



**STEERING COMMITTEE TO BUILD CONSENSUS  
AROUND THE PROVISIONAL CONCLUSIONS  
REACHED BY THE GOVERNMENT/INDUSTRY  
MEETING HELD IN NEW YORK ON 19 AND 20  
JUNE 2007: SUB-COMMITTEE ON PUBLIC  
SERVICE  
Paris, 13 May 2009**

UNIDROIT 2009  
Study LXXIIJ – Doc. 16  
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**SUMMARY REPORT**

*(prepared by the UNIDROIT Secretariat)*

**I. INTRODUCTION**

*Origins of the establishment of the Sub-Committee*

At its launch meeting, held in Berlin from 7 to 9 May 2008, the Steering Committee to build consensus around the provisional conclusions regarding the preliminary draft Protocol to the Convention on Matters specific to Space Assets reached by the Government/industry meeting held in New York on 19 and 20 June 2007 (hereinafter referred to as the *Steering Committee*) decided to set up a Sub-committee to develop options for a solution to the problem of public service (hereinafter referred to as the *Sub-committee*) – a problem essentially consisting in how best to balance the need of Governments to guarantee the continuation of a public service performed by a space asset where the debtor was in default, on the one hand, with the rights of the creditor upon such default under the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*) as applied to space assets, on the other - that might be laid before the UNIDROIT 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 (hereinafter referred to as the *Committee of governmental experts*), once reconvened. The Sub-committee was invited by the Steering Committee to seek those options most likely to generate consensus and thus bring about the timeous completion of the preliminary draft Protocol to the Convention on Matters specific to Space Assets (hereinafter referred to as the *preliminary draft Protocol*). It was agreed that the Sub-committee should be co-ordinated by the UNIDROIT Secretariat and work by electronic means and conference call.

**II. HOLDING OF THE SUB-COMMITTEE MEETING**

*(a) Opening of, and participation in the meeting*

This notwithstanding, one member of the Sub-committee proposed that it should meet. The Sub-committee, consequently, met, under the auspices of Crédit Agricole S.A., on the premises of Gide Loyrette Nouel, in Paris, on 13 May 2009. The Chairman of the Steering Committee, Mr S. Marchisio (representing the Government of Italy), was in the chair. The meeting was also attended

by representatives of the Governments the People's Republic of China, France, Germany, the Russian Federation, Spain and the United States of America and representatives of Baker & McKenzie, Crédit Agricole S.A., EADS, the German Space Agency, Gide Loyrette Nouel, Space Exploration Technologies ("SpaceX") and Telespazio, as well as three experts attending in their personal capacity, namely Sir Roy Goode (United Kingdom), as co-draftsman of the alternative version of the preliminary draft Protocol under preparation by the Steering Committee, Mr O. Heinrich (Germany) and Mr S. Kozuka (Japan).<sup>1</sup>

The meeting was opened at 9.45 a.m. by *the Chairman* who thanked both Ms M. Leimbach and, through her, Crédit Agricole S.A., as well as Mr R. Reece and, through him, Gide Loyrette Nouel, for kindly placing the meeting under its auspices and hosting it respectively, as did Mr M.J. Stanford, Deputy Secretary-General, on behalf of UNIDROIT.

While specifying that UNIDROIT would not wish to arrogate to itself any special wisdom in coming up with a magic solution, especially in view of the other proposals already tabled, Mr Stanford, nevertheless, commended to the Sub-committee's consideration the idea set forth in the Secretariat memorandum, based on the Legislative Guide on Privately Financed Infrastructure Projects (hereinafter referred to as the *Legislative Guide*) and the Model Legislative Provisions on Privately Financed Infrastructure Projects (hereinafter referred to as the *Model Provisions*) prepared by the United Nations Commission on International Trade Law (UNCITRAL), as a pertinent example of how the question of public service had been addressed by another intergovernmental Organisation, all the more so since this reflected a consolidation of the practice already obtaining in the resolution of the public service issue in the context of privately financed infrastructure projects.<sup>2</sup> The basic principles reflected in the Legislative Guide and the Model Provisions were, in particular, based on the solution employed in the 1986 Canterbury Treaty between France and the United Kingdom for the construction and operation by private concessionaires of a fixed link under the English Channel, a solution that had, moreover, found application in a number of other major privately financed infrastructure projects, such as the Tagus Bridge project, and was broadly recognised as providing a balanced solution to the problem raised by the need of the State to ensure the continued performance of a public service guaranteed by a privately financed infrastructure project in the event of default by the debtor, on the one hand, and the need of the private lenders to be able to ensure the continued flow of revenue from the project, on the other. Mr Stanford explained that, put at its most simple, the solution enshrined in the Legislative Guide and the Model Provisions involved the State agreeing in advance with private lenders, in the event of default by the concessionaire, upon the appointment of a substitute concessionaire to operate the concession, nominated by the lenders or the State, in the exercise of what were commonly referred to as "step-in" rights.

*(b) Adoption of the agenda*

The draft Agenda, prepared by the Secretariat, was adopted.<sup>3</sup>

*(c) Documentation for the meeting*

Draft Agenda (prepared by the Secretariat);

<sup>1</sup> Cf. the list of participants reproduced in Appendix I to this report.

<sup>2</sup> Cf. the summary of the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects and the Model Legislative Provisions on Privately Financed Infrastructure Projects as potential sources of inspiration for resolution of the question of public service in the context of the preliminary draft Space Protocol (hereinafter referred to as the *Summary of the UNCITRAL Legislative Guide and Model Provisions*).

<sup>3</sup> The Agenda as thus adopted is reproduced in Appendix II to this report.

“Public Service” exemption: a background of main ideas (prepared by Mr D.J. Den Herder, Legal Counsel, SpaceX) (hereinafter referred to as the *Background paper*);

Interim report on the extent to which Article XVI(3) of the preliminary draft Protocol should provide limitations on the exercise of creditors’ remedies in respect of space assets performing a public service (prepared for the New York meeting by the Secretariat) (hereinafter referred to as the *Interim report*);

Extract from the summary report on the launch meeting of the Steering Committee regarding the discussions on the question of public service (prepared by the Secretariat);

Memorandum on the extent to which Article XVI(3) of the preliminary draft Protocol should provide limitations on the exercise of creditors’ remedies in respect of space assets performing a public service (prepared for the New York meeting by Messrs Jacques Bertran de Balanda, Denis Bandet and Bertrand Fournier-Montgieux, Herbert Smith L.L.P., Paris) (hereinafter referred to as the *Memorandum by Messrs Bertran de Balanda, Bandet and Fournier-Montgieux*);

Some general remarks on how best to achieve an appropriate balance between creditors’ legitimate interests in space assets, on the one hand, and the interests of States in the uninterrupted delivery of public service, on the other (prepared for the launch meeting of the Steering Committee by the Finmeccanica Group, including Finmeccanica, Telespazio and Thales Alenia Space) (hereinafter referred to as the *Finmeccanica proposal*);

Summary of the UNCITRAL Legislative Guide and Model Legislative Provisions (prepared by the Secretariat).

### III. CONSIDERATION OF PUBLIC SERVICE

#### (a) Background

The issue of public service, as described above, was dealt with in Article XVI(3) of the preliminary draft Protocol. This paragraph was set forth in alternative formulations, the alternative nature of which was indicated by the employment of square brackets:

[3. - A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare whether and to which extent the remedies provided in Chapter III of the Convention and in Articles IX and XII of this Protocol shall be exercisable for space assets as far as they are used for establishing or maintaining its public services as specified in its declaration or determined by a competent authority of the State notified to the Depositary.]

[3. - A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare any limitations to the exercise of remedies provided in Chapter III of the Convention and in Articles IX and XII of this Protocol with respect to space assets designed and used for flight control and navigation of aircraft, maritime navigation, search and rescue and similar public services as specified in its declaration or determined by a competent authority of the State notified to the Depositary.]

#### (b) Discussion

*The Chairman*, recalling that there had been a great deal of uncertainty at the second session of the Committee of governmental experts as to the most appropriate solution to the issue

of public service, noted that this could be seen as reflecting the way in which the preliminary draft Protocol on this issue ran the risk of interfering with fundamental rights of ownership. In view of the importance that was attached to the safeguarding of such rights,<sup>4</sup> it was especially important that the Sub-committee come up with technical solutions that would command consensus within the Committee of governmental experts, once reconvened.

The author of the Background paper summarised the various solutions that had been tabled on the issue of public service: first, the solutions proposed in the Interim report that had been identified at the aforementioned New York Government/industry meeting as being viable,<sup>5</sup> secondly, two additional solutions that had been tabled at the launch meeting of the Steering Committee - namely a proposal by Sir Roy Goode<sup>6</sup> and another by Finmeccanica<sup>7</sup> - and, thirdly, the possible approach illustrated in the summary of the UNCITRAL Legislative Guide and Model Provisions.

A representative of Finmeccanica acknowledged that, while the proposal tabled by his group was designed to give creditors the right to use a satellite in the same operational way as the debtor in default, the summary of the UNCITRAL Legislative Guide and Model Provisions provided a good alternative starting point for the seeking of a viable solution. Sir Roy Goode noted that a similar advantage to be found in his proposal, also related to the exercise of "step-in" rights, was that the

<sup>4</sup> Cf. Memorandum by Messrs Bertran de Balanda, Bandet and Fournier-Montgieux.

<sup>5</sup> Cf. Background paper, pp. 5-6, where it is stated as follows

"At the New York meeting, there was broad understanding that neither of the alternative texts proposed at the early sessions of the Committee [were] commercially viable ... In an interim report prepared by the UNIDROIT Secretariat for the New York meeting, several additional options for a solution were identified, including:

- a general affirmation of the sovereign duty to protect public services and explicit referral to national laws for the protection of private property;
- the modification of Alternative II to include a unified compensation regimen; and
- giving the State in question a priority lien or right of first refusal".

<sup>6</sup> Cf. Study LXXIIJ - Doc. 14, p. 24, where it is stated as follows:

"... a creditor intending to exercise its default remedies would need to give a certain period of notice to the grantor of the related rights, during which time the Contracting State under the laws of which such rights were granted would have the duty to ensure that the grantor of these rights or such other authority or person as designated:

- assumed or procured another competent body to assume the duties of the debtor under the agreement;
- permitted the creditor to exercise its remedies; or
- compensated the creditor for any loss suffered by it through its inability to exercise such remedies".

<sup>7</sup> Cf. Study LXXIIJ - Doc. 14, p. 24, where it is stated as follows:

"... in the event of default, the creditor's remedies should include a "step-in" right to use the signals emitted by satellites under the same conditions as those granted to the debtor:

- exercisable by notice given to the relevant national authority and appropriate persons, such as the debtor;
- subject to the creditor committing to ensure the continuance of the public service in question;
- involving the appointment of an operator to be approved by the State concerned;
- with that State being able to use any approval mechanism provided by its law, subject to the creditor not being substantially impeded in the exercise of its step-in right by any unjustified or discriminatory measures; and
- with the State being entitled, in the event of any interruption or other malfunctioning of the public service caused, either directly or indirectly, by the creditor stepping in or in any way attributable to the operator appointed by the creditor, to take action against the creditor and the operator, which might include revocation of the step-in right in the most serious cases".

public service would be maintained for the benefit of both the State, through the continued service, and the creditor, through the on-going revenue stream.

Reference was also made to the proposal tabled at the launch meeting of the Steering Committee for a solution along the lines of Article XXV of the Luxembourg Protocol to the Convention on Matters specific to Railway Rolling Stock (hereinafter referred to as the *Luxembourg Protocol*).<sup>8</sup> However, this possibility was not considered to be appropriate, owing to concerns regarding the applicability of such a solution to space assets.<sup>9</sup>

The representatives of two Governments acknowledged the desirability of the future Protocol including limitations on the exercise of default remedies under the Convention as applied to space assets in order to maintain public services. Reference was made in this context to the broad powers enjoyed by the regulatory body of one State to define which services were of crucial importance to the public interest – and, therefore, public services – and to ensure the continuity of such services; it was noted, however, that such broad authority also gave rise to a great deal of litigation, so that such a model might not perhaps be suitable for the preliminary draft Protocol.

It was suggested by the representative of one Government that, rather than limiting the Committee of governmental experts to the choice of only one from among several solutions to the issue of public service, it be presented with a list of several options any number of which could be incorporated in the preliminary draft Protocol for Contracting States to choose from at the time of their ratification or accession thereof, by the lodging of appropriate declarations. This would have

<sup>8</sup> Article XXV of the Luxembourg Protocol reads as follows:

“1. A Contracting State may, at any time, declare that it will continue to apply, to the extent specified in its declaration, rules of its law in force at that time which preclude, suspend or govern the exercise within its territory of any of the remedies specified in Chapter III of the Convention and Articles VII to IX of this Protocol in relation to railway rolling stock habitually used for the purpose of providing a service of public importance (“public service railway rolling stock”) as specified in that declaration notified to the Depositary.

2. Any person, including a governmental or other public authority, that, under rules of law of a Contracting State making a declaration under the preceding paragraph, exercises a power to take or procure possession, use or control of any public service railway rolling stock, shall preserve and maintain such railway rolling stock from the time of exercise of such power until possession, use or control is restored to the creditor.

3. During the period of time specified in the preceding paragraph, the person referred to in that paragraph shall also make or procure payment to the creditor of an amount equal to the greater of:

- (a) such amount as that person shall be required to pay under the rules of law of the Contracting State making the declaration; and
- (b) the market lease rental in respect of such railway rolling stock.

The first such payment shall be made within ten calendar days of the date on which such power is exercised, and subsequent payments shall be made on the first day of each successive month thereafter. In the event that in any month the amount payable exceeds the amount due to the creditor from the debtor, the surplus shall be paid to any other creditors to the extent of their claims in the order of their priority and thereafter to the debtor.

4. A Contracting State whose rules of law do not provide for the obligations specified in paragraphs 2 and 3 may, to the extent specified in a separate declaration notified to the Depositary, declare that it will not apply those paragraphs with regard to railway rolling stock specified in that declaration. Nothing in this paragraph shall preclude a person from agreeing with the creditor to perform the obligations specified in paragraphs 2 or 3 or affect the enforceability of any agreement so concluded.

5. Any initial or subsequent declaration made under this Article by a Contracting State shall not adversely affect rights and interests of creditors arising under an agreement entered into prior to the date on which that declaration is received by the Depositary.

6. A Contracting State making a declaration under this Article shall take into consideration the protection of the interests of creditors and the effect of the declaration on the availability of credit.”

<sup>9</sup> Cf. Background paper, pp. 8-9.

the merit, it was further suggested, of enabling Contracting States to choose between, on the one hand, a stronger measure of protection for the maintenance of public services or, on the other, a stronger dose of protection for the creditors' ability to exercise his default remedies. There was general agreement as to the suitability of such an approach for the purpose of obtaining broad consensus within the Committee of governmental experts, once reconvened. It was, accordingly, agreed that a list of possible options should be developed by the Sub-committee - a list, moreover, that should be subject to further elaboration - with a view to the Committee of governmental experts choosing those options that were felt to be the most appropriate for the resolving of the issue of public service.

There was general agreement among the Governments and the international commercial space and financial communities represented that the term "public service" should not be defined in the preliminary draft Protocol, lest one create an international duty not contracted for, it being preferable to leave the right to define "public service" to the individual Contracting States. In this connection, it was suggested that Contracting States could also define the concept of "public service", as applied under their national laws, by the lodging of a declaration under the future Protocol, thus offering heightened certainty and clarity to the international commercial space and financial communities as to which activities were to be considered of a public service nature under the various national laws. Contracting States could specify what was considered to be a public service by reference either to a general term or to a list of activities, reserving the possibility to amend such a definition in the future, although the representative of one Government stressed that attention would have to be paid to the retroactive effect that such amendments would have on previously registered interests. This proposal was endorsed by the representative of another Government, as an approach that would encourage the protection of public services through contractual rather than legislative options. He was strongly supported in this view by representatives of the international commercial space and financial communities, who urged the Sub-committee not to complicate space financing by implementing complex rules that might interfere with local laws or the parties' freedom of contract.

Several representatives of the international commercial space and financial communities indicated that so long as rights to compensation or "step-in" rights as enforced to date remained unaffected, it made no difference whether the term "public service" was defined or even how it was defined. In their view, what was most important to a creditor taking security over a space asset was his ability to exercise his rights in the asset and thereby preserve the revenue-generating capacity of the asset.

Representatives of two Governments suggested that the future International Registry might be used as a means of providing States with an opportunity to discover who might be a creditor in respect of a space asset intended to provide a public service, thus giving States the chance to seek a pre-emptive agreement that would ensure the maintenance of the relevant public services with such creditor. Such an idea might, it was suggested, be seen as building on the way in which many national space policies already required the provider of a space-based service within a State having enacted such a policy to obtain a licence or permit for such a space-based operation, thus providing an early opportunity for States to negotiate with the potential providers of a public service and the relevant creditors. However, it was noted that not all States had enacted such national space policies, in particular States not having envisaged private space ventures being mounted from within their jurisdictions.

In the light of this idea, one representative of the international commercial space and financial communities suggested that such contractual solutions to the issue of public service should be encouraged between Contracting States - at least those that possessed national space policies requiring private providers of space-based services to seek licences and permits for their operations - and the creditors of those providers of public services, through the inclusion of

language in the preliminary draft Protocol that would give States the option to determine the application of public service limitations on the exercise of default remedies on a case-by-case basis, notably at the time of the issuing of a licence or permit for the operation of a space-based service within the relevant State's jurisdiction. Similarly, another representative of the international commercial space and financial communities suggested that such contractual solutions could be further promoted by providing an option that would encourage States to reach agreements with the creditors of providers of public services, at the time when the project arose - including at the time when financing for the project was sought - as to the conditions necessary for the exercise of a "step-in" right.

In the context of this discussion, the representative of one Government suggested that a Contracting State be allowed to record a notice regarding the provision of a public service in respect of a particular space asset against the asset in question in the future International Registry, in much the same way as had been agreed by the Steering Committee at its launch meeting in respect of the recording of debtor's rights and related rights.<sup>10</sup> Any creditor with an interest registered after the recording of such a public service notice would be debarred from exercising a remedy that would have the effect of interrupting that public service, just as a creditor with an interest registered prior to the recording of a public service notice would take free thereof. The representative of the same Government further suggested that the exercise of default remedies by a creditor with a previously registered interest should be subject to the duty first to give the Contracting State of the defaulting debtor the opportunity to perform the duties of that debtor. Neither proposal by the Government in question was intended to apply in cases of default where the relevant Contracting State had not recorded a public service notice.

One participant expressed concern at the idea of giving Contracting States a right to limit the exercise of default remedies that did not exist before, as this might negatively affect the creditor's right of ownership. He urged the Sub-committee to ensure that special attention be paid to the effects that any proposed solutions to the issue of public service might have upon the relationships between a Contracting State, a provider of a public service, a debtor operating the relevant satellite and the creditors of that satellite or any of its relevant components.<sup>11</sup>

Representatives of both Governments and the international commercial space and financial communities expressed concern about use of the term "step-in" rights in the context of the preliminary draft Protocol, because, first, the term might be interpreted differently under different national laws and, secondly, even if the term were defined in such a way as to provide uniform application, the very fact that the original debtor had gone into default signalled that it was likely that there was something wrong with the business model behind the public service and that the substitute debtor was likely to default as well. Accordingly, it was recommended that it should be made clear that references to "step-in" rights covered only situations in which the substitute debtor undertook the duty to maintain a predetermined public service - but not necessarily all the other contractual duties originally agreed to by the debtor - in such a way as to enable the substitute debtor to alter the original business model behind the public service with a view to achieving sustainability of the operation.

### *(c) Conclusions*

There was general consensus that the preliminary draft Protocol should provide a menu of options, rather than a single rule, on the question of public service limitations on the exercise of default remedies and that Contracting States should be free to choose from this menu of options by means of a system of declarations, at the time of ratifying or acceding to the future Protocol, on

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<sup>10</sup> Cf. Study LXXIIJ - Doc. 14, p. 16.

<sup>11</sup> Cf. illustration of four different cases supplied by Mr S. Kozuka, reproduced in Appendix III to this report.

the ground that this would provide States with the degree of flexibility needed to choose those limitations best suited to their needs and, in particular, their own national laws.

There was also general consensus that the term "public service" should not be defined in the preliminary draft Protocol, thus avoiding the risk of creating an international duty. It was agreed that Contracting States should, however, themselves be able to define, at the time of ratification or accession, what was to be considered a "public service" under their own laws, also by declaration.

It was agreed that the possibility should be kept open of such declarations being amended in the future, as needed.

The proposed menu of options developed by the Sub-committee, subject to further elaboration of their precise wording, for submission to the Committee of governmental experts, was as follows:

- the holder of an international interest in a space asset providing a public service may not exercise default remedies that would result in the interruption of that public service;
- the holder of an international interest in a space asset providing a public service shall have the right to exercise a "step-in" right in the event of default by the debtor providing that public service;
- a Contracting State shall have the right to exercise a "step-in" right in the event of default by a debtor providing a public service;
- fair compensation shall be provided to the holder of an international interest in a space asset providing a public service in the event that a Contracting State intervene in the operation of that asset;
- default remedies may only be exercised after the elapsing of a specified period of time;
- where a privately owned space asset provides public services to more than one Contracting State, a Contracting State shall declare how it will perform its overall obligations in respect of that asset, for example by the granting of compensation or the exercising of a "step-in" right;
- a Contracting State may record a notice with the future International Registry in respect of a space asset providing a public service, the effect of which will be, first, that any creditor having registered an international interest in that space asset prior to the recording of such notice may only exercise any default remedy that he possesses under the Convention as applied to space assets to the extent that the Contracting State does not elect to assume the obligations of the defaulting debtor and, secondly, that any creditor having registered an international interest in the space asset after the recording of such notice may only exercise any default remedy that he possesses under the Convention as applied to space assets to the extent that the public service in question is not thereby interrupted;
- a Contracting State may determine the application of public service limitations on a case-by-case basis, namely at the time of the issuing of a licence or permit for the operation of a space asset intended to be used for the provision of a public service; and/or
- a Contracting State may, at the time when the space financing project arises, agree with the holder of an international interest in a space asset providing a public service as to the conditions necessary for "step-in" rights to be exercised.

It was agreed that, overall, this approach was the one most likely to command the broadest level of consensus within the Committee of governmental experts.



**IV. FOLLOW-UP TO THE CONCLUSIONS OF THE SUB-COMMITTEE**

The Sub-committee agreed that its conclusions should be referred to the Steering Committee at its second meeting, to be held in Paris on 14 and 15 May 2009, and that, should the Steering Committee approve the Sub-committee's approach, the proposed system of declarations and options should be referred to the co-chairmen of the Drafting Committee of the Committee of governmental experts for incorporation into the alternative version of the preliminary draft Protocol to be prepared following the meeting of the Steering Committee and then laid for consideration before the Committee of governmental experts, once reconvened.

**V. ANY OTHER BUSINESS**

No other business being raised, *the Chairman* declared the meeting closed at 3.30 p.m.



**APPENDIX I**

*LIST OF PARTICIPANTS*

**REPRESENTATIVES OF GOVERNMENTS**

CHINA (PEOPLE'S REPUBLIC OF)	Ms ZHANG Huiling Section Chief Department of Treaty and Law Ministry of Commerce <i>Beijing</i>
	Mr LI Bingzhuo Official Department of Treaty and Law Ministry of Foreign Affairs <i>Beijing</i>
FRANCE	Mr Alexandre DE FONTMICHEL Avocat à la Cour Darrois Villey Maillot Brochier ; <i>representative of the Ministry of Justice</i> <i>Paris</i>
GERMANY	Mr Hans-Georg BOLLWEG Head of Division Federal Ministry of Justice; member of the UNIDROIT Governing Council <i>Berlin</i>
	Mr Simon SCHULTHEISS Division for Compensation Law Law of Civil Aviation Federal Ministry of Justice <i>Berlin</i>
	Mr Karl F. KREUZER Emeritus Professor of Law University of Würzburg <i>Würzburg</i>
ITALY	Mr Sergio MARCHISIO Professor of Law; Director Institute of International Legal Studies University of Rome I; Chairman of the UNIDROIT Committee of governmental experts; Chairman of the Steering Committee; <b>Chairman of the Sub-committee</b> <i>Rome</i>

## RUSSIAN FEDERATION

Ms Anna DONCHENKO  
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Trade Representation of the Russian Federation  
in France  
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## UNITED STATES OF AMERICA

Mr Harold S. BURMAN  
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Mr Steven L. HARRIS  
Professor of Law  
Chicago-Kent College of Law  
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*Chicago, Illinois*

Mr K. Koro NURI  
Senior Finance Counsel  
Office of the General Counsel  
Import-Export Bank of the United States of  
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**REPRESENTATIVES OF INTERNATIONAL COMMERCIAL SPACE AND FINANCIAL  
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Mr Vittorio COLELLA ALBINO

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*Rome*

Mr David J. DEN HERDER

Counsel  
Space Exploration Technologies ("SpaceX")  
*Washington, D.C.*

Mr Olaf GEBLER

Partner  
Baker & McKenzie  
*Frankfurt am Main*

Ms Martine LEIMBACH

Responsable conformité juridique et contrôle  
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Direction des affaires juridiques  
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Ms Daniela NIESSEN

Legal Consultant  
German Space Agency  
*Bonn*

Mr Rupert REECE

Avocat Associé  
Barrister England & Wales  
Gide Loyrette Nouel  
*Paris*

Mr Bernhard SCHMIDT-TEDD

Head of Legal and Business Support  
German Space Agency  
*Bonn*

Mr Jean-Claude VECCHIATTO

Vice President  
Head of Corporate and Project Finance  
Legal Department  
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#### **OTHERS**

Sir Roy GOODE

Co-draftsman of alternative version of  
preliminary draft Space Assets Protocol  
*Oxford*

Mr Oliver HEINRICH

Attorney  
*Cologne*

Mr Souichirou KOZUKA

Professor of Law  
Sophia University  
*Tokyo*

#### **UNIDROIT**

Mr Martin STANFORD, Deputy Secretary-General

Mr Daniel A. PORRAS, Associate Officer



**APPENDIX II**

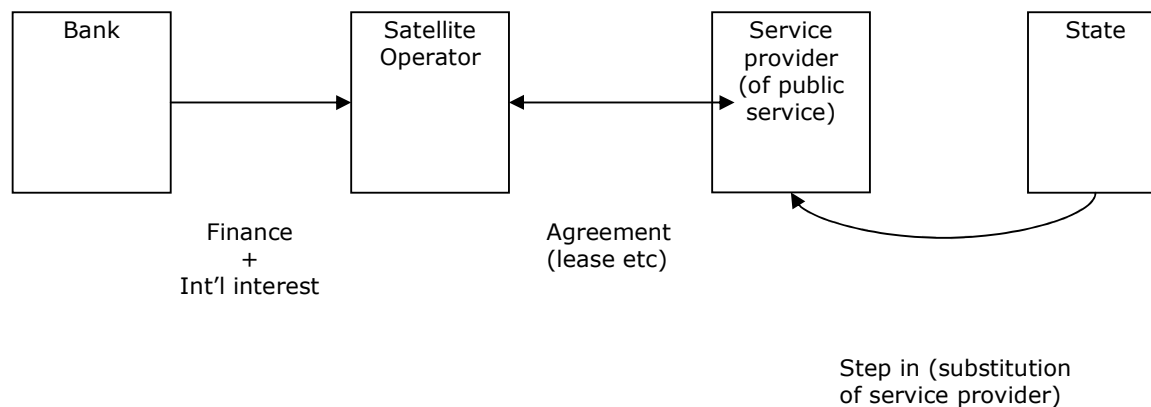
*AGENDA*

1. Opening of the meeting
2. Adoption of the agenda
3. Organisation of work for the meeting
4. Preparation of options for a solution to the problem of public service under the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets that might be laid before the UNIDROIT Committee of governmental experts for the preparation of a draft Space Assets Protocol, once reconvened
5. Next steps to be taken in respect of the conclusions reached by the Sub-committee
6. Any other business.





## APPENDIX III

ILLUSTRATIONS OF CASES REFERRED TO BY MR S. KOZUKA  
(cf. p. 7, supra)

## Case No. 1

The service provider becomes insolvent and the service is suspended. The State is anxious about the situation and may wish to step in and substitute the service provider (this is the situation contemplated by the UNCITRAL Legislative Guide and Model Provisions).

The above situation has nothing to do with the default remedy of the bank nor is it a case of default by the satellite operator. Should this situation be addressed by the preliminary draft Protocol at all?

## Case No. 2

The satellite operator becomes insolvent but the satellite is, for the moment, still controlled by the operator. The service provider is solvent and continues to provide the service sufficiently. The State (and perhaps the service provider) becomes worried that the relevant bank may exercise a default remedy under the preliminary draft Protocol and move the satellite to another orbit, making the continuation of the public service impossible.

Is it the intention of the Steering Committee that the State should be able to step in and substitute the satellite operator? Granting such a right to the State Party might be excessive, especially if only a part of the satellite is used for the relevant public service. It may be sufficient to impose a limitation on default remedies whereby a creditor (bank) is prevented from changing the orbit/position of a satellite without the consent of the relevant State.

## Case No. 3

Both the satellite operator and the service provider become insolvent (suppose that the insolvency of the service provider triggers the insolvency of the satellite operator). A public service is suspended. The State becomes concerned and may wish to step in.

This case may be worth careful examination. Would it be appropriate to entitle the State to step in and substitute the satellite operator and, perhaps, the service provider as well? If this case is understood to be the combination of Case 1 and Case 2, would it not be sufficient to limit the remedies by the creditor (bank) to the extent that the creditor is prevented from changing the orbit/position of the satellite or from contracting with a new satellite operator who will also seek to change the orbit/position of the satellite without the consent of the State?

Case No. 4

The satellite operator and the service provider are the same company and become insolvent. The public service is suspended and the State becomes concerned.

In this case, the State may wish to step in, which is justified. However, is it necessary to enable the State to appoint a new entity as the satellite operator and service provider (without the consent of the creditor)? The State may have the full authority to appoint a new service provider. But if the State wishes to let this new service provider operate the satellite just as its predecessor, should it not be a requirement that the State reach an agreement with the creditor as well? Would it not be sufficient to apply a limitation that would prevent a creditor from changing the orbit/position of the satellite without the consent of the State?