Last Comments on the Text of the Draft Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets

Prof. Gabriella Catalano Sgrosso[*]

Abstract

The *Convention on International Interests in Mobile Equipment* entered into force in 2004; subsequently, the Final Act of the "*Draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets*", which is complementary to the Convention, was drafted at the UNIDROIT Conference that was held in Berlin in 2012.

The Convention aims to facilitate the financing of the acquisition and use of mobile equipment of high value or particular economic significance, establishing a uniform regulatory framework governing asset-based financing and leasing, as well as related transactions. To ensure clarity and a uniform interpretation of the rules, the States Parties to the Convention felt the need to provide, in the initial part of the Convention, a list of the terms used therein. This paper will analyze the clear rules set out in the Convention with regard to international interests, the sale and acquisition of space assets, the effects of insolvency and default-related remedies.

The Space Protocol aims to achieve the same targets as the Convention, by making a pioneering effort – considering the subject matter at hand – to extend its benefits to space assets. The overview of the rules on international interests in mobile equipment provided in this paper wishes to also take into account the need, felt by the States Parties to the Space Protocol, to adapt the Convention to space assets, as well as analyze the specific definitions provided therein, including that of "space asset", the rules limiting the scope of the Protocol based on clauses made available to Contracting States, the limitations on remedies for purposes related to public service provision, as well as the rules setting out that the parties may agree on the law which is to govern their contractual rights and obligations and on the competent courts.

The Convention and, specifically, the Space Protocol, establish a supervisory mechanism based on two entities, the Supervisory Authority and the Registrar. The establishment of an International Registry in which the relevant transactions are registered makes such mechanism more transparent and reliable. After the entry into force of

* University of Rome, Italy, gab.sgrosso@alice.it.

the Convention in 2004, we are now heading towards the ratification of the Final Act of the Space Protocol, and the fact that UNIDROIT was designated Depositary and ITU the Supervisory Authority is a good starting point and a step in the right direction.

1 The Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets

The *Convention on International Interests in Mobile Equipment* (hereafter referred to as "Cape Town Convention" or simply "Convention") was drafted at the end of the Diplomatic Conference held in Cape Town in 2001. The Convention addresses the need to acquire and use mobile equipment of high value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner. The Agreement aims to establish a uniform regulatory framework governing the ownership of such equipment, as well as issues pertaining to privileges and sale and lease agreements, by creating an international registration system for their protection. It recognizes the advantages of asset-based financing and leasing for this purpose and wishes to facilitate these types of transactions by establishing clear rules to govern them. Moreover, it addresses the need to establish a legal framework for international interests in such equipment, by analyzing the various legal measures that may be adopted in case of insolvency, as well as existing default and insolvency-related remedies and national bankruptcy regulations[1].
The Cape Town Convention and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* were jointly adopted in 2001. The Protocol relates to aircraft that can transport at least 8 people or goods in excess of 2750 kilograms, helicopters that can carry 5 or more passengers and, specifically, aircraft engines.
The resolution proposing the treaty was signed by 53 of 68 countries attending the Conference and 14 International Organizations, including ICAO and IATA. It entered into force after the deposit of the third instrument of ratification (art. 49) on April 1, 2004, and was signed by 28 countries[2].
The Protocol for aircraft and aircraft engines came into force on March 1, 2006 when it was ratified by 8 countries (Ethiopia, Ireland, Malaysia, Nigeria, Oman, Panama, Pakistan, and the United States); additionally, as of 2011, it was ratified by other 36 countries[3].

---

1 See CATALANO SGROSSO, International Space Law, LoGisma ed., Florence 2011, p. 230 ff.; see also bibliography and works cited.

2 Opened for signature on Nov. 16, 2001; available at: <www.unidroit.org /english/conventions/c-main.htm> in 69 Air Law and Commerce, 3 (2004) by CLARK.

3 For the current status of ratifications, see: <http://it.wikipedia.org/wiki/Trattato_di_Citt%C3%AO_del_Capo> And for the text of the Protocol, see the links provided therein.

The *European Union* – except for Denmark – ratified the Aircraft Protocol on April 28, 2009, only as regards those issues over which it has exclusive competence. With Council Decision of April 6, 2009, the EU approved the Cape Town Convention, specifying that matters relating to jurisdiction, recognition and enforcement of judgments in civil and commercial matters, as well as insolvency proceedings and the law applicable to contractual obligations shall be governed by the Cape Town Convention and the Aircraft Protocol. In accordance with art. 48 of the Cape Town Convention and art. XXVII of the Aircraft Protocol, a Regional Economic Integration Organization shall, at the time of acceptance, make a declaration to the Depositary specifying the matters governed by the Convention and the Protocol in respect of which competence has been transferred to that Organization by its Member States[4].

2 Draft Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets

As it occurred with regard to the Aircraft Protocol, the legal community immediately felt the need to also draft a Protocol concerning the use of space assets. The text of the Protocol was prepared under the auspices of UNIDROIT, which set up an *ad hoc* Committee of governmental experts. The UNIDROIT Governing Council approved a preliminary draft Space Protocol at its 80th session held in Rome from September 17 to 19, 2001. The Final Act of the "*Draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets*"[5] (hereafter referred to as "Space Protocol" or simply "Protocol") was drafted at the last Diplomatic Conference that was held in Berlin from February 27 to March 9, 2012. 25 countries signed the Final Act, while 3 countries signed the Space Protocol at the closing ceremony of the Diplomatic Conference[6]. The Protocol shall come into force after the deposit of the 10th instrument of ratification.

---

4 2009/370/EC: Council Decision of April 6, 2009 on the accession of the European Community to the Convention and its Protocol specific to aircraft equipment, in Official Journal no. L 121 of 15/05/2009, p. 0003-0007.

5 The text of the Space Protocol is available on the following website: <www.unidroit.org/english/workprogrammme/study072/spaceprotocol/conference/documents/documents-sp-43-e.pdf>.

6 The abovementioned 25 countries were the following: Brazil, Burkina Faso, Canada, the Czech Republic, France, Germany, Ghana, India, Iraq, Ireland, Italy, Japan, Luxembourg, Madagascar, Pakistan, the People's Republic of China, the Republic of Korea, the Russian Federation, Saudi Arabia, Senegal, South Africa, Spain, Turkey, the United States of America and Zimbabwe. It was also signed by a regional economic integration organization, namely the European Union.
The fallowing States that signed the Space Protocol were the following: Burkina Faso, Saudi Arabia and Zimbabwe. 4 International Intergovernmental Organizations also attended the Conference: ESA, ITU, OCAO and OTIF (the Intergovernmental Organization for International Carriage by Rail).

The Space Protocol initially specifies, among other things, that it refers to 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 (ITU). It is divided into 6 chapters:
- Chapter I – Sphere of Application and General Provisions
- Chapter II – Default Remedies, Priorities and Assignments
- Chapter III – Registry Provisions relating to International Interests in Space Assets
- Chapter IV – Jurisdiction
- Chapter V – Relationship with Other Conventions
- Chapter VI – Final Provisions

The new Protocol is expected to play a key role in facilitating the financing of the acquisition and use of space assets, especially as regards weaker players, such as small firms and new companies entering the commercial space sector. The joint efforts made by government representatives and the commercial space sector at the various working sessions of the Committee of governmental experts[7] aimed at rendering asset-based financing more accessible to an industry that is presently searching for innovative ways to obtain start-up capital for space-based services. Such ventures are full of risk and uncertainty and, consequently, their financing is currently still prohibitively expensive. By introducing a uniform regulatory framework to govern the creation, perfection and enforcement of international interests in space assets, notably satellites, the cost of financing is expected to be reduced as a result of the increased level of transparency and predictability for financiers, thereby making financing more widely available to a greater number of players in the commercial space sector, thus also helping small start-up companies entering the sector.
The Space Protocol is complementary to the Cape Town Convention, as set out in art. 6 of the latter: "This Convention and the Protocol shall be read and interpreted together as a single instrument". However, to the extent of any inconsistency between the Convention and the Protocol, the Protocol shall prevail, in accordance with the principle based on which special law prevails over general law[8]. Moreover, the Convention shall not apply to the category of objects covered therein until the Protocol is finalized and adopted.
The Protocol shall enter into force three months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession; however, the Supervisory Authority shall, at the same time, deposit with the Depositary a certificate confirming that the International Registry is fully operational (art. XXXVIII of the Space Protocol).

---

7 For an overview of the various working sessions of the Committee of governmental experts for the preparation of a Space Protocol, see: <www.unidroit.org/english/workprogramme/study072/spaceprotocol/conference/background.htm>.

8 See TRONCHETTI, *The future of the Unidroit Draft Space Protocol: Legal Proposals to favor and stimulate its Success*, Proc. of the International Institute of Space Law, Glasgow 2008, p. 60 ff.

Articles XXXIV and XXXV, Chapter V, of the Space Protocol, in line with article 46 of the Convention, address the Relationship with other conventions and, specifically, with the UNIDROIT Convention on International Financial Leasing, signed at Ottawa in 1988. The Protocol shall supersede the abovementioned UNIDROIT Convention in respect of its subject matter, while it shall not affect State Party rights and obligations under the existing UN Outer Space Treaties or instruments of the International Telecommunication Union.
The Convention, to which the Space Protocol refers, establishes an International Registry, appoints a Supervisory Authority and a Registrar – to which several tasks are assigned and a number of privileges and immunities are granted – and designates UNIDROIT the Depositary, in accordance with art. 62 of the Convention.

3 Constitution of an International Interest

The Convention provides for the constitution and effects of an *international interest* (art. 2.1) in certain categories of mobile equipment (which are specified in art. 2.3) and associated rights. It applies when, at the time of the conclusion of the agreement creating or providing for the international interest, the debtor is situated in a Contracting State (art. 3)[9]. Therefore, the fact that the creditor is situated in a non-Contracting State does not affect the applicability of the Convention. While the Aircraft Protocol also envisages another possible connection element, i.e. the nationality of the State of registry of the aircraft at the time of the conclusion of the security agreement, the Space Protocol only refers to the place where the debtor is situated, as mentioned above. The interest, which serves the purpose of assuring performance of any obligations in favor of a creditor, may be based on a security agreement, made in writing, or under any other agreement that serves the same purpose (art. 1.2.(c) of the Space Protocol). An interest may also be created under national regulations; in most cases a national security will simultaneously constitute an international interest, so that the two will co-exist. However, a registered international interest will usually give the creditor stronger rights than a purely domestic interest.
In case of *default*, a creditor - i.e. a chargee under a security agreement - may exercise any of the following three remedies: take possession or control of any object charged to it; sell or grant a lease of any such object; and collect or receive any income or profits arising from the management or use of any such object. The creditor may alternatively apply for a court order authorizing or directing any of the abovementioned remedies (art. 8 of the Convention). Any remedy set out in the Convention, and not only those set out in art. 8.3 of the Convention, shall be exercised in a commercially reasonable manner (art.XVII.1 of the Space Protocol). A remedy shall be deemed to be exercised in a commercially

9 The debtor is situated in any Contracting State under the law of which it is incorporated or formed, where it has its registered office or statutory seat, where it has its center of administration, or where it has its place of business (art. 4).

reasonable manner where it is exercised in conformity with a provision of the security agreement except where such a provision is manifestly unreasonable. In insolvency proceedings against the debtor, an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in compliance with the Convention (art. 30.1 of the Convention). This rule is based on effectiveness rather than non-effectiveness, as paragraph 2 of the same article sets out that "Nothing in this Article impairs the effectiveness of an international interest in the insolvency proceedings where that interest is effective under the applicable law" (art. 30.2 of the Convention). Where the sums collected or received by the creditor as a result of the exercise of any remedy mentioned above exceed the amount secured by the security interest and any reasonable costs incurred in the exercise of any such remedy, then the creditor shall distribute the surplus among holders of subsequently ranking interests which have been registered or of which the creditor has been given notice, in order of priority, and pay any remaining balance to the debtor – i.e. a chargor under a security agreement (art.8.6 of the Convention).

An *assignment* of an asset made in writing – governed by chapter IX of the Convention and addressed in further detail in article IX of the Space Protocol – also transfers to the assignee the "associated rights"[10], including the related international interest and all the interests and priorities of the assignor under the Convention. However, a Contracting State may, at any time, declare those categories of non-consensual right or interest which under that State's law have priority over an interest in an object equivalent to that of the holder of a registered international interest and which shall have priority over a registered international interest, whether in or outside insolvency proceedings (art. 39 of the Convention).

In case of *default* by the debtor, article XVIII.1 of the Space Protocol expressly refers to articles 8, 9 and 11 to 14 of the Convention. The key provision in case of default is that regarding the *transfer of ownership of the object* to the creditor and all the interested persons, only if the court deems the amount of the secured obligations that shall be satisfied by such vesting to be commensurate with the value of the object after taking account of any payment to be made by the chargee to any of the interested persons (art. 9).

Moreover, a creditor may, pending final determination of its claim, obtain from a court speedy relief in the form of *interim relief measures* ranging from preservation of the object and its value, to possession, control or custody of the object, immobilization of the object up to the lease or management of the object and the income therefrom (art. 13).

In accordance with the most widely-recognized rule of private international law, the parties to an agreement, a contract of sale, a rights assignment or rights reassignment or a related guarantee contract or subordination agreement may

10 Article 1.c of the Convention sets out that "associated rights means all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object".

(to the extent legally possible under national regulations) *agree on the law* which is to govern their contractual rights and obligations, wholly or in part (art. VIII of the Space Protocol), unless a Contracting State has made a declaration pursuant to Article XLI(2) of the Protocol (declaring that it shall not apply such article).

If the parties fail to agree on the applicable law, reference shall be made 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. The *lex rei sitae* principle may give rise to conflicts of law, especially as regards items of mobile equipment which are constantly moving from one country to another or, in the case of space assets, which are not on Earth at all. On the one hand, national laws vary widely from one country to another and in some jurisdictions are highly supportive of security interests while in others they are more hostile or restrictive. On the other hand, there is no law of any kind, national or international, governing security, title reservation and leasing interests in objects in outer space. Hence for space assets there is an even stronger need for an international set of rules governing the abovementioned issues, to provide creditors with the necessary safeguards, while at the same time incorporating measures for the protection of debtors and not discouraging potential financiers from extending credit also with respect to these assets[11].

Unless otherwise agreed, *jurisdiction* also depends on the forum chosen by the parties. The courts of a Contracting State chosen by the parties to a transaction have jurisdiction in respect of any claim brought under the Convention, whether or not the chosen forum has a connection with the parties or the transaction (art. 42 of the Convention). Any such agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of the chosen forum, i.e. the *lex fori*. Insolvency proceedings are subject to primary insolvency jurisdiction.

The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is situated have jurisdiction to grant interim relief in respect of that object. Such interim relief may also be granted by the courts of a Contracting State on the territory of which the debtor is situated. The Space Protocol, specifically article XXXIII, also addresses the issue of *waiver of sovereign immunity*. A waiver of sovereign immunity from jurisdiction of the courts, made in writing by the authorities enjoying such immunities (i.e. the Supervisory Authority and the Registrar), 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.

---

11 See Sir Roy Goode's explanatory notes (United Kingdom) UNIDROIT 2011, DCME-SP – Doc. 4, Original: English, July 2011, p. 1 and 2, on the following website: <www.unidroit.org/english/conventions/mobile-equipment/conference2012/dcme-sp-04-e.pdf>.

4 Space Assets and Sale

Article 1.2(k) of the Final Act provides a detailed definition of *space asset*, thereby resolving many doubts that had arisen among the international legal community over the issue. While the international Conventions on outer space generally use the term "space object", the Protocol willfully uses a different term, i.e. "space asset", meaning assets of high value that may be privately sold by their entitled owners. According to the Protocol, "space asset" means any man-made uniquely identifiable asset in space or designed to be launched into space. Article 1.2(k) is further divided into three parts and specifies that the term "space asset" comprises spacecrafts (such as satellites, space stations, space modules, space capsules, space vehicles or reusable launch vehicles), payloads (whether telecommunications, navigation, observation, scientific or otherwise) in respect of which a registration may be effected in accordance with the regulations, as well as parts of a spacecraft or payload, such as a transponder, also in respect of which a separate registration may be effected. The term also includes all installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto[12].
While the Aircraft Protocol envisages a single aircraft identification method for the purposes of registration and the constitution of an international interest, the Draft Space Protocol follows the Protocol to the Convention on Matters specific to Railway Rolling Stock (hereafter referred to as the "Luxembourg Protocol"), thereby allowing any method as long as it is sufficient to identify a space asset for the purposes relating to an international interest agreement.
Article 41 of the Convention had already extended the scope of the Convention to the *sale and prospective sale* of a space asset. However, the Space Protocol – as well as the Aircraft Protocol, save for the Luxembourg Protocol – further specifies its scope of application in article IV: conclusion of an agreement and registration in the International Registry, pre-emption rights and priority of competing rights assignments, insolvency-related effects, jurisdiction, sale rights, as well as salvage rights, meaning 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.
A contract of sale shall be made in writing and shall relate to a space asset – in accordance with the identification criteria contained in the Space Protocol[13] – of which the seller is entitled to dispose. A contract of sale transfers the interest of the seller in the space asset to the buyer according to its terms. In accordance with the principle of effectiveness, which always governs international relationships, an interest in a future space asset 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 (art. VII.2 of the Space Protocol).
A remark should be made at this stage, following the overview of the articles provided above. Although the Convention and the Protocol envisage that an

12 See art.1.2(k) of the Space Protocol, Final Act, Berlin 2012.
13 See art. 7 of the Space Protocol: Identification of space assets.

international interest and the sale of a space asset must be registered in an International Registry established by the Supervisory Authority, greater attention should be paid, especially in a global market, to the disclosure of information regarding the transfer of ownership or any encumbrance or burden upon the space asset, in order to protect third parties. Our main goal is to be able to identify the entity that shall bear responsibility in case of accidents if the ownership of the space asset has been transferred or if it has been sold following a default-related event. In case of a transfer of ownership of a space asset, instead of requiring that a compensation agreement be signed between the launching State and the creditor, in order to protect third parties who may suffer damage[14], the Protocol should simply refer to a number of provisions already contained in article II of the Registration Convention. The latter specifies that States Parties shall provide detailed information on space objects launched into outer space, including any transfer of ownership, to the Secretary-General of the United Nations, who shall enter such information into the international register he maintains[15]. Ownership of objects launched into outer space is only transferred following contracts entered into by the entitled owners and is not affected by their presence in outer space or on a celestial body or by their return to Earth, as set forth by art. VIII.2 of the Outer Space Treaty (OST). Some countries are concerned about the potential impact of the Convention and the Protocol on their national regulations; therefore, they suggest limiting their application should a conflict of interest arise with respect to their national security interests or law and regulations[16]. However, we must object to this proposal, as in private international law the limit to the application of foreign

14 See Tronchetti, *The future of the Unidroit*…., cit. p. 68; Canada's proposed amendment envisages a compensation agreement to be signed between the interested States Parties, or other similar measures to be taken to reduce liability risk with respect to any damage that may be caused by the space object whose ownership is transferred. See: Unidroit 2012-DCME-SP-Doc.9, which, together with the other proposed amendments to the Convention and the Protocol, is available on the following website: <www.unidroit.org/english/conventions/mobile-equipment/conference2012/dcme-sp-documents-e.htm>.

15 See CATALANO SGROSSO, *International Space Law,* cit., part I, chap. II.1 Registration of space objects and jurisdiction, p.167 ff.; LARSEN, *UNIDROIT Space Protocol: Comments on the Relationship between the Protocol and Existing International Space Law,* in Proc. of the 44th Colloquium on the Law of Outer Space, 2001, p. 187 ff.; Idem, *Critical Issues in the UNIDROIT Draft Space Protocol*, Proc. of the 45th Coll. on the Law of Outer Space, Houston 2002, p. 2 ff.; Idem *Memorandum on National Restrictions on the Transfer and Operation of Space Assets*, Space Working Group, New York 19/20 June 2007, UNIDROIT Working Paper; OSPINA, *The UNIDROIT Registration of security interests and the Registration Convention: compatible-complementary, or contradictory?*, Proc. of the 46th Colloquium on the Law of Outer Space, Bremen 2003, p. 464 ff.

16 See part 1 of Canada's proposed amendment, Unidroit 2012-DCME-SP-Doc.9, available on the website mentioned in note 14.

rules or to the implementation of conventional rules already applies and is represented by the protection of public order or internal security. Nonetheless, to favor the application of conventional rules, as is the case, they should, first of all, contain provisions addressing potential conflicts of interest, thus ironing out State concerns over the issue.
For example, to ensure that adequate checks are performed by the State of the seller/buyer or the State of the creditor/debtor, which shall bear international responsibility for the activities carried out by private parties in outer space under art. VI of the OST, prior authorization could be required for the transfer of ownership of a space object. This mandatory authorization regime has been imposed by the French Act of June 3, 2008[17], both in case such transfer requires prior authorization in France and in case the space object is transferred to a French national. This enables States, which are responsible for activities carried out by their nationals, to make sure that technical rules on the transfer of assets and codes of conduct are complied with[18].

5 Registry and Supervisory Authorities

Chapter IV of the Convention establishes an *International Registry* specifically for the registration of international interests and related rights, assignments and acquisitions of international interests, and notices of national interests, while only the Space Protocol expressly envisages the registration of a contract of sale of a space asset. In fact, article V.3 of the latter sets out that registration of a contract of sale remains effective indefinitely, while that of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration. The Convention specifies that the term "registration" includes, where appropriate, an amendment, extension or discharge of a registration[19]. The Registry to be established under the Protocol is the main tool through which the Cape Town Convention aims to reduce uncertainty and enhance transparency in the area. The Registry established under the Registration Convention and maintained by the Secretary-General of the United Nations is completely different from the Registry established by the UNIDROIT Convention, although the two may interact. The former is used by States, while the latter by private companies.
To register a space asset, a description of the asset in accordance with the identification criteria set out in art. VII is needed (art. XXX of the Space

17 For further information about the French Act, see: CATALANO SGROSSO, *International Space Law,* cit., part I, chap.II.4 National legislations, p. 207 ff.
18 See also SCHMIDT-TEDD, ARNOLD, *The Unidroit Draft of a Space Assets Protocol - A Civil Law instrument under a Public Framework*, Proc. of the International Institute of Space Law, Glasgow 2008, p. 71 ff.
19 For a better understanding of the text of the Convention and the Protocol, see Sir Roy Goode's explanatory notes (United Kingdom) UNIDROIT 2011, mentioned in note 11.

Protocol): a description of the space asset by item, a description by type, a statement that the agreement covers all present and future space assets, or a statement that the agreement covers all present and future space assets except for specified items or types[20]. Registration is not, however, proof of the existence of an international interest and is of no effect if the purported international interest has not been validly created. Rather registration ensures that, if an international interest validly created is registered, priorities are determined on a first-to-register basis, with which the courts of any Contracting State must comply. The registration system will be electronic and available online, will operate 24 hours a day, seven days a week, except when service is suspended to allow for repairs or maintenance.

The Protocol establishes further provisions on the registration of space assets in addition to those contained in art. 16 of the Convention. It requires registration of rights assignments and reassignments, as well as of acquisitions by subrogation and sets out that if a space asset provides *public services*, the public services provider may register a public service notice. Moreover, it specifies the period after the expiration of which the creditor may exercise any of the remedies available under the regulations should the debtor have failed to cure its default within that period. A significant limitation on the remedies that a creditor may exercise in case of a debtor's default is related to the use of the relevant space asset. If, in fact, it is designed to provide services that are needed for the provision of a public service, especially if in another State, the Protocol aims to ensure it is not abruptly terminated or suspended through the exercise of creditors' remedies. A creditor may not, in case of default, exercise any such remedies for a period 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. During this period the creditor, the debtor and the public service provider must cooperate in good faith with a view to finding a commercially reasonable solution permitting the continuation of the public service (art. XXVII paras. 2, 4 and 7 of the Space Protocol).

Unless otherwise provided for, 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 (art. XVII.3 of the Space Protocol). However, the issue whether a creditor may exercise a remedy with respect to a space asset that is physically linked with another space asset in which another creditor holds an international interest remains unresolved. On the matter, Germany and the US put forward a proposal to amend the abovementioned article specifying that if a space asset is acquired under

20 Germany, Japan and the Russian Federation's proposed amendment, i.e. Unidroit 2012-DCM-SP-Doc.12 (available on the website mentioned in note 14), envisages also including the name of the manufacturer, as well as the model and identification number of the space asset among the identification criteria.

national regulations prior to the entry into force of the Protocol in that State, it may be registered within 3 years of the date of entry into force of the Protocol and, for purposes relating to priority with respect to other interests, such period shall be considered registration period[21].

The Convention, in compliance with the relevant Protocol, designates a number of entities designed to oversee and manage activities regarding the assets specified therein: a Supervisory Authority and a Registrar.

The *Supervisory Authority* shall: establish the International Registry; after consultation with the Contracting States, make or approve and ensure the publication of regulations dealing with the operation of the International Registry; establish administrative procedures for filing complaints concerning the operation of the International Registry. Moreover, it shall appoint, supervise and, if needed, dismiss the Registrar and, at the request of the latter, provide guidance for the effective operation of the International Registry as well as the relevant registration procedures. The Supervisory Authority shall also set and periodically review the structure of fees to be charged for the services and facilities of the International Registry and report periodically to Contracting States concerning the discharge of its obligations under the Convention and the Protocol (art. 17 of the Convention).

To enable it to perform its duties more easily, the Supervisory Authority shall have international legal personality where not already possessing such personality, and shall enjoy immunities that are similar to those granted to diplomats: the Authority and its officers and employees shall enjoy immunity from legal or administrative process. Moreover, the Supervisory Authority shall enjoy exemption from taxes and such other privileges as may be provided by agreement with the host State (i.e. the State in which the Supervisory Authority is situated) and the assets, documents, databases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process (art. 27 of the Convention).

The *Registrar* shall ensure the efficient operation of the International Registry and perform the functions assigned to it by the Convention, the Protocol and the regulations. The Registrar shall enjoy the privileges and immunities granted to the Supervisory Authority but it shall be liable for compensatory damage for loss suffered by a person directly resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the international registration system. The Registrar shall procure insurance or a financial guarantee covering such liability (art. 28 of the Convention). Should damage be caused to third parties, the Registrar will no longer enjoy immunity from jurisdiction and the courts of the place in which it has its center of administration shall have exclusive jurisdiction over the matter.

Supervisory authorities designed to oversee the implementation and functioning of the various Conventions are often appointed under private international law. UNCITRAL (the United Nations Commission on International Trade Law),

21 See joint proposal presented by Germany and the US, Unidroit 2012- DCME-Sp-Doc.17, available on the website mentioned in note 14.

which was established by the General Assembly of the United Nations in 1966 (Resolution 2205 (XXI) of 17 December 1966), may serve as an example[22]. In accordance with art. XXVII of the Space Protocol, *ITU was designated the Supervisory Authority* at the Diplomatic Conference held in Berlin. Resolution 2 of the Protocol invites it to consider the matter of the ITU becoming Supervisory Authority upon or after the entry into force of the Protocol and take the necessary action, as appropriate. Resolution 1 sets up a Preparatory Commission for the establishment of the International Registry for space assets and invites the Supervisory Authority to establish a Commission of Experts consisting of not more than 20 members from among persons nominated by the Signatory and Contracting States to the Protocol, having the necessary qualifications and experience, with the task of assisting it in the discharge of its functions.

In *conclusion*, aware of the great efforts made by the Committee of Experts over the past 11 years to try to resolve the age-old problems associated with international trade transactions, engaging in long legal discussions over still-unresolved marginal issues is deemed to be useless. It might be more useful to make minor amendments to the documents through proposals put forth by Contracting States, as is currently happening, in order to encourage States to deposit their instruments of ratification.

The Protocol, which is complementary to the Cape Town Convention, establishes clear, global trade-driven rules governing space asset transactions, sets up and operates an International Registry in which international interests and associated rights on space assets are registered and establishes a Supervisory Authority, thereby achieving, as efficiently as possible, another key target, i.e. enhancing transparency and winning financiers' trust.

22 See LARSEN, *Financing of Space Assets; Unidroit Convention's International Registry of Financial Interests in Space Property,* in Proc. of the 43th Colloquium on the Law of Outer Space, 2000, p. 258 ff.