or holder [are were](#) references to the assignee or subsequent assignee.

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

Article XVI – Derogation

The parties may, by agreement in writing, exclude the application of Article XXI and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article XVII(2) [\[and \(3\)\]](#).

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 ten-fourteen or more working-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.

~~*[Alternative A*~~~~3. — No additional provision should be included in this Protocol on this subject.]~~~~*[Alternative B*~~~~3. — In the absence of an agreement among two or more parties with interests governed by this Protocol with respect to physically linked space assets, and without prejudice to the priority and related provisions of the Convention and this Protocol, if the exercise of a remedy provided for under this Protocol by a creditor of one of the physically linked space assets will cause physical damage to, or render inoperable, another physically linked space asset, the applicable law shall determine whether the creditor may proceed with the exercise of such remedy.]~~~~*[Alternative C*~~~~3. — In the absence of an agreement among two or more parties with interests governed by this Protocol with respect to physically linked space assets, and without prejudice to the priority and related provisions of the Convention and this Protocol, if the exercise of a remedy provided for under this Protocol by a creditor of one of the physically linked space assets will cause physical damage to, or render inoperable, another physically linked space asset, such creditor exercising such remedy shall compensate for the damage caused to the holder of the relevant interests in the physically linked space asset.]~~

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. A sale that is registered within three years from the effective date of the Convention, as defined in Article [], is deemed to have been registered at the time of the sale.

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 references:

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

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

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

Article XIX – Placement of data and materials

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

Article XX – Modification of provisions regarding relief pending final determination

1. – This Article applies only where a Contracting State has made a declaration to that effect under Article ~~[XL(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 ~~working-calendar~~ days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.

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

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

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

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

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

Article XXI – Remedies on insolvency

1. – This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article ~~[XL(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 ⁵:

- (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.

⁵ It was agreed by the Drafting Committee of the Committee of governmental experts that the future Official Commentary should make it clear that, if the creditor was already in possession of or had control of the debtor's rights, then there would be no need to rely on this provision.

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 [XL(4)] of this Protocol whether it will:

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

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

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

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

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

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

Article XXII – Insolvency assistance

1. – This Article applies only where a Contracting State has made a declaration pursuant to Article [XL(1)] of this Protocol.

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

Article XXIII – Modification of priority provisions

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

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

~~3. – The docking of one space asset with another in outer space does not affect ownership, rights or an international interest in those assets.~~

~~4. – Ownership of or another right or interest in a space asset shall not be affected by its installation on or removal from another space asset.~~

Article XXIV – Modification of assignment provisions

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

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

Article XXV – Debtor provisions

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

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

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

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

Article XXVI – Preservation of powers of Contracting States

1. – This Protocol does not affect the exercise by a Contracting State of its authority to issue licences, approvals, permits or authorisations for the launch or operation of space assets or the provision of any service through the use or with the support of space assets.

2. – This Protocol further does not:

(a) render transferable or assignable any licences, approvals, permits or authorisations which, in accordance with the laws and regulations of the granting Contracting State or the contractual or administrative provisions under which they are granted, may not be transferred or assigned;

(b) limit the right of a Contracting State to authorise the use of orbital positions and frequencies in relation to space assets; or

(c) affect the ability of a Contracting State in accordance with its laws and regulations to prohibit, restrict or attach conditions to the placement of command codes and related data and materials pursuant to Article XIX.

3. – Nothing in this Protocol shall be construed so as to require a Contracting State to recognise or enforce an international interest in a space asset when the recognition or enforcement of such interest would conflict with its laws or regulations concerning:

(a) the export of controlled goods, technology, data and services; or

(b) national security.

~~Article XXVI – Limitations on remedies~~

~~1. — This Article applies only where a Contracting State has made a declaration pursuant to Article XL(1) of this Protocol.~~

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

~~[Alternative text~~

~~2. — Nothing in the Convention and this Protocol limits the ability of a Contracting State, in accordance with its laws and regulations, to restrict or attach conditions:~~

~~(a) to the constitution of an international interest or a rights assignment, for reasons of national security, international peace and security, or in order to regulate controlled goods, and~~

~~(b) to the exercise of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol, including to the placement of command codes and related data and materials pursuant to Article XIX, for reasons of national security, international peace and security or where the exercise of such remedies would involve or require the transfer of controlled goods, technology, data or services, or would involve the transfer or assignment of a licence, or the grant of a new licence.]~~

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

Article XXVII – 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;

(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 8, 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 3bis.

3bis. A Contracting State shall at the time of ratification, acceptance, approval of, or accession to this Protocol specify by a declaration under Article [] 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.

~~3. — 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 and 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 a period of 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.~~

4. – The preceding paragraph 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 the preceding paragraph where the debtor is not able to do so.

~~45. – The creditor shall promptly notify the debtor and the public services provider of the date of registration of its notice under the preceding paragraph and of the date of expiry of the period referred to therein.~~

~~56. – 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; ~~and, as appropriate,~~~~

(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 substitution of the debtor as operator of the space asset concerned in accordance with the rules of the licensing authorities.

~~67.~~ – Notwithstanding paragraphs 3 and ~~45~~, the creditor is free to exercise any of the remedies provided in Chapter III of the Convention and-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.

~~78.~~ – Unless otherwise agreed, ~~the~~ the limitation on the remedies of the creditor provided for in paragraph 3 shall not apply in respect of an international interest registered prior to the ~~public service notice, unless otherwise agreed by the parties~~ registration of a public service notice pursuant to paragraph 1 by a creditor whose interest in the space asset was created pursuant to an agreement made before the contract with the services provider referred to in paragraph 1 and who, at the time the international interest was registered in the International Registry, had no knowledge that such a public services contract had been entered into.

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

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

Article XXVIII – The Supervisory Authority

1. – The Supervisory Authority shall be designated at, or pursuant to a resolution of, the diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets, provided that such Supervisory Authority is able and willing to act in such capacity.

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

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

Article XXIX – First regulations

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

Article XXX – Identification of space assets for registration purposes

A description of a space asset in accordance with the criteria for identification provided by that contains the name of its manufacturer, its manufacturer's serial number and its model designation, and satisfies such other requirements as may be established in the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry.

Article XXX bis – Designated entry points

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

Article XXXI – 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(3) 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 shall take such steps as are within its power to procure the discharge of the registration no later than five-ten calendarworking days after the receipt of the demand described in such paragraph.

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

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

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

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

CHAPTER IV – JURISDICTION

Article XXXII – Waiver of sovereign immunity

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

2. – A waiver under the preceding paragraph must be in writing and contain a description [of the space asset](#); in accordance with Article VII of this Protocol, ~~of the space asset~~.

CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS

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

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

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

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

[CHAPTER VI – FINAL PROVISIONS ⁶]

⁶ In line with practice, draft Final Provisions have been prepared for the diplomatic Conference by the UNIDROIT Secretariat. These are set out in DCME-SP - Doc. 5.