

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

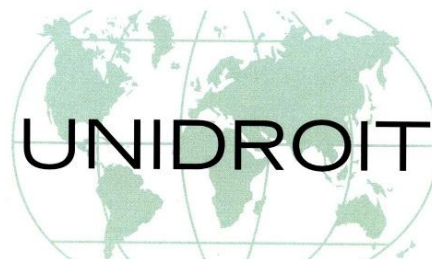
Signed in Berlin on 9 March 2012

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THE SECRETARY-GENERAL



JOSE ANGELO ESTRELLA FARIA



BERLIN

9 MARCH 2012

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

THE STATES PARTIES TO THIS PROTOCOL,

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

CONSCIOUS of the need to adapt the Convention to meet the particular demand for and the utility of space assets and the need to finance their acquisition and use,

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

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

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

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

HAVE AGREED upon the following provisions relating to space assets:

CHAPTER I – SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I – Defined terms

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

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

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

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

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

(d) "insolvency-related event" means:

(i) the commencement of the insolvency proceedings; or

(ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor's right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;

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

(f) "obligor" means a person from whom payment or other performance of debtor's rights is due or to become due;

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

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

(i) "rights reassignment" means:

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

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

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

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

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

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

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

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

(a) the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, signed at London, Moscow and Washington, D.C. on 27 January 1967;

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

(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.

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

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

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

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

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

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

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

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

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

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

Article IV – Application of the Convention to sales; salvage

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

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

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

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

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

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

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

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

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

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

Article VI – Representative capacities

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

Article VII – Identification of space assets

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

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

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

Article VIII – Choice of law

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

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

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

Article IX – Formal requirements for rights assignment

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

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

Article X – Effects of rights assignment

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

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

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

Article XI – Assignment of future rights

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

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

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

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

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

3. – A search certificate issued under Article 22 of the Convention shall include the particulars recorded under paragraph 1.

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

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

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

Article XIII – Priority of recorded rights assignment

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

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

Article XIV – Obligor's duty to creditor

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

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

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

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

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

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

Article XV – Rights reassignment

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

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

Article XVI – Derogation

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

CHAPTER II – DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article XVII – Modification of default remedies provisions as regards space assets

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

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

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

Article XVIII – Default remedies as regards rights assignments and rights reassignments

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

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

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

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

Article XIX – Placement of data and materials

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

Article XX – Modification of provisions regarding relief pending final determination

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

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

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

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

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

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

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

Article XXI – Remedies on insolvency

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

Alternative A

2. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 8 and to Article XXVI(2) of this Protocol, give possession of or control over the space asset to the creditor no later than the earlier of:

(a) the end of the waiting period; and

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

3. – Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 8 and to Article XXVI(2) of this Protocol, give

possession of or control over the debtor's rights covered by a rights assignment to the creditor, no later than the earlier of:

- (a) the end of the waiting period; and
- (b) the date on which the creditor would be entitled to possession of or control over the debtor's rights covered by the rights assignment.

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

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

6. – Unless and until the creditor is given possession of or control over the space asset under paragraph 2 or the debtor's rights under paragraph 3:

- (a) the insolvency administrator or the debtor, as applicable, shall preserve the space asset and maintain it and its value in accordance with the agreement; and
- (b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

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

8. – The insolvency administrator or the debtor, as applicable, may retain possession of and control over the space asset and the debtor's rights covered by a rights assignment where by the time specified in paragraph 2 or paragraph 3 it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

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

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

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

12. – No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests. This provision shall not derogate from the provisions of Article XXVI(2) of this Protocol.

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

Alternative B

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

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

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

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

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

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

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

Article XXII – Insolvency assistance

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

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

Article XXIII – Modification of priority provisions

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

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

Article XXIV – Modification of assignment provisions

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

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

Article XXV – Debtor provisions

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

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

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

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

Article XXVI – Preservation of powers of Contracting States

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

2. – This Protocol further does not:

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

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

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

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

- (a) the export of controlled goods, technology, data and services; or
- (b) national security.

Article XXVII – Limitations on remedies in respect of public service

1. – Where the debtor or an entity controlled by the debtor and a public services provider enter into a contract that provides for the use of a space asset to provide services that are needed for the provision of a public service in a Contracting State, the parties and the Contracting State may agree that the public services provider or the Contracting State may register a public service notice.

2. – For the purposes of this Article:

(a) “public service notice” means a notice in the International Registry describing, in accordance with the regulations, the services which under the contract are intended to support the provision of a public service recognised as such under the laws of the relevant Contracting State at the time of registration; and

(b) “public services provider” means an entity of a Contracting State, another entity situated in that Contracting State and designated by the Contracting State as a provider of a public service or an entity recognised as a provider of a public service under the laws of a Contracting State.

3. – Subject to paragraph 9, a creditor holding an international interest in a space asset that is the subject of a public service notice may not, in the event of default, exercise any of the remedies provided in Chapter III of the Convention or Chapter II of this Protocol that would make the space asset unavailable for the provision of the relevant public service prior to the expiration of the period specified in a declaration by a Contracting State as provided by paragraph 4.

4. – A Contracting State shall at the time of ratification, acceptance, approval of, or accession to this Protocol specify by a declaration under Article XLI(1) a period for the purposes of the preceding paragraph not less than three months nor more than six months from the date of registration by the creditor of a notice in the International Registry that the creditor may exercise any such remedies if the debtor does not cure its default within that period.

5. – Paragraph 3 does not affect the ability of a creditor, if so authorised by the relevant authorities, temporarily to operate or ensure the continued operation of a space asset during the period referred to in that paragraph where the debtor is not able to do so.

6. – The creditor shall promptly notify the debtor and the public services provider of the date of registration of its notice under paragraph 3 and of the date of expiry of the period referred to therein.

7. – During the period referred to in paragraph 3:

(a) the creditor, the debtor and the public services provider shall co-operate in good faith with a view to finding a commercially reasonable solution permitting the continuation of the public service;

(b) the regulatory authority of a Contracting State that issued a licence required by the debtor to operate the space asset that is the subject of a public service notice shall, as appropriate, give the public services provider the opportunity to participate in any proceedings in which the debtor may participate in that Contracting State, with a view to the appointment of another operator under a new licence to be issued by that regulatory authority; and

(c) the creditor is not precluded from initiating proceedings with a view to the replacement of the debtor by another person as operator of the space asset concerned in accordance with the rules of the licensing authorities.

8. – Notwithstanding paragraphs 3 and 7, the creditor is free to exercise any of the remedies provided in Chapter III of the Convention or Chapter II of this Protocol if, at any time during the period referred to in paragraph 3, the public services provider fails to perform its duties under the contract referred to in paragraph 1.

9. – Unless otherwise agreed, the limitation on the remedies of the creditor provided for in paragraph 3 shall not apply in respect of an international interest registered by a creditor prior to the registration of a public service notice pursuant to paragraph 1, where:

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

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

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

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

Article XXVIII – The Supervisory Authority

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

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

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

Article XXIX – First regulations

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

Article XXX – Identification of space assets for registration purposes

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

Article XXXI – Designated entry points

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

Article XXXII – Additional modifications to Registry provisions

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

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

- (a) the recording of rights assignments and rights reassignments;
- (b) the recording of acquisitions of debtor’s rights by subrogation;
- (c) the registration of public service notices under Article XXVII(1) of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets; and
- (d) the registration of creditors’ notices under Article XXVII(4) of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets.”.

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

3. – For the purposes of Article 25(2) of the Convention, and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest or the person in whose favour a prospective sale has been registered shall take such steps as are within its power to procure the discharge of the registration no later than ten calendar days after the receipt of the demand described in such paragraph.

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

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

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

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

CHAPTER IV – JURISDICTION

Article XXXIII – Waiver of sovereign immunity

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

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

CHAPTER V – RELATIONSHIP WITH OTHER CONVENTIONS

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

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

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

The Convention as applied to space assets shall not affect State Party rights and obligations under the existing United Nations outer space treaties or instruments of the International Telecommunication Union.

CHAPTER VI - FINAL PROVISIONS

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

1. – This Protocol shall be open for signature in Berlin on 9 March 2012 by States participating in the diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets held in Berlin from 27 February to 9 March 2012. After 9 March 2012 this Protocol shall be open to all States for signature at Rome until it enters into force in accordance with Article XXXVIII.

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

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

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

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

Article XXXVII – Regional Economic Integration Organisations

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

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

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

Article XXXVIII – Entry into force

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

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

(b) the date of the deposit by the Supervisory Authority with the Depositary of a certificate confirming that the International Registry is fully operational.

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

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

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

Article XXXIX – Territorial units

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

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

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

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

5. – In relation to a Contracting State with two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, any reference to the law in force in a Contracting State or to the law of a Contracting State shall be construed as referring to the law in force in the relevant territorial unit.

6. – If a Contracting State has a federal system where the federal legislative power has competence over matters governed by this Protocol, that Contracting State shall have the same rights and obligations over those matters as those Contracting States which do not have a federal system.

Article XL – Transitional provisions

1. – Article 60 of the Convention shall not apply in relation to space assets.

2. – Subject to the second sentence of Article XVII(3) of this Protocol, the Convention does not apply to a right or interest of any kind in or over a space asset created or arising before the effective date of the Convention, which retains the priority it enjoyed under the applicable law before the effective date of the Convention.

3. – For the purposes of this Protocol:

(a) “effective date of the Convention” means in relation to a debtor the time when the Convention enters into force or the time when the State in which the debtor is situated at the time the right or interest is created or arises becomes a Contracting State, whichever is the later; and

(b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if it has no place of business, its habitual residence.

Article XLI – Declarations relating to certain provisions

1. – A Contracting State shall, at the time of ratification, acceptance, approval of, or accession to this Protocol, make a declaration pursuant to Article XXVII(4) of this Protocol.

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

- (a) that it will not apply Article VIII;
- (b) that it will apply Article XXII.

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

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

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

Article XLII – Declarations under the Convention

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

Article XLIII – Reservations and declarations

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

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

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 Depository 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 Depository. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depository.

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

Article XLV – Withdrawal of declarations

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

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

Article XLVI – Denunciations

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

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

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

Article XLVII – Review Conferences, amendments and related matters

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

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

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

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

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

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

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

Article XLVIII – Depositary and its functions

1. – Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. – The Depositary shall:

- (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Protocol;
 - (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.

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.