

# The Way to the Successful Completion of the Negotiations\*

*M.J. Stanford\*\**

## I. Origins of Protocol

### (a) Decision by Unidroit General Assembly to Include Security Interests in Mobile Equipment in Unidroit Work Programme

The negotiations that led to the opening to signature in Berlin on 9 March 2012 of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets go back quite a long way, in fact almost a quarter of a century, to the decision by the Unidroit Governing Council in June 1988 to propose to the Unidroit General Assembly the inclusion in the Unidroit Work Programme of the subject of security interests in mobile equipment. It was this decision that led in the first place to the preparation of the Convention and the Protocol thereto on Matters specific to Aircraft Equipment and to the opening to signature of these instruments in Cape Town on 16 November 2001.

### (b) Decision by Unidroit Study Group to Divide Project into a General Convention and Equipment-Specific Protocols

From the very beginning, it was, however, intended that the future Convention should apply to as wide a variety of assets likely to be moving across or beyond frontiers in the ordinary course of business as possible. Satellites and other space assets were seen as just one such class of asset. However, in January 1997, the Unidroit Study Group responsible for the first stage of the preparation of the future Convention took the decision to split the future instrument into, on the one hand, a Convention designed to carry the general rules applicable to all classes of such asset and, on the other, asset-specific Protocols designed to adapt these general rules to the specific pattern of secured financing in relation to each such class of asset.

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\* Cf. Chronology of the development of the Cape Town Convention and Protocols thereto up to and including the Berlin diplomatic Conference, prepared by the Unidroit Secretariat for inclusion in the Official Commentary on the Convention and Space Protocol under preparation by Professor Sir Roy GOODE, reproduced in the Appendix hereto.

\*\* Immediate past Deputy Secretary-General, International Institute for the Unification of Private Law (Unidroit).

**(c) Decision to Entrust Preparation of a First Draft of Future Space Protocol to an Industry Working Group**

It was thus that in August 1997 the President of Unidroit invited Mr Peter Nesgos, an eminent expert in commercial space financing practice, to organise a working group, essentially made up of representatives of the manufacturers, financiers, users and insurers of space property as also of the interested international Organisations, to prepare a first draft of a future Protocol on Matters specific to Space Assets. This task was entrusted to a special space industry working group so as to give representatives of the different sectors involved in the space industry a first go at indicating the sort of regimen needed to make asset-based financing more accessible to commercial space financing transactions before handing the matter over for finalisation to Governments. In line with what had been done for the Aircraft Protocol, a first draft of which was prepared by a similar industry working group, the thought was that the technical complexities of preparing a new international regimen governing the taking of security in space assets required first and foremost the participation of parties familiar with the day-to-day nature and objectives of such transactions if such a regimen was to respond to market needs. Moreover, Unidroit has always tended to work at the cutting edge of developments in international commercial law and practice and the Unidroit Governing Council has, accordingly, always considered it appropriate to ensure that any instrument prepared by Unidroit in the commercial law field should respond in the first place to the needs of the relevant commercial sector.

**(d) Priority Given to Finalisation of Convention and Aircraft Protocol**

Until completion of the Convention, providing the basic framework of the new regimen, and the Aircraft Protocol, the primary focus of Unidroit's efforts was, however, to bring these two instruments to completion within, first, the Unidroit Study Group and, secondly, a joint Committee of governmental experts of Unidroit and the International Civil Aviation Organization (I.C.A.O.). And work on the future Space Protocol (as indeed on the future Rail Protocol, opened to signature in Luxembourg on 23 February 2007) necessarily took second place. Experts from the space and rail industry working groups nevertheless participated actively in the negotiation of the Convention, in particular with a view to ensuring that the basic interests of the commercial space and rail industries were adequately reflected in the text adopted in Cape Town and that it would work for them too.

**II. Preparation of First Draft of Space Protocol**

**(a) Work of Space Working Group**

Meanwhile, though, between 1997 and 2001, the Space Working Group held four meetings, two in North America and two in Europe,<sup>1</sup> at which it worked

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1 These meetings were held in Los Angeles on 1 July 1997, in Rome on 19 and 20 October 2000, in Seal Beach on 23 and 24 April 2001 and in Evry Courcouronnes on 3 and 4 September 2001.

out the essential features of a first preliminary draft Space Protocol. The fourth such meeting was held the month before the Cape Town diplomatic Conference. A broad cross-section of representatives of all sectors of the commercial space industry was involved in these efforts,<sup>2</sup> as also representatives of interested international Organisations<sup>3</sup> and national space agencies.<sup>4</sup> These efforts benefitted also from the expertise of those representatives of the international aviation finance community brought together by the Aviation Working Group, which played such a key role in the determination of the final shape of both the Convention and the Aircraft Protocol.

**(b) First Consideration of Relationship between Space Protocol and International Space Law**

A special informal group of experts, from both Government and industry, was also convened by Unidroit in October 2000 to look at the issues arising from the relationship between, on the one hand, what was then still the draft Convention and the Space Working Group's working draft of a preliminary draft Space Protocol and, on the other, the existing body of international space law. Conscious of the need to ensure full concordance between the future Space Protocol and the existing body of international space law, the Unidroit Secretariat also made contact with the United Nations Office for Outer Space Affairs (U.N.O.O.S.A.) and participated not only in UNISPACE III in Vienna in July 1999 but also, from 2000 onwards, as an observer, in the annual sessions of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space (U.N./COPUOS).

This co-operation between Unidroit and U.N./COPUOS led to the decision by the latter in June 2000 to include consideration of the draft Convention and

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- 2 Representatives of the following companies took part in one or more of these meetings: Alcatel, Alenia Spazio, ANZ Investment Bank, Argent Group, Arianespace, Assicurazioni Generali, Astrium, BNP Paribas, the Boeing Company, Crédit Lyonnais, Deutsche Morgan Grenfell, DIRECTV, EADS, FiatAvio, GE American Communications, Hughes Electronics Corporation, ING Lease International Equipment Finance, Lockheed Martin Finance Corporation, Lockheed Martin Global Telecommunications, The Long Term Credit Bank of Japan, The Mitsubishi Trust and Banking Corporation, Motorola Satellite Communications Group, PanAmSat Corporation, La Réunion Spatiale, Space Systems/Loral, SpaceVest, TelecomItalia and Telespazio.
  - 3 Representatives of the following international Organisations took part in one or more of these meetings: the European Organisation for Safety of Air Navigation (Eurocontrol), the European Space Agency, the International Mobile Satellite Organization, the International Telecommunications Satellite Organization (Intelsat), the United Nations Office for Outer Space Affairs, the European Centre for Space Law of the European Space Agency, the International Bar Association and the International Institute of Space Law.
  - 4 Representatives of the following space agencies took part in one or more of these meetings: the French Centre for Space Studies (CNES), the German Space Agency (DLR) and the Russian Aviation and Space Agency.

the working draft of the preliminary draft Space Protocol on the agenda of the Legal Subcommittee at its following session, as a single issue discussion item, and to invite the Secretariats of Unidroit and U.N.O.O.S.A. to prepare a joint background paper for that session. Significantly, each year since that first occasion, U.N./COPUOS has renewed its initial decision to include consideration of the future Space Protocol on the agenda of the Legal Subcommittee, which will thus be considering the Space Protocol once again at its current 52<sup>nd</sup> session. In June 2001, U.N./COPUOS moreover decided to set up an *ad hoc* consultative mechanism to review the draft Convention and the preliminary draft Protocol and to report back to the Legal Subcommittee the following year.

**(c) Decision by Unidroit Governing Council to Authorise Transmission of First Draft to Governments for Finalisation**

A new phase in the development of the future Space Protocol was ushered in with the adoption in Cape Town in November 2001 of the Convention on International Interests in Mobile Equipment (the Convention) and the Protocol thereto on Matters specific to Aircraft Equipment (the Aircraft Protocol).

Already in September 2001, just before the Cape Town Conference, the Unidroit Governing Council had authorised the Unidroit Secretariat to transmit the preliminary draft Space Protocol prepared by the Space Working Group to Governments and to convene a first session of a Unidroit Committee of governmental experts (the Committee of governmental experts) to review that text once a Steering and Revisions Committee had had the opportunity to review its compatibility with the texts of the Convention and the Aircraft Protocol to be adopted in Cape Town and in the light of the preliminary results reached by the *ad hoc* consultative mechanism.

**(d) Composition of Unidroit Committee of Governmental Experts**

Significantly, the Governing Council authorised the opening up of the intergovernmental consultation process to all members of U.N./COPUOS, to ensure not only the broadest representation of States in the finalisation of the preliminary draft Protocol but also concordance with the existing body of international space law.

One of the Resolutions adopted in Cape Town, Resolution No. 3, moreover, specifically invited Unidroit to afford non-member States an opportunity of participating in the negotiation and adoption of subsequent Protocols.

As mentioned above, Unidroit has always attached the greatest importance to the representation of the views of industry in the preparation of its instruments. It was thus that it organised two colloquia, for Governments and industry to compare notes on the preliminary draft Protocol, in the run-up to the first session of the Committee of governmental experts and in the immediate aftermath of that session: the first colloquium was held in Paris in September 2003, in co-operation with the European Centre for Space Law (E.C.S.L.), and the second in Kuala Lumpur in April 2004, in co-operation with the Malaysian National Space Agency and the Space Working Group.

**(e) Alignment of First Draft with Convention and Aircraft Protocol**

In February 2002, following an additional meeting of the Space Working Group,<sup>5</sup> the Steering and Revisions Committee, manned by representatives of Unidroit, U.N.O.O.S.A. and the Space Working Group, went right through the text of the preliminary draft Space Protocol to bring it into line with the instruments adopted in Cape Town and to take account of the preliminary conclusions reached by the *ad hoc* consultative mechanism.<sup>6</sup>

**(f) First Consideration of Question of Supervisory Authority under Future Protocol**

In June 2002, when deciding to renew the status of consideration of the preliminary draft Protocol as a single issue item on the agenda of the Legal Subcommittee at its 2003 session, U.N./COPUOS specifically invited it to consider the possibility of the United Nations serving as Supervisory Authority under the Space Protocol, as well as the question of the relationship between the terms of the preliminary draft Protocol and the rights and obligations of States under the legal regimen applicable to outer space. In June 2003 this referral was renewed for a further year. Ultimately, although there was strong support within the Legal Subcommittee for the idea of the United Nations serving as Supervisory Authority, consensus could not be reached, essentially because some members saw the functions of Supervisory Authority as being incompatible with the mandate of the United Nations.<sup>7</sup>

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5 This meeting was held in Rome on 30 and 31 January 2002.

6 It was left to a drafting group of the Steering and Revisions Committee to implement the amendments agreed upon and to the Unidroit Secretariat to introduce any additional amendments rendered necessary by the verification procedures in respect of the Convention and the Aircraft Protocol still underway at the time.

7 Another international Organisation began at round about this time to examine the possibility of it also serving as Supervisory Authority, namely the International Mobile Satellite Organization (I.M.S.O.). The matter was first considered in November 2003 by the I.M.S.O. Advisory Committee, at its eighth session. At its 26<sup>th</sup> session, held in March 2010, the same body, however, decided that it would not be possible for I.M.S.O. to assume such functions. In the run-up to the fifth session of the Committee of governmental experts, Mr A. Guillot, Head of the Legal Affairs Unit of the International Telecommunication Union (I.T.U.), informed the Unidroit Secretariat that the I.T.U. had manifested its continuing keen interest in the project and noted that the question of the I.T.U. acting as Supervisory Authority was still very interesting for his Organisation. At the Berlin diplomatic Conference the observer representing the I.T.U. indicated, on behalf of the Secretary-General of the I.T.U., that that Organisation continued to express interest for the I.T.U. to become Supervisory Authority but that the matter of whether or not the I.T.U. would become Supervisory Authority should not be prejudged.

### III. Finalisation of Preliminary Draft Space Protocol by Governments

#### (a) First Two Sessions of Committee of Governmental Experts

The work of the Committee of governmental experts got underway in Rome in December 2003. Ultimately, five sessions of this Committee proved to be necessary before the text of the preliminary draft Protocol was adjudged by the Committee to be ripe for transmission to a diplomatic Conference, for adoption. 57 States,<sup>8</sup> representing a cross-section of the industrialised, emerging and developing worlds, and a considerable number of intergovernmental<sup>9</sup> and international non-governmental Organisations,<sup>10</sup> as well as leading representatives of the commercial space, financial and insurance communities,<sup>11</sup> participated in the work of the Committee of governmental experts.<sup>12</sup> This Committee was chaired by Mr S. Marchisio (Italy), the three deputy Chairmanships being held by Mexico, South Africa and the Czech Republic.

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8 Albania, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burkina Faso, Canada, the People's Republic of China, Colombia, the Czech Republic, France, Germany, Greece, Hungary, India, Indonesia, the Islamic Republic of Iran, Ireland, Italy, Japan, Kazakhstan, Kenya, Latvia, Luxembourg, Malaysia, Mexico, Morocco, Nicaragua, Nigeria, the Islamic Republic of Pakistan, Paraguay, Peru, the Philippines, Portugal, the Republic of Korea, Romania, the Russian Federation, Saudi Arabia, Senegal, Slovakia, Slovenia, South Africa, Spain, Sudan, Sweden, Syria, Thailand, Tunisia, Turkey, Ukraine, the United Kingdom, the United States of America, Uruguay and Venezuela.

9 European Union, European Organisation for the Exploitation of Meteorological Satellites, European Space Agency, International Civil Aviation Organization, International Mobile Satellite Organization, International Telecommunication Union, United Nations Commission on International Trade Law and United Nations Office for Outer Space Affairs.

10 Aviation Working Group, European Centre for Space Law, European Federation of Leasing Company Associations, European Satellite Operators Association, International Association of Young Lawyers, International Astronautical Federation, International Bar Association, International Institute of Space Law, International Law Association, Rail Working Group and Space Working Group.

11 Alcatel, Arianespace, the Boeing Capital Corporation, Calyon, EADS, EADS Astrium, EADS Space Transportation, Eutelsat Communications, the German Space Agency, Groupe Crédit Agricole, Hermes, Intelsat, JSAT Corporation, KfW, Marsh SA, Munich Reinsurance Company, SES SA, SpaceX, Telespazio, Thales Alenia Space and Thuraya Satellite Telecommunications, as well as law firms advising such parties, including Baker & McKenzie, BHO Legal, Herbert Smith, Lovells, Milbank, Tweed, Hadley & McCloy, Mizrack & Gantt, White & Case and Zuckert Scoult & Rasenberger.

12 The Committee of governmental experts held five sessions, the first held in Rome from 15 to 19 December 2003, the second in Rome from 26 to 28 October 2004, the third in Rome from 7 to 11 December 2009, the fourth in Rome from 3 to 7 May 2010 and the fifth in Rome from 21 to 25 February 2011.

**(b) Intersessional Work**

A few issues proved to be of particular difficulty and this is why there was a hiatus in the work of the Committee of governmental experts following its second session. This hiatus was *inter alia* used to gather information on one of these particular issues, namely public service.<sup>13</sup> The time was also used to focus on issues specific to the future international registration system for space assets, notably the criteria necessary to identify such assets for registration purposes.<sup>14</sup>

**(i) Government/Industry Meetings**

These key outstanding issues were, together with related issues, the main focus of two special Government/industry meetings held in 2006 and 2007.<sup>15</sup> These meetings attracted representative participation from the Governments of the leading space-faring nations<sup>16</sup> and all sectors of the commercial space, financial and insurance communities.<sup>17</sup>

**(ii) Steering Committee**

Following the second such meeting, the Unidroit General Assembly at its 61st session, held in Rome in November 2007, decided upon the establishment of a Steering Committee to draw conclusions from these consultations regarding the text of the preliminary draft Protocol having come out of the first session of the Committee.<sup>18</sup>

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13 Report on the second session of the Committee (C.G.E./Space Pr./2/Report) § 41.

14 *Ibid* § 51.

15 The first such meeting, “The crucial role of industry in finalising an expansion of the Cape Town Convention to cover space assets”, was hosted by the Royal Bank of Scotland in London on 24 April 2006, the second, “The views of industry and Government on how best to finalise an expansion of the Cape Town Convention to cover space assets”, by Milbank, Tweed, Hadley & McCloy in New York on 19 and 20 June 2007.

16 The People’s Republic of China, France, Germany, India, Italy, Japan, Mexico, Nigeria, the Republic of Korea, the Russian Federation, Spain, the United Kingdom and the United States of America.

17 ABN Amro Bank NV, Alcatel Alenia Space France, Alcatel Alenia Space Italia, Arianespace, BNP Paribas, the Boeing Capital Corporation, Calyon Groupe Crédit Lyonnais, Commerzbank AG, Crédit Agricole, SA, EADS, EADS Astrium, the European GNSS Supervisory Authority, Eutelsat Communications, the Galileo Joint Undertaking, the German Space Agency, HellasSat SA, Hispasat, JSAT Corporation, ManSat, Marsh USA Inc, the Royal Bank of Scotland, SES Astra, SES Global, Space Systems/Loral Inc, SpaceX, Telespazio and Virgin Galactic (as well as representatives of the following law firms advising such clients: Baker & McKenzie, Brödermann & Jahn, Freshfields Bruckhaus Deringer, Lovells, Milbank Tweed Hadley & McCloy, Herbert Smith, White & Case and Zuckert Scoutt & Rasenberger).

18 Report on the session (A.G. 61 (8)).

**(c) Reconvening of Committee of Governmental Experts**

At the conclusion of the second such Steering Committee meeting<sup>19</sup> it was considered that the progress that it had made in building on the conclusions reached by the Government/ industry meetings, notably in respect of the key outstanding issues, was such as to justify the reconvening of the Committee of governmental experts. This view was endorsed by the Unidroit Governing Council<sup>20</sup> and it was thus that the third session of the Committee of governmental experts was held in December 2009. An alternative version of the preliminary draft Protocol, reflecting the intersessional work carried out since the second session of the Committee of governmental experts, provided the basis for the deliberations of the reconvened Committee of governmental experts.<sup>21</sup>

**(d) Finalisation of Preliminary Draft Protocol**

Progress in building consensus around this new version of the preliminary draft Protocol over the three remaining sessions of the Committee of governmental experts, aided by significant further intersessional work carried out between the penultimate and final sessions of that Committee,<sup>22</sup> enabled the Chairman

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19 The Steering Committee held two meetings, the first, at the invitation of the Government of Germany, in Berlin from 7 to 9 May 2008 and the second, under the auspices of the European Centre for Space Law, in Paris on 14 and 15 May 2009. It attracted participation from the Governments of Canada, the People's Republic of China, France, Germany, Greece, Italy, Japan, Mexico, Nigeria, the Russian Federation, South Africa, Spain, the United Kingdom and the United States of America and, representing the commercial space, financial and insurance communities, Ariane-space, the Boeing Capital Corporation, Coface, Commerzbank AG, Crédit Agricole SA, EADS, EADS Astrium, the European GNSS Supervisory Authority, Finmeccanica, the German Space Agency, JSAT Corporation, ManSat, Marsh SA, SCOR Global P&C, Sky Perfect JSAT Group, Space Communication Corporation, SpaceCo, SpaceX, Telespazio SpA, Thales Alenia Space France, Thales Alenia Space Italia, as well as representatives of the following law firms advising such clients: Baker & McKenzie, Gide Loyrette Nouel, Heinrich Kanzlei and Zuckert Scoutt & Rasenberger. The Steering Committee established two sub-committees, the Sub-committee on default remedies in relation to components and the Sub-committee on public service: each met once, the former in Berlin on 31 October and 1 November 2008 and the latter in Paris on 13 May 2009.

20 Report on the 88th session of the Governing Council (C.D. (88) 17)), § 138.

21 Report on the third session of the Committee of governmental experts (C.G.E./Space Pr./3/Report).

22 Consultations with representatives of the international commercial space and financial communities were held in Rome on 18 October 2010. The Informal Working Group of the Committee of governmental experts on default remedies in relation to components met in Rome from 19 to 21 October 2010. The Informal Working Group of the Committee of governmental experts on limitations on remedies met in Rome on 20 and 21 October 2010.

at the final session of the Committee of governmental experts to recommend, on behalf of the Committee of governmental experts, to the Unidroit Governing Council that the preliminary draft Protocol as improved during that session be considered ripe for transmission to a diplomatic Conference, for adoption.

#### **IV. Finalisation and Adoption of Draft Protocol**

##### **(a) Transmission of Draft Protocol to Diplomatic Conference for Adoption**

At its 90th session, held in Rome in May 2011, the Unidroit Governing Council endorsed the Committee of governmental experts' recommendation. It was thus that, following the decision in June by the Government of Germany to host the diplomatic Conference, the draft Protocol as established by the Committee of governmental experts was transmitted for adoption to a diplomatic Conference. All Unidroit member States were invited to the diplomatic Conference, as well as, pursuant to Resolution No. 3 adopted by the Cape Town diplomatic Conference, all member States of the United Nations. Invitations were also extended, as observers, to the relevant international Organisations and, as technical advisers, to those representatives of the commercial space, financial and insurance communities having participated in the development of the draft Protocol.

##### **(b) Adoption of Space Protocol**

The diplomatic Conference was held in Berlin from 27 February to 9 March 2012.<sup>23</sup> It was attended by the representatives of 40 States,<sup>24</sup> one Regional

23 The President of the Conference was Mr J.H.E. Kronke (Germany). The Vice-Presidents of the Conference were Mr H.S. Burman (United States of America), Mr M. Gourdault-Montagne (France), Mr I.E. Manylov (Russian Federation), Rev. M. Stofile (South Africa) and Mr Tang Wenhong (the People's Republic of China). The Chairman of the Commission of the Whole was Mr S. Marchisio (Italy). The Deputy Chairman of the Commission of the Whole was Mr V. Kopal (Czech Republic). Sir Roy Goode (United Kingdom) was appointed Reporter. The Chairperson of the Final Clauses Committee was Ms N. Chadha (India). The Chairman of the Credentials Committee was Mr E. Zoungrana (Burkina Faso). The Chairman of the Drafting Committee was Mr M. Deschamps (Canada). Mr J.A. Estrella Faria, Secretary-General of Unidroit, acted as Secretary-General of the Conference.

24 Albania, Brazil, Burkina Faso, Canada, the People's Republic of China, Colombia, the Czech Republic, Denmark, France, Germany, Ghana, India, Indonesia, Iraq, the Islamic Republic of Iran, Ireland, Italy, Japan, Latvia, Luxembourg, Madagascar, Malawi, Mexico, Moldova, Nigeria, the Islamic Republic of Pakistan, Portugal, the Republic of Korea, the Russian Federation, Saudi Arabia, Senegal, Slovenia, South Africa, Spain, Sudan, Turkey, the United Kingdom, the United States of America, Yemen and Zimbabwe.

Economic Integration Organisation,<sup>25</sup> four intergovernmental organisations,<sup>26</sup> five international non-governmental Organisations<sup>27</sup> and a certain number of technical advisers<sup>28</sup> as well as a number of special invitees of the Government of Germany<sup>29</sup> and Mr R. Cowan, Managing Director of Aviareto Limited, the Registrar of the International Registry for aircraft objects.

At the conclusion of its work on 9 March 2012 the Protocol to the Convention on Matters specific to Space Assets was opened to signature. To date four States have signed the Protocol: Burkina Faso,<sup>30</sup> Germany,<sup>31</sup> Saudi Arabia<sup>32</sup> and Zimbabwe.<sup>33</sup> The Protocol will remain open for signature at the seat of Unidroit in Rome,<sup>34</sup> until its entry into force.<sup>35</sup> It will enter into force on the later of, first, 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, secondly, the date of the deposit by the Supervisory Authority with the Depositary of a certificate confirming that the International Registry for space assets is fully operational.<sup>36</sup>

Together with the Protocol, the Berlin Conference adopted five Resolutions, the first of which provided for the setting up of the Preparatory Commission for the establishment of the International Registry for space assets, the second invited the governing bodies of the International Telecommunication Union to consider the matter of the I.T.U. becoming Supervisory Authority, the third sought to ensure that any search of the International Registry relating to physically linked assets would reveal all international interests registered against

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25 The European Union.

26 The European Space Agency, the Intergovernmental Organisation for International Carriage by Rail, the International Civil Aviation Organization and the International Telecommunication Union.

27 The Aviation Working Group, the European Satellite Operators Association, the International Bar Association, the International Institute of Space Law and the Rail Working Group.

28 Mr H. Baumann (Munich Re Insurance Company), Mr M. Borello (Thales Alenia Space), Mr S. Devouge (Marsh SA), Mrs C. Dubreuil (Astrium), Ms N.J. Eskenazi (SES SA), Mr O. Heinrich (BHO Legal), Ms M. Leimbach (Legal Risk Consultants), Mr M. Lemaire (Eutelsat Communications), Ms P. Meredith (Zuckert Scoutt Rasenberger LLP), Ms M. Petitjean (Eutelsat Communications), Mr B. Schmidt-Tedd (German Space Agency) and Mr J.-C. Vecchiato (EADS).

29 Mr U. Grude (Norddeutsche Landesbank Girozentrale), Mr J. Meincke (Association of German Pfandbrief Banks), Mr M. Reuleaux (Norddeutsche Landesbank Girozentrale) and Ms A. Richter-Mendau (Association of German Pfandbrief Banks).

30 On 9 March 2012.

31 On 21 November 2012.

32 On 9 March 2012.

33 *Idem*.

34 Unidroit was designated Depositary under Article XLVIII(1) of the Protocol.

35 Cf. Article XXXVI(1) of the Protocol.

36 Cf. Article XXXVIII(1) of the Protocol.

such assets, the fourth encouraged Contracting States and financing institutions to provide developing Contracting States with a reasonable discount or rebate on any exposure rates levied by such institutions and the fifth provided for the preparation of an Official Commentary on the Protocol by Professor Sir Roy Goode, who had acted as Reporter to the Commission of the Whole in Berlin.

## **V. Conclusions**

The Cape Town regimen is designed to make asset-based financing more widely available. The benefits of asset-based financing in respect of an asset are that they enable an entrepreneur - and, par excellence, a start-up company - to obtain financing secured against the value of the asset to be used by that entrepreneur in his or her business, a matter of great importance for the person advancing funds. These benefits are particularly attractive in the context of an entrepreneur looking to finance its acquisition of such a high-value asset as a satellite, where the satellite will normally be that entrepreneur's only asset capable of generating revenue.

To give just one example, it is significant to note that, despite the current testing business climate, the figures for the twelve-month period 1 January to 31 December 2012 released by the U.K. Asset Based Finance Association (A.B.F.A.) show that the number of companies in both the United Kingdom and Ireland using this method of financing continues to rise. Comparing figures with the previous year, the A.B.F.A. noted that the total number of businesses using asset-based financing had risen by 3% and that, moreover, both the turnover of these companies and the amount of funding advanced through asset-based financing had risen, by 5% and 6% respectively.

The unique success of such financing in the context of aircraft and aircraft engines is borne out by the fact that the Convention and Aircraft Protocol, completed only 11 years ago, already have 56 and 49 Contracting Parties respectively and that already one year ago, that is only five years after the entry into operation of the International Registry for aircraft objects, approximately 313,000 registrations had been made in that Registry against 125,000 aircraft objects (airframes, aircraft engines and helicopters).

It is true that asset-based financing in the commercial space context does not have the track record of commercial aviation. But then the commercial space market is vastly smaller than the commercial aviation market. And asset-based financing is a particularly flexible tool well suited to meet the changing needs of the commercial space market. The Convention and the Space Protocol provide a well prepared new international regimen calculated to provide invaluable legal certainty and transparency to parties wishing to avail themselves of this new alternative method of financing.

It is also true that some of the leading players in the commercial space market do not, for the moment, have any funding problems of a sort that would make the Convention and the Protocol interesting for them. However, it is important to bear in mind that one of the key objectives of the Protocol is to broaden ac-

cess to the commercial space market, which is, potentially, far larger than the aforementioned leading players. And this is why, as enshrined in the Preamble to the Protocol, its authors anticipated that the Convention and Protocol could yield significant benefits, in particular to emerging and developing markets, in generating an expansion in space-based services and financing.

This account of the history of the Protocol shows, I would submit, the thoroughness of the preparation that went into the Protocol. Already the Convention and the Aircraft Protocol were the result of a unique decade-long collaboration between two intergovernmental Organisations, Governments from all over the world and at all levels of development and representatives of the international business community, as well as the relevant international Organisations. This collaboration, unique in the annals of treaty making, was also the hallmark of the preparation of the Space Protocol.

As with the Aircraft Protocol, a first draft of the Space Protocol was prepared by a representative cross-section of the commercial space, financial and insurance communities and representatives of these communities continued to be actively associated in the development of the Protocol throughout the intergovernmental consultation process too. Again, Governments from all over the world and at all levels of development took an active part in working out the problems that had to be overcome in adapting the asset-based financing objectives of the Convention to the daily patterns of commercial space financing practice. Member States of U.N./COPUOS, as well as observers representing U.N.O.S.A., brought their own particular expertise to bear in resolving the special problems arising out of the relationship between the Protocol and the existing body of international space law.

A particular debt of gratitude is, of course, owed not only to the two international Organisations sponsoring this symposium but also to the Legal Subcommittee for the invaluable opportunities they have afforded for discussion of many of the issues involved in preparation of the Protocol. The challenge now is to build on all this preparation with a view to achieving early implementation of the Protocol. Its economic objectives, namely, through asset-based financing, to widen access to the commercial space market and thus meet the future needs of commercial space financing, are such that it is in the interest of all humankind to join in this endeavour.<sup>37</sup>

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37 It is expected that the Official Commentary on the Convention and Space Protocol prepared by Professor Sir Roy Goode will be published shortly. Cf. also Hans-Georg BOLLWEG and Simon SCHULTHEISS: "Das Berliner Weltraumprotokoll" in *Zeitschrift für Luft- und Weltraumrecht* 2012, 389 *et seq.*; Bernhard SCHMIDT-TEDD and Erik PELLANDER: "From Cape Town to Berlin - A new instrument for financing space assets" in *The Aviation & Space Journal* 2012, 32 *et seq.*; M.J. STANFORD: *The Contents of the Space Protocol and the Differences between it and the Aircraft and Rail Protocols* at <[www.law.ox.ac.uk/conferences/ctc/papers.php](http://www.law.ox.ac.uk/conferences/ctc/papers.php)>; M.J. STANFORD: "The availability of a new form of financing for commercial space activities: the extension of the Cape Town Convention to space assets" in *The Cape Town Convention Journal*, September 2012, Issue No. 1, 109 *et seq.*

## Appendix

## CHRONOLOGY

**of the development of the Cape Town Convention and Protocols thereto  
up to and including the Berlin diplomatic Conference  
(with references to development of the Space Protocol highlighted in bold type)**

**1988:** Initial decision of the Unidroit Governing Council at its 67<sup>th</sup> session, held in Rome in June, to propose to the Unidroit General Assembly the inclusion of the subject on the Institute's Work Programme in response to a proposal by the Canadian Government.

**1989:** Submission to the Unidroit Governing Council at its 68<sup>th</sup> session, held in Rome in April, of a study on an *International regulation of aspects of security interests in mobile equipment*, prepared by Mr Ronald C.C. Cuming, Professor of Law in the University of Saskatchewan.

**1990:** *Questionnaire* designed to test the assumptions underpinning Mr Cuming's conclusions, circulated by the Unidroit Secretariat in business and financial circles.

**1991:** *Analysis of the replies* to this questionnaire, prepared by the Unidroit Secretariat and submitted to the Unidroit Governing Council at its 70<sup>th</sup> session, held in Rome in May.

**1992:** *Restricted Exploratory Working Group*, chaired by Sir Roy Goode, Emeritus Professor of English Law in the University of Oxford, and assisted by representatives of business interests and practising lawyers with special experience of the problems raised by cross-border secured financing, met in Rome in March to ascertain the need for, and feasibility of, uniform rules.

**1993:** *Study Group for the preparation of uniform rules on certain international aspects of security interests in mobile equipment*, chaired by Sir Roy Goode, met for the first time in Rome in March and made a preliminary examination of the issues involved in the preparation of uniform rules.

Decision by the Unidroit Governing Council at its 72<sup>nd</sup> session, held in Rome in June, that this work should for the time being be carried forward within a Sub-committee of the Study Group essentially responsible for the preparation of a first draft.

**1994:** *Sub-committee for the preparation of a first draft*, chaired by Sir Roy Goode, met for the first time in Rome in February reaching a number of provisional conclusions regarding the sphere of application of the uniform rules, the setting up of an international registry and the conditions that should govern the recognition by the courts of a Contracting State of international interests in mobile equipment created under the uniform rules.

*Drafting Group of the Sub-committee*, chaired by Sir Roy Goode, met for the first time in Paris in July to draw up proposals for a first set of draft articles of a future Unidroit Convention on International Interests in Mobile Equipment, on the basis of the provisional conclusions reached by the Sub-committee at its first session.

*Sub-committee for the preparation of a first draft* met for a second time in Rome in November/December, considering the proposals for a first draft prepared by the Drafting Group, in particular in the light of the comments submitted thereon by members of the Study Group and the Sub-committee and the international Organisations represented by observers thereon, reaching a number of provisional conclusions regarding priorities and enforcement and inviting the Boeing Company and Airbus Industrie jointly to prepare a memorandum for the consideration of the Sub-committee setting forth a representative aviation industry view on the desired content of the proposed Convention as the same related to aircraft.

**1995:** *Memorandum* submitted jointly in May by Airbus Industrie and The Boeing Company on behalf of a working group (the Aviation Working Group).

Submission of this Memorandum for comment to all members of the Sub-committee as well as the international Organisations represented by observers thereon in May and to all other members of the Study Group and international Organisations represented thereon by observers in July.

*Drafting Group of the Sub-committee* met for a second time in Oxford in June to draw up revised proposals for a first set of draft articles of the planned Unidroit Convention, on the basis of the provisional conclusions reached by the Sub-committee at its second session.

Submission of Drafting Group's revised proposals for a first set of draft articles submitted for comment to all members of both the Sub-committee and the Study Group as well as the international Organisations represented thereon by observers in July.

*Sub-committee for the preparation of a first draft* met for a third and final time in Rome in October, considering the revised proposals for a first set of draft articles prepared by the Drafting Group and the Memorandum submitted jointly by Airbus Industrie and The Boeing Company.

*Drafting Group of the Sub-committee* met for a third time in Oxford in December to establish a first set of draft articles of a future Unidroit Convention on International Interests in Mobile Equipment, pursuant to the decisions taken by the Sub-committee at its third session.

**1996:** *Restricted Drafting Group of the Sub-committee*, manned by the French member thereof and a representative of the Unidroit Secretariat, met in Paris in March to revise the first set of draft articles which the Drafting Group had established in December 1995, in particular with a view to improving the French text and rendering it more consistent with the English text.

*Second memorandum*, incorporating a draft aviation text, submitted jointly by Airbus Industrie and The Boeing Company on behalf of an Aviation Working Group in March.

*Study Group for the preparation of uniform rules on certain international aspects of security interests in mobile equipment* met for a second time in Rome in April to consider the first set of draft articles of a future Unidroit Convention on International Interests in Mobile Equipment established by the Drafting Group of the Sub-committee in conjunction with the draft aviation text submitted by Airbus Industrie and The Boeing Company.

*Registration Working Group of the Study Group*, chaired by Mr Ronald C.C. Cuming, met for a first time in Rome in April to consider the legal and technical issues raised by the setting up of the international register posited under the future Unidroit Convention.

*Drafting Group of the Study Group*, chaired by Sir Roy Goode, met for a first time in Rome in April and for a second time in Oxford in October to revise the draft articles in the light of the Study Group's reading at its second session of the first set of draft articles in conjunction with the draft aviation text.

**1997:** *Study Group for the preparation of uniform rules on certain international aspects of security interests in mobile equipment* met for a third time in Rome in January to consider the revised draft articles established by the Drafting Group as well as a joint proposal of the Aviation Working Group and the International Air Transport Association (I.A.T.A.).

*Drafting Group of the Study Group* met for a third time in Rome in January to commence revising the revised draft articles in the light of the Study Group's deliberations at its third session.

Establishment of a working group, external to Unidroit, for the preparation of a preliminary draft Protocol on matters specific to aircraft equipment (the Aircraft Protocol Group), to be organised by Mr Jeffrey Wool, expert consultant to the Study Group on international aviation finance matters, authorised by the President of Unidroit, in February.

Preparation by the Chairman of the Study Group in February of a completely revised set of the revised draft articles designed to take account of the work accomplished by the Drafting Group in January and, for those provisions not considered by the Drafting Group on that occasion, of the deliberations of the Study Group at its third session.

*Registration Working Group of the Study Group* met for a second time in Geneva in May to consider the provisions relating to registration of the Chairman's February redraft.

*Drafting Group of the Study Group* met for a fourth time in Würzburg in July to agree on the text of the revised draft articles, amended to take account *inter alia* of the proposals relating to the registration provisions made at the second meeting of the Registration Working Group, to go before the Study Group at its fourth session.

Circulation of the revised draft articles proposed by the Drafting Group circulated for comment in August among those invited to participate in the fourth session of the Study Group and those having responded to the Secretariat's initial questionnaire.

**Establishment of a working group, external to Unidroit, for the preparation of a preliminary draft Protocol on matters specific to space property (the Space Working Group), to be organised by Mr Peter Nesgos, expert consultant to the Study Group on international space finance matters, Mr Scott Siegel and Mr Dan Schechter, authorised by the President of Unidroit, in August.**

*Space Working Group held its first meeting in Los Angeles in July.*

*Study Group for the preparation of uniform rules on certain international aspects of security interests in mobile equipment* met for a fourth and final time in Rome in November to consider the revised draft articles proposed by the Drafting Group, in particular in the light of the comments received thereto.

*Drafting Group of the Study Group* met for a fifth and final time in Rome in November to amend the revised draft articles as agreed by the Study Group at its fourth session.

Decision by the ICAO Council at the Tenth Meeting of its 152<sup>nd</sup> Session in December to include in the General Work Programme of the Legal Committee of ICAO the item "International Interests in Mobile Equipment (Aircraft Equipment)".

Finalisation of the text of the preliminary draft Unidroit Convention on International Interests in Mobile Equipment established by the Study Group in December.

Establishment of a working group, external to Unidroit, for the preparation of a preliminary draft Protocol on matters specific to railway rolling stock (the Rail Working Group), to be organised by Mr Howard Rosen, expert consultant to the Study Group on international rail finance matters, authorised by the President of Unidroit, in December.

**1998:** Submission to the President of Unidroit of the preliminary draft Protocol on Matters specific to Aircraft Equipment, established by the Aircraft Protocol Group (the core members of which were the International Civil Aviation Organization (ICAO), I.A.T.A. and the Aviation Working Group) in January.

Decision by the Unidroit Governing Council at its 77<sup>th</sup> session, held in Rome in February, that the preliminary draft Unidroit Convention on International Interests in Mobile Equipment and the preliminary draft Protocol thereto on Matters specific to Aircraft Equipment should be further refined by a Steering and Revisions Committee before and with a view to their submission to governmental experts.

*Steering and Revisions Committee*, chaired by Sir Roy Goode, as member of the Unidroit Governing Council, met in Rome in June to finalise the texts of the preliminary draft Unidroit Convention on International Interests in Mobile Equipment and the preliminary draft Protocol on Matters specific to Aircraft Equipment, in the light of the comments formulated by members of the Governing Council at its 77<sup>th</sup> session and on the basis of revised texts prepared by the Chairman of the Study Group.

Decision by the ICAO Assembly at its 32<sup>nd</sup> Session in Montreal in September/October to upgrade the priority of the item "International Interests in Mobile Equipment (Aircraft Equipment)" within the General Work Programme of the ICAO Legal Committee and to urge the Legal Committee to pursue this matter with a view to convening a diplomatic Conference at the earliest possible date.

Decision by the Chairman of the ICAO Legal Committee in October to establish a Sub-Committee of the Legal Committee "to study the subject of a draft instrument or draft instruments relating to international interests in mobile equipment, with particular reference to aircraft equipment".

**1999:** *First Joint Session of the Unidroit Committee of Governmental Experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment and the Sub-Committee of the ICAO Legal Committee on the study of international interests in mobile equipment (aircraft equipment)*, chaired by Ms Emilia Chiavarelli (Italy), held in Rome in February to consider the preliminary draft Unidroit Convention on International Interests in Mobile Equipment and the preliminary draft Protocol on Matters specific to Aircraft Equipment.

*Registration Working Group of the Joint Session*, chaired by Mr Ronald C.C. Cuming (Canada), met in Rome for the first time in February to consider the provisions of the preliminary draft Convention concerned with the international registration system, the modalities of registration and the liabilities and immunities of the International Registry and the provisions of the preliminary draft Aircraft Protocol concerned with registration of international interests in aircraft objects.

Decision by the Unidroit Governing Council at its 78<sup>th</sup> session, held in Rome in April, that, should the preliminary draft Protocol on matters specific to railway rolling stock be submitted by the Rail Working Group before its 79<sup>th</sup> session, the Unidroit Secretariat should have the authority to convene a Steering and Revisions Committee before its submission to the Governing Council.

**Consideration of the Unidroit project for the creation of a new legal regimen governing the taking of security in high-value mobile assets: "a window of opportunity for the commercialisation of space" at the Third Colloquium of the European Centre for Space Law on International Organisations and Space**

**Law: their Role and Contributions, held in Perugia in May.**

*Registration Working Group* met informally in New York in June in order to discuss the features of an electronic International Registry for international interests in aircraft objects.

*Informal Insolvency Working Group of the Joint Session*, chaired by Miss Catherine R. Allen (United Kingdom), met in Rome in July to consider the insolvency-related provisions of the preliminary draft Convention and the preliminary draft Aircraft Protocol.

**Consideration of the Unidroit project for the creation of a new regimen governing the taking of security in high-value mobile assets: “a window of opportunity in the context of the privatisation and commercialisation of space” at the Workshop on Space Law in the Twenty-first Century, organised by the International Institute of Space Law with the United Nations Office for Outer Space Affairs, as part of the Technical Forum on Space Law of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space, held in Vienna in July.**

*Second Joint Session of the Unidroit Committee of Governmental Experts and the Sub-Committee of the ICAO Legal Committee* held in Montreal in August/September to continue consideration of the preliminary draft Unidroit Convention and the preliminary draft Aircraft Protocol, as revised at the First Joint Session.

*Registration Working Group* met in Montreal in August/September to complete its consideration of the registration provisions of the preliminary draft Convention and the preliminary draft Aircraft Protocol.

*Insolvency Working Group of the Joint Session*, chaired by Mr Bryan Welch (United Kingdom), met in Montreal in August/September.

*Public International Law Working Group of the Joint Session*, chaired by Ms Gloria T. Serobe (South Africa), met informally in Montreal in August/September to organise the task of considering a number of problem areas of a public international law nature identified during the Joint Session's second reading of the preliminary draft Convention and preliminary draft Aircraft Protocol referred to it by the Second Joint Session.

Ad hoc *Drafting Group of the Second Joint Session*, chaired by Mr Karl F. Kreuzer (Germany), met in Rome in November to complete the drafting work left uncompleted by the Second Joint Session and to prepare revised texts of the preliminary draft Convention and the preliminary draft Aircraft Protocol for the third Joint Session.

*Public International Law Working Group* met for a first time in Cape Town and on the Blue Train *en route* to Pretoria in December.

**2000:** Submission to the President of Unidroit of the preliminary draft Protocol on Matters specific to railway rolling stock, established by the Rail Working Group, constituted under the authority of the President of Unidroit, in February.

Decision by the Chairman of the ICAO Legal Committee in March to appoint a Rapporteur (Mr Gilles Lauzon (Canada)) on the subject “International Interests in Mobile Equipment (Aircraft Equipment)”.

*Third Joint Session of the Unidroit Committee of Governmental Experts and the Sub-Committee of the ICAO Legal Committee* held in Rome in March to finalise a draft [Unidroit] Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment, on the basis of the texts of the preliminary draft Convention and the preliminary draft Aircraft Protocol revised by the ad hoc Drafting Group.

*Public International Law Working Group* met for a second and final time in Rome in March.

Ad hoc *International Registry Task Force of the Joint Session*, co-chaired by Mr Georges Grall (France) and Mr Joseph R. Standell (United States of America), met informally in Rome in March to organise the task of preparing for the establishment of the International Registry for aircraft objects referred to it by the Third Joint Session.

*Steering and Revisions Committee*, chaired by Mr Roland Loewe, as member of the Unidroit Governing Council, met in Rome in March to finalise the text of the preliminary draft Protocol on Matters specific to Railway Rolling Stock prepared by the Rail Working Group, with a view to its submission to the Unidroit Governing Council at its 79<sup>th</sup> session.

Decision by the Unidroit Governing Council at its 79<sup>th</sup> session, held in Lisbon in April, that the texts of the draft [Unidroit] Convention and the draft Aircraft Protocol were ready for submission to a diplomatic Conference, authorising the Unidroit Secretariat to make arrangements for the holding of such a Conference as early as practicable in 2001 and to proceed on the basis of the texts annexed to the Report of the Drafting Committee of the Third Joint Session in concluding arrangements with the Government of South Africa or, failing this, the Government of Ireland or another interested Government to host the diplomatic Conference.

## THE WAY TO THE SUCCESSFUL COMPLETION OF THE NEGOTIATIONS

Decision by the Unidroit Governing Council at its 79<sup>th</sup> session, held in Lisbon in April, to authorise the Unidroit Secretariat to convene, as early as practicable, a Committee of governmental experts to consider the preliminary draft Protocol on Matters specific to Railway Rolling Stock finalised by the Steering and Revisions Committee, in collaboration with the Intergovernmental Organisation for International Carriage by Rail (O.T.I.F.).

Decision by the ICAO Council at the Fifth Meeting of its 160<sup>th</sup> Session, held in Montreal in May, to refer the draft [Unidroit] Convention and the draft Aircraft Protocol for consideration to the 31<sup>st</sup> Session of the ICAO Legal Committee.

**United Nations Committee on the Peaceful Uses of Outer Space (U.N./C.O.P.U.O.S.), at its 43<sup>rd</sup> session, held in Vienna in June, decided, first, to include consideration of the draft [Unidroit] Convention and the preliminary draft Protocol on Matters specific to Space Property on the agenda of the Legal Subcommittee of U.N./C.O.P.U.O.S. at its 40<sup>th</sup> session, to be held in Vienna in April 2001, as a single issue discussion item and, secondly, to invite the Secretariats of the United Nations Office for Outer Space Affairs (U.N./O.O.S.A.) and Unidroit to prepare a joint background paper for that session.**

*International Registry Task Force* met for the first time in Paris in June to consider a draft request for proposals, a draft requirements document and a draft regarding the process for the soliciting and evaluation of proposals.

Submission of the First Report of the International Registry Task Force to the Unidroit and ICAO Secretariats, with enclosures, in July.

*ICAO Legal Committee* at its 31<sup>st</sup> Session, held in Montreal in August/September and chaired by Mr Gilles Lauzon (Canada), further considered the draft [Unidroit] Convention and the draft Aircraft Protocol.

*International Registry Task Force* met in Montreal in August/September for the assignment of preliminary papers in respect of certain special subjects.

***Restricted informal group of experts met in Rome in October, under the chairmanship of Mr Olivier Tell (France), to identify, and engage in a preliminary discussion of the issues meriting consideration in the context of the relationship between the draft [Unidroit] Convention and the preliminary draft Protocol on Matters specific to Space Property and the existing body of international space law.***

***Space Working Group held its second meeting in Rome in October.***

Decision by the ICAO Council at the Ninth Meeting of its 161<sup>st</sup> Session, held in Montreal in November, to authorise the circulation of the draft Convention and the draft Aircraft Protocol as they had emerged from the 31<sup>st</sup> Session of the ICAO Legal Committee to Contracting States and international Organisations and the convening of a diplomatic Conference, in principle in South Africa starting in May 2001.

**2001:** *International Registry Task Force* met for a second time in Dublin in January to approve papers relating to the acquisition process for the International Registry.

Joint mission of administrative officers from Unidroit and ICAO was carried out to South Africa in January, pursuant to the decision taken by the ICAO Council at the Ninth Meeting of its 161<sup>st</sup> Session, held in Montreal in November 2000, to discuss the financial implications of, and administrative arrangements for a diplomatic Conference in South Africa with a view to the taking by the ICAO Council of a final decision regarding the venue and date of such a Conference.

**Finalisation in January of the report by the Unidroit and U.N./O.O.S.A. Secretariats on the draft [Unidroit] Convention and the preliminary draft Protocol on Matters specific to Space Property for consideration by the Legal Subcommittee of U.N./C.O.P.U.O.S. at its 40<sup>th</sup> session.**

*International Registry Task Force* met for a third time in Washington, D.C. in February to finalise discussion of a paper on the basic features of the International Registry, to be enclosed with the Request for Proposals.

Submission of the Second Report of the International Registry Task Force to the Unidroit and ICAO Secretariats, enclosing final acquisition papers and recommendations as to their issuance, in February.

*First Joint Session of the Unidroit/O.T.I.F. Committee of governmental experts for the preparation of a draft Protocol on Matters specific to Railway Rolling Stock* held, under the chairmanship of Mr Karl F. Kreuzer (Germany), in Berne in March, proceeding to a first reading of the preliminary draft Protocol finalised by the Steering and Revisions Committee.

Decision by the ICAO Council, at the Eleventh Meeting of its 162<sup>nd</sup> Session, held in Montreal in March, that the diplomatic Conference should be held in Cape Town from 29 October to 16 November 2001.

**Consideration of the draft [Unidroit] Convention and the then working draft of a preliminary draft**

**Protocol on Matters specific to Space Property under consideration by the Space Working Group by the Legal Subcommittee of U.N./COPUOS, as a single issue discussion item, at its 40<sup>th</sup> session, held in Vienna in April.**

*Space Working Group held its third meeting in Seal Beach, California in April.*

**Decision by U.N./COPUOS at its 44<sup>th</sup> session, held in Vienna in June to endorse the agreement reached by the Legal Subcommittee at its 40<sup>th</sup> session, first, that consideration of the draft [Unidroit] Convention and the working draft of a preliminary draft Protocol on Matters specific to Space Property should be retained, as a single issue item, on the agenda of the Legal Subcommittee for its 41<sup>st</sup> session, to be held in Vienna in April 2002, and, secondly, that an *ad hoc* consultative mechanism should be set up to review the draft [Unidroit] Convention and the working draft of the preliminary draft Protocol on Matters specific to Space Property and to report back to the Legal Subcommittee at its 41<sup>st</sup> session.**

**Submission to the President of Unidroit of the preliminary draft Protocol on Matters specific to Space Property established by the Space Working Group in June.**

*U.N./COPUOS ad hoc consultative mechanism held its first working meeting, hosted by the Government of France, in Paris in September.*

*Space Working Group held its fourth meeting in Evry Courcouronnes in September.*

*International Registry Task Force met for a fourth time in Geneva in September in order to finalise expert papers and consider the cost and timing of the setting up of the International Registry.*

**Decision by the Unidroit Governing Council at its 80<sup>th</sup> session, held in Rome in September, to authorise the Secretariat to transmit the preliminary draft Protocol on Matters specific to Space Property prepared by the Space Working Group to Governments and to convene a first session of a Unidroit Committee of governmental experts (open also to all members of U.N./COPUOS) to prepare a draft Protocol on the basis thereof at such time as a Steering and Revisions Committee had had the opportunity to review it in the light of both the texts of the draft Convention and the draft Aircraft Protocol to be adopted by the diplomatic Conference and the preliminary results of the U.N./COPUOS *ad hoc* consultative mechanism.**

Submission of the Third Report of the International Registry Task Force to the Unidroit and ICAO Secretariats, enclosing draft Regulations for the International Registry, a draft outline on private law aspects of the relationship between the Supervisory Authority and the International Registry, a paper on the liability of the International Registry and another on funding/cost recovery methods for the International Registry, in October.

*Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol, convened under the joint auspices of Unidroit and ICAO, held in Cape Town from 29 October to 16 November, adopting and opening to signature the Convention on International Interests in Mobile Equipment (the Convention) and the Protocol on Matters specific to Aircraft Equipment.*

**2002: U.N./COPUOS ad hoc consultative mechanism held its second working meeting, hosted by the Government of Italy, in Rome in January.**

*Space Working Group held its fifth meeting in Rome in January.*

*Steering and Revisions Committee for consideration of the preliminary draft Protocol on Matters specific to Space Assets prepared by the Space Working Group met in Rome in February, under the chairmanship of Mr Jorge Sánchez Cordero Dávila (Mexico).*

*Drafting Group of the Drafting Committee of the Unidroit/OTIF Committee of governmental experts for the preparation of a draft Protocol on Matters specific to Railway Rolling Stock, chaired by Mr Karl F. Kreuzer (Germany), held its first session in Rome in February to draft the changes agreed at the first session of the Unidroit/OTIF Committee of governmental experts.*

*Registry Task Force (Rail) established by the Unidroit/OTIF Committee of governmental experts at its first joint session held its first session in Rome in March, under the co-chairmanship of Mr Fabio Crococolo (Italy) and Mr Peter Bloch (United States of America).*

**Consideration of the Convention and the preliminary draft Protocol on Matters specific to Space Assets by the Legal Subcommittee of U.N./COPUOS, as a single issue discussion item, at its 41<sup>st</sup> session, held in Vienna in April.**

*Second Joint Session of the Unidroit/OTIF Committee of governmental experts for the preparation of a draft Protocol on Matters specific to Railway Rolling Stock* held, under the chairmanship of Ms I. Weinberg de Roca (Argentina), in Rome in June, considering the amended text of the preliminary draft Rail Protocol and undertaking a second reading of Articles I to XV and a first reading of the remaining Articles of that text.

**Decision by U.N./COPUOS at its 45<sup>th</sup> session, held in Vienna in June, to endorse the agreement reached by the Legal Subcommittee at its 41<sup>st</sup> session that consideration of the preliminary draft Protocol on Matters specific to Space Assets should be retained, as a single issue item, on the agenda of the Legal Subcommittee for its 42<sup>nd</sup> session, to be held in Vienna in March/April 2003, to consider in particular, first, the possibility of the United Nations serving as Supervisory Authority under the future Space Protocol and, secondly, the relationship between the terms of the preliminary draft Protocol and the rights and obligations of States under the legal regimen applicable to outer space.**

*Drafting Group of the Drafting Committee of the Unidroit/OTIF Committee of governmental experts for the preparation of a draft Protocol on Matters specific to Railway Rolling Stock* held its second session in Rome in October to draft the changes agreed at the second session of the Unidroit/OTIF Committee of governmental experts.

**2003: Registry Task Force (Rail)** held its second session, chaired by Mr Peter Bloch (United States of America), in Washington D.C. in March.

**Consideration of the preliminary draft Protocol on Matters specific to Space Assets by the Legal Subcommittee of U.N./COPUOS, as a single issue discussion item, at its 42<sup>nd</sup> session, held in Vienna in March/April.**

*Third Joint Session of the Unidroit/OTIF Committee of governmental experts for the preparation of a draft Protocol on Matters specific to Railway Rolling Stock* held, under the co-chairmanship of Ms I. Weinberg de Roca (Argentina) and Mr A. Leinonen (Finland), in Berne in May, proceeding to a reading of the entirety of the preliminary draft Rail Protocol and the finalisation by the Drafting Committee of the text adopted.

**Decision by U.N./COPUOS at its 46<sup>th</sup> session, held in Vienna in June, to endorse the agreement reached by the Legal Subcommittee at its 42<sup>nd</sup> session that consideration of the preliminary draft Protocol on Matters specific to Space Assets should be retained, as a single issue item, on the agenda of the Legal Subcommittee for its 43<sup>rd</sup> session, to be held in Vienna in March/April 2004, to consider in particular, first, the possibility of the United Nations serving as Supervisory Authority under the future Space Protocol and, secondly, the relationship between the terms of the preliminary draft Protocol and the rights and obligations of States under the legal regimen applicable to outer space.**

*An opportunity for Government and industry to compare notes in the run-up to the intergovernmental consultation process: a colloquium on the preliminary draft Protocol on Matters specific to Space Assets organised by Unidroit, in co-operation with the European Centre for Space Law, in Paris in September.*

*Advisory Committee of the International Mobile Satellite Organization (I.M.S.O.), at its eighth session, held in London in November, considered the possibility of I.M.S.O. serving as Supervisory Authority under the future Space Protocol and decided to authorise the I.M.S.O. Secretariat to follow the work of the Committee of governmental experts with a view to reporting to the Assembly of Parties of that Organisation, at its following meeting, to be held in October 2004.*

*Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets* held its first session in Rome in December, under the chairmanship of Mr Sergio Marchisio (Italy).

**2004: Consideration of the preliminary draft Protocol on Matters specific to Space Assets by the Legal Subcommittee of U.N./COPUOS, as a single issue discussion item, at its 43<sup>rd</sup> session, held in Vienna in March/April.**

*Regional seminar* to promote awareness of the future Rail Protocol in, and its potential benefits for the countries of Central and Eastern Europe, organised by Unidroit, OTIF and the Rail Working Group, in co-operation with the Government of Poland, in Warsaw in April.

*An opportunity for Government and industry to compare notes in the run-up to the intergovernmental consultation process: a colloquium on the preliminary draft Protocol on Matters specific to Space Assets organised by Unidroit, in co-operation with the Malaysian National Space Agency and the Space Working Group, in Kuala Lumpur in April.*

**Decision by U.N./COPUOS at its 47<sup>th</sup> session, held in Vienna in June, to endorse the agreement reached by the Legal Subcommittee at its 43<sup>rd</sup> session that consideration of the preliminary draft Protocol on Matters specific to Space Assets should be retained, as a single issue item, on the agenda of the Legal Subcommittee for its 44<sup>th</sup> session, to be held in Vienna in April 2005, to consider in particular, first, the possibility of the United Nations serving as Supervisory Authority under the future Space Protocol and, secondly, the relationship between the terms of the preliminary draft Protocol and the rights and obligations of States under the legal regimen applicable to outer space.**

*Registry Task Force (Rail) held its third session, chaired by Mr Peter Bloch (United States of America) and Mr Henrik Kjellin (Sweden), in Brussels in September.*

*Regional seminar to promote awareness of the future Rail Protocol in, and its potential benefits for the countries of the Americas, organised by Unidroit and OTIF, in co-operation with the Government of Mexico and the Mexican Center of Uniform Law, in Mexico City in October.*

*I.M.S.O. Assembly of Parties, at its Session held in October, requested the Director of I.M.S.O. to continue to monitor developments regarding the preliminary draft Protocol on Matters specific to Space Assets and to report to the following Session of the Assembly and to the Advisory Committee on all implications, including costs.*

*Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets held its second session in Rome in October, deciding on the carrying out of intersessional work on certain aspects of the preliminary draft Protocol.*

**2005:** *Registry Task Force (Rail) held its fourth session, chaired by Mr Peter Bloch (United States of America) and Mr Henrik Kjellin (Sweden), in Rome in February.*

**Consideration of the preliminary draft Protocol on Matters specific to Space Assets by the Legal Subcommittee of U.N./COPUOS, as a single issue discussion item, at its 44<sup>th</sup> session, held in Vienna in April.**

Decision by the Unidroit Governing Council at its 84th session, held in Rome in April, to authorise the UNIDROIT Secretariat's transmission of the draft Rail Protocol to a diplomatic Conference, for adoption.

**Decision by U.N./COPUOS at its 48<sup>th</sup> session, held in Vienna in June, to endorse the agreement reached by the Legal Subcommittee at its 44<sup>th</sup> session that examination and review of the developments concerning the preliminary draft Protocol on Matters specific to Space Assets should be included, as a single issue item, on the agenda of the Legal Subcommittee for its 45<sup>th</sup> session, to be held in Vienna in April 2006.**

Decision by the General Assembly of OTIF in October that OTIF should assume the role of Secretariat of the Supervisory Authority under the draft Rail Protocol, subject to agreement between the Administrative Committee of OTIF and the Supervisory Authority of the Rail Registry.

**Consideration of the preliminary draft Protocol on Matters specific to Space Assets at the United Nations/Nigeria Workshop on Space Law "Meeting International Responsibilities and Addressing Domestic Needs", held in Abuja in November.**

**2006:** Decision by the Government of the Grand Duchy of Luxembourg to invite the Governments of all U.N. member States to attend the diplomatic Conference for the adoption of the draft Rail Protocol in February 2007.

**Consideration of the preliminary draft Protocol on Matters specific to Space Assets by the Legal Subcommittee of U.N./COPUOS, as a single issue discussion item, at its 45<sup>th</sup> session, held in Vienna in April.**

*The crucial role of industry in finalising an expansion of the Cape Town Convention to cover space assets: a Government-industry forum on the preliminary draft Protocol on Matters specific to Space Assets, hosted by the Royal Bank of Scotland, in collaboration with Unidroit and the Space Working Group, in London in April.*

**Decision by U.N./COPUOS at its 49<sup>th</sup> session, held in Vienna in June, to endorse the agreement reached by the Legal Subcommittee at its 45<sup>th</sup> session that examination and review of the developments concerning the preliminary draft Protocol on Matters specific to Space Assets should be retained, as a single issue item, on the agenda of the Legal Subcommittee for its 46<sup>th</sup> session, to be held in Vienna in March/April 2007.**

*Regional seminar to promote awareness of the future Rail Protocol amongst, and its potential benefits for African Governments, development banks and rail operators organised under the joint auspices of the Government of the Republic of Togo, Unidroit and AFRICARAIL and funded by the Government of the Grand Duchy of Luxembourg, held in Lomé in November.*

**2007:** *Diplomatic Conference to Adopt a Rail Protocol to the Convention on International Interests in Mobile Equipment*, convened under the joint auspices of Unidroit and OTIF, held in Luxembourg from 12 to 23 February, adopting and opening to signature the Protocol to the Convention on Matters specific to Railway Rolling Stock.

**Consideration of the preliminary draft Protocol on Matters specific to Space Assets by the Legal Subcommittee of U.N./COPUOS, as a single issue discussion item, at its 46<sup>th</sup> session, held in Vienna in March/April.**

**Decision by U.N./COPUOS at its 50<sup>th</sup> session, held in Vienna in June, to endorse the agreement reached by the Legal Subcommittee at its 46<sup>th</sup> session that examination and review of the developments concerning the preliminary draft Protocol on Matters specific to Space Assets should be included, as a single issue item, on the agenda of the Legal Subcommittee for its 47<sup>th</sup> session, to be held in Vienna in March/April 2008.**

*The views of Government and industry on how best to finalise an expansion of the Cape Town Convention to cover space assets: a Government-industry forum on the preliminary draft Protocol on Matters specific to Space Assets, hosted by Milbank, Tweed, Hadley & McCloy, LLP, in collaboration with Unidroit and the Space Working Group, in New York in June.*

**Establishment by the Unidroit General Assembly, at its 61st session, held in Rome in November, of a Steering Committee, open to all having participated in the intersessional Government-industry meetings, with a view to finding the most appropriate means of building consensus around the provisional conclusions reached by the New York forum.**

**2008:** **Consideration of the preliminary draft Protocol on Matters specific to Space Assets by the Legal Subcommittee of U.N./COPUOS, as a single issue discussion item, at its 47<sup>th</sup> session, held in Vienna in March/April.**

*Steering Committee* to build consensus around the provisional conclusions reached by the New York Government/industry meeting regarding the preliminary draft Protocol on Matters specific to Space Assets (the Steering Committee) held its first meeting in Berlin in May, under the chairmanship of Mr Sergio Marchisio (Italy).

Decision by U.N./COPUOS at its 51<sup>st</sup> session, held in Vienna in June, to endorse the agreement reached by the Legal Subcommittee at its 47<sup>th</sup> session that examination and review of the developments concerning the preliminary draft Protocol on Matters specific to Space Assets should be included, as a single issue item, on the agenda of the Legal Subcommittee for its 48<sup>th</sup> session, to be held in Vienna in March/April 2009.

*Sub-committee of the Steering Committee on default remedies in relation to components* met in Berlin in October/November, under the chairmanship of Mr Sergio Marchisio (Italy).

2009: Consideration of the preliminary draft Protocol on Matters specific to Space Assets by the Legal Subcommittee of U.N./COPUOS, as a single issue discussion item, at its 48<sup>th</sup> session, held in Vienna in March/April.

Authorisation by the Unidroit Governing Council, at its 88th session, held in Rome in April, of the Unidroit Secretariat, subject to the success of the meetings of the Steering Committee and its Subcommittee on public service in May 2009 and in consultation with the Chairman of the Committee of governmental experts and the Steering Committee, reconvening the Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets in late 2009.

*Sub-committee of the Steering Committee on public service* met in Paris in May, under the chairmanship of Mr Sergio Marchisio (Italy).

*Steering Committee* held its second meeting in Paris in May, concluding that the time was ripe for resumption of the intergovernmental consultation process.

Decision by U.N./COPUOS at its 52<sup>nd</sup> session, held in Vienna in June, to endorse the agreement reached by the Legal Subcommittee at its 48<sup>th</sup> session that examination and review of the developments concerning the preliminary draft Protocol on Matters specific to Space Assets should be included, as a single issue item, on the agenda of the Legal Subcommittee for its 49<sup>th</sup> session, to be held in Vienna in March/April 2010.

Consideration of the preliminary draft Protocol on Matters specific to Space Assets at a session of the Annual Conference of the International Bar Association (I.B.A.) held in Madrid in October on the “commercialisation of space: the future of economy in space on the eve of completion of the Space Protocol to the Cape Town Convention”, organised by the I.B.A. Space Law Committee in liaison with Unidroit.

*Sub-Committee of the Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets to examine certain aspects of the future international registration system for space assets* met in Rome in October, under the chairmanship of Mr Bernhard Schmidt-Tedd (Germany).

Consideration of the preliminary draft Protocol on Matters specific to Space Assets as a unique opportunity to expand the benefits of space-based services and to broaden the market for commercial space activities in general at the United Nations/Islamic Republic of Iran Workshop on Space Law “Role of International Space Law in the Development and Strengthening of International and Regional Cooperation of States in the Peaceful Exploration and Uses of Outer Space”, jointly organised in Tehran

**in November with, and hosted by the Iranian Space Agency and supported by the Asia-Pacific Space Cooperation Organization.**

*Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets held its third session in Rome in December, under the chairmanship of Mr Sergio Marchisio (Italy).*

**2010: I.M.S.O. Advisory Committee decided at its 26<sup>th</sup> session, held in London in March, that I.M.S.O. could not assume the functions of Supervisory Authority as envisaged by the draft Protocol on Matters specific to Space Assets under preparation.**

**Consideration of the preliminary draft Protocol on Matters specific to Space Assets by the Legal Subcommittee of U.N./COPUOS, as a single issue discussion item, at its 49<sup>th</sup> session, held in Vienna in March/April.**

*Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets held its fourth session in Rome in May.*

**Decision by U.N./COPUOS at its 53<sup>rd</sup> session, held in Vienna in June, to endorse the agreement reached by the Legal Subcommittee at its 49<sup>th</sup> session that examination and review of the developments concerning the preliminary draft Protocol on Matters specific to Space Assets should be included, as a single issue item, on the agenda of the Legal Subcommittee for its 50<sup>th</sup> session, to be held in Vienna in March/April 2011.**

**Consideration of the preliminary draft Protocol on Matters specific to Space Assets at a session of the Annual Conference of the I.B.A. held in Vancouver in October on “air and space financing on the basis of the Unidroit Protocols to the 2001 Cape Town Convention”, organised jointly by the I.B.A. Space Law and World Organisations Committees.**

*Intersessional consultations with representatives of the international commercial space and financial communities convened, in accordance with the decision taken by the Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets at its fourth session, in Rome in October, with Mrs Anna Veneziano (Italy) and Mr Marc Borello (Thales Alenia Space) as moderators.*

*Intersessional meeting of the Informal Working Group of the Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets on default remedies in relation to components convened, in accordance with the decision taken by that Committee at its fourth session, in Rome in October, with Mr José Angelo Estrella Faria (Secretary-General of Unidroit) as moderator.*

*Intersessional meeting of the Informal Working Group of the Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets on limitations on remedies convened, in accordance with the decision taken by that Committee at its fourth session, in Rome in October, with Mr José Angelo Estrella Faria (Secretary-General of Unidroit) as moderator.*

**Consideration of the preliminary draft Protocol on Matters specific to Space Assets at the United Nations/Thailand Workshop On Space Law “Activities of States in Outer Space in the light of New Developments: Meeting International Responsibilities and Establishing National Legal and Policy Frameworks” jointly organised in Bangkok in November by the United Nations Office for Outer Space Affairs, the Government of Thailand and the European Space Agency and hosted by the Geo-Informatics and Space Technology Development Agency.**

**2011:** *Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets* held its fifth session in Rome in February, with Mr Sergio Marchisio (Italy) at the conclusion of the session, as Chairman, recommending, on behalf of the Committee, to the Unidroit Governing Council that it authorise the transmission of the revised preliminary draft Protocol to a diplomatic Conference, for adoption.

Consideration of the preliminary draft Protocol on Matters specific to Space Assets by the Legal Subcommittee of U.N./COPUOS, as a single issue discussion item, at its 50<sup>th</sup> session, held in Vienna in March/April.

Authorisation by the Unidroit Governing Council, at its 90<sup>th</sup> session, held in Rome in May, of the Unidroit Secretariat transmitting the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets to a diplomatic Conference, for adoption.

Decision by U.N./COPUOS at its 54<sup>th</sup> session, held in Vienna in June, to endorse the agreement reached by the Legal Subcommittee at its 50<sup>th</sup> session that examination and review of the developments concerning the draft Protocol on Matters specific to Space Assets should be included, as a single issue item, on the agenda of the Legal Subcommittee for its 51<sup>st</sup> session, to be held in Vienna in March 2012.

Decision by the Government of the Federal Republic of Germany in June to host the diplomatic Conference to adopt the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets.

Consideration by the Council of the International Telecommunication Union (I.T.U.) in Geneva in October of the implications of that Organisation acting as Supervisory Authority of the international registration system to be established under the future Space Protocol.

Authorisation by the I.T.U. Council in Geneva in October of its Secretary-General continuing to express interest in the I.T.U. becoming Supervisory Authority of the international registration system to be established under the future Space Protocol, but without the matter of whether or not that Organisation would become Supervisory Authority being prejudged.

**2012:** *Diplomatic Conference to adopt the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets*, convened under the auspices of Unidroit in Berlin from 27 February to 9 March, adopting and opening to signature the Protocol to the Convention on Matters specific to Space Assets.