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**Item No. 5 on the agenda: International interests in mobile equipment –
(b) Preliminary draft Protocol on Matters specific to Space Assets**

(Memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Report on the completion of the intergovernmental negotiations on the preliminary draft Protocol / case for the transmission of the latter, as a draft Protocol, to a diplomatic Conference, for adoption</i>
<i>Action to be taken</i>	<i>See paragraph 35, below</i>
<i>Mandate</i>	<i>Work Programme 2011-2013</i>
<i>Priority level</i>	<i>High</i>
<i>Status</i>	<i>On target for completion in the first quarter of 2012</i>
<i>Related documents</i>	<i>UNIDROIT 2010 - C.G.E./Space Pr./5/W.P. 4; UNIDROIT 2011 – C.G.E./SpacePr./5/Report; Annual Report 2010 (C.D. (90)02), pp 9-12.</i>

INTRODUCTORY REMARKS

1. An account of the significant progress made toward completion of this project in 2010 is to be found in the Annual Report 2010.¹ This memorandum will, accordingly, focus on the outcome of the fifth session of the UNIDROIT Committee of governmental experts for the preparation of a draft Protocol to the Cape Town Convention on Matters specific to Space Assets (hereinafter referred to as the *Committee*), held in Rome from 21 to 25 February 2011,² and in particular the case for bringing the text of the revised preliminary draft Protocol to the Cape Town Convention on Matters specific to Space Assets (hereinafter referred to as the *revised preliminary draft Protocol*)

¹ See also the paper delivered by Mr M.J. Stanford 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", organised jointly 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 of Thailand in Bangkok from 16 to 19 November 2010.

² 32 States, three intergovernmental Organisations and five international non-governmental Organisations were represented at the session, which was also attended by seven representatives of the commercial space, financial and insurance communities and a representative of the International Registry for aircraft objects (cf. C.G.E./SpacePr./5/Report, Appendix II).

established at the conclusion of the recent session of the Committee to adoption,³ as well as the implications of such a step.

THE PARTIES

2. The Cape Town Convention was opened to signature in Cape Town in November 2001, together with the first of what was envisaged as a string of Protocols, the Protocol to the Convention on Matters specific to Aircraft Equipment. Council members will recall the strenuous efforts being made at the time by certain parties to convert the then draft Convention and draft Aircraft Protocol into an aircraft-only Convention and the uncertainty with which UNIDROIT, therefore, approached the Cape Town Conference. That these efforts came to naught was due not only to the firm conviction of UNIDROIT and a broad body of the experts involved in the preparation of the draft Convention as to the desirability of making the benefits of the future Convention available to a broader range of categories of high-value mobile equipment than just aircraft but also to the substantial preparatory work that had been done, prior to the Conference, with a view to demonstrating the case for the extension of these benefits to other categories of such equipment; for instance, already in March 2001 the text of a preliminary draft Rail Protocol prepared by an industry working group had been ready for consideration by a first session of governmental experts, held under the joint auspices of UNIDROIT and the Intergovernmental Organisation for International Carriage by Rail, and the fourth and penultimate session of the industry working group preparing a preliminary draft Space Protocol had been held in September 2001.

3. Council members will be familiar with all the vicissitudes that have characterised the intergovernmental negotiations in respect of the revised preliminary draft Protocol and will, therefore, know that this approach, whilst effective in ensuring the extension of the Convention to a broader range of categories of equipment, also brought in its wake all manner of complications, not least from the temporal point of view, with complaints, in particular, being heard from industry as to the level of priority assigned to the project in relation to other UNIDROIT activities.⁴

4. Ultimately, two factors determined the re-launching of the process in felicitous circumstances. The first of these was the considerable progress made in flushing out and finding potential solutions to the key outstanding problems during a couple of Government/industry meetings held in April 2006 and June 2007 and the second the decision taken by the UNIDROIT General Assembly, at its 61st session, held in November 2007, to establish a Steering Committee to take responsibility for the building of consensus, within Government and industry, around the provisional solutions reached at the second Government/industry meeting.

5. Since the first meeting of that Steering Committee was held in May 2008 the project has proceeded at a heady rate of progress: in fewer than three years the representatives of Governments and industry have attended two meetings of the Steering Committee, two meetings of sub-committees of the Steering Committee, three sessions of the Committee (reconvened in December 2009), two sessions of informal working groups of the Committee and special consultations with industry.⁵ Over that time, these representatives have whittled away successfully

³ The revised preliminary draft Protocol is set forth in C.G.E./SpacePr./5/Report, Appendix XV.

⁴ Cf., for example, the Secretariat memorandum on international interests in mobile equipment – preliminary draft Protocol on Matters specific to Space Assets submitted to the Governing Council at its 85th session C.D. (85) 7(b), § 7.

⁵ The first meeting of the Steering Committee was held in Berlin, at the invitation of the German Ministry of Justice, from 7 to 9 May 2008. The Sub-committee of the Steering Committee on default remedies in relation to components met in Berlin, at the invitation of Commerzbank AG, on 31 October and 1 November 2008. The Sub-committee of the Steering Committee on public service met in Paris, at the invitation of Crédit Agricole S.A., on 13 May 2009. The second meeting of the Steering Committee was held in Paris, at the invitation of the European Centre for Space Law, on 14 and 15 May 2009. The Sub-committee of the Committee

at all the outstanding difficulties, to the point where the Committee was able at the conclusion of its fifth session to establish a text of the revised preliminary draft Protocol that it felt able, in the words of Mr S. Marchisio (Italy), its Chairman, to recommend to the Governing Council as being ripe for transmission to a diplomatic Conference, for adoption.⁶

6. That the Secretariat has been able to maintain this rate of progress is, moreover, in great part, due to the munificence of the American Foundation on International Uniform Law, the German Space Agency and the U.K. Foundation on International Uniform Law in funding the invaluable support work on this project accomplished since 1 March 2008 by Mr D.A. Porras, as Research Assistant to Mr Stanford. However, it is important to recognise that the impetus given to the project in recent times also owes a great deal to the invaluable contribution made, under the agreement signed on 21 October 2009 between UNIDROIT and Crédit Agricole S.A., by Ms M. Leimbach, of that Group, in enhancing the Committee's awareness of the point of view of financiers.⁷ The Secretariat takes this opportunity to record its special debt of gratitude to all these benefactors.

7. As will hopefully emerge from the Secretariat's brief overview of the history of the intergovernmental negotiations, this process falls into two distinct phases. The revised preliminary draft Protocol as it has emerged over the second of these phases, beginning with the work of the Steering Committee, is quite another animal from the text prepared by the industry working group which was transmitted by the Governing Council in September 2001 to Governments for finalisation. It would not be an exaggeration to say that the earlier text has, in most if not all ways, been superseded by the text which has taken shape over the last two and three quarter years. Some of the representatives of the commercial space sector who were involved in the earlier phase have indicated that they are not, necessarily, at one with the ambitions of the new text. It is noticeable that such parties tend to be major established players with little or no need for private sector financing, whereas the principal focus of the planned Space Protocol has always been those new players, typically small private companies, new entrepreneurial space ventures, non-profit Organisations and other non-traditional stakeholders, often referred to as the NewSpace community, without the same guaranteed financing resources. It is, therefore, particularly encouraging for the future of the planned Protocol that not only do many leading players, including financial institutions like the Crédit Agricole Group, operators like Eutelsat Communications and manufacturers like EADS Astrium and Thales Alenia Space, continue, through their participation in the negotiations and their contribution of technical expertise on the key outstanding technical issues,⁸ to recognise the importance of the planned Protocol for the future but that leading members of the NewSpace community, such as SpaceX, notwithstanding their less abundant resources, are equally forthcoming in the time they are prepared to devote to fashioning the best possible end-product, the commercial importance of which for them may be seen in the context of the leading role that they have been assigned in the Government of the United States of America's new commercial space programme for Low Earth Orbit activity.

to examine certain aspects of the future international registration system for space assets met in Rome on 26 and 27 October 2009. The third session of the Committee was held in Rome from 7 to 11 December 2009 and its fourth session was held in Rome from 3 to 7 May 2010. Consultations with representatives of the commercial space and financial communities were held in Rome on 18 October 2010. The Informal Working Group of the Committee on default remedies in relation to components met in Rome from 19 to 21 October 2010. The Informal Working Group of the Committee on limitations on remedies met in Rome on 20 and 21 October 2010. And, of course, the fifth session of the Committee was held last month.

⁶ Cf. C.G.E./SpacePr./5/Report, § 134.

⁷ Cf. Secretariat memorandum on international interests in mobile equipment – preliminary draft Protocol on Matters specific to Space Assets submitted to the Governing Council at its 89th session (C.D. (89) 4(b), § 3.

⁸ Cf., for example, Intersessional consultations with representatives of the international commercial space and financial communities (Rome, 18 October 2010): report (prepared by the UNIDROIT Secretariat) C.G.E./Space Pr./5/W.P. 4.

8. The principal actors in the process, however, remain Governments⁹ and it is equally encouraging to see how many of the Governments that might reasonably be identified with the NewSpace community are also actively involved in the process. This has, of course, been greatly facilitated by the decision, in line with Resolution No. 3 adopted by the Cape Town diplomatic Conference, to open membership of the Committee to member States of the United Nations Committee on the Peaceful Uses of Outer Space.

THE ISSUES

9. At its fifth session, the Committee's essential task consisted in finding consensus on the key outstanding issues, the complete reading of the revised preliminary draft Protocol that had taken place at the fourth session of the Committee, held in May 2010, having shown that there was complete consensus on all issues save the definition of the term "space asset" - fundamental for the delimitation of the substantive sphere of application of the future instrument - default remedies in relation to components, public service and the criteria for the identification of space assets for registration purposes. Consensus was able to be reached on all but one of these issues and, even on the one issue where the reaching of consensus proved impossible, the Committee was nevertheless agreed on the manner of presenting the alternatives representing the different points of view for decision to the diplomatic Conference.

(a) *The definition of the term "space asset"*

10. Concern had been expressed previously, first, that any definition of the term "space asset" needed to be sufficiently general to cover future technological developments, secondly, that high-value components, such as transponders - as indeed any other component deemed bankable at the time - should be capable of falling within the definition and, thirdly, that low-value components, in particular those not deemed bankable, should be excluded from the sphere of application of the planned Protocol so as to avoid the future International Registry being cluttered up with countless registrations of international interests in simple nuts and bolts.

11. The Committee decided, in the event, to use a three-tier approach providing for the coverage as a space asset of "any man-made uniquely identifiable asset in space or designed to be launched into space" that fell under one of the following categories: a spacecraft (such as a satellite, a space station and a space module), a payload (whether a telecommunications, navigation, observation, scientific or other payload) and part of a spacecraft or payload (such as a transponder).¹⁰

(b) *Default remedies in relation to components*

12. In the light of its decision to include high-value components, such as transponders, in the definition of "space asset", the Committee had to decide what should be done in those situations where a conflict of interests arose at the moment of a creditor's exercise of its default remedies in respect of a space asset that was physically linked to another asset belonging to a non-defaulting third party, such as a transponder, potentially impacting negatively on that third party.

⁹ Altogether, 57 Governments served on the Committee (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).

¹⁰ Cf. Article I(2)(l) of the revised preliminary draft Protocol.

13. There had long been a division of opinion as to the most appropriate solution: on the one hand, there were those arguing that this was an issue on which the revised preliminary draft Protocol should be silent, with the issue being left to be resolved by inter-creditor agreements and, on the other, those claiming that, whilst it was right that inter-creditor agreements should, in principle, govern such potential conflicts, a default rule should be provided for those cases where no inter-creditor agreement was actually reached or even made.

14. Given the continuing divide on this subject, the Committee ultimately decided that the best solution would be to refer three alternatives, basically reflecting the different options favoured by the two sides, for decision to the planned diplomatic Conference.¹¹

(c) *Limitations on remedies (public service)*

15. Another key outstanding issue concerned the striking of the most appropriate balance between, on the one hand, the interests of a creditor seeking to exercise remedies against a space asset performing a "public" service in the event of its debtor's default, and, on the other, those of one or more organs of the State anxious to ensure the continuity of the performance of the particular "public" service, notwithstanding that default.

16. It was agreed to require that any creditor seeking to exercise a default remedy that would interrupt a service that had been designated in the future International Registry as a public service give six months' notice of its intention to exercise its remedies to the affected Government or Government agency, with that Government or Government agency being during that time invited to be directly involved in any proceedings of the regulatory authority of the licensing State of the asset that the defaulting debtor might also take part in, whether or not the creditor or debtor was located within that State.¹²

(d) *Identification criteria*

17. The Committee had at its fourth session called for the testing of the technical feasibility of the identification criteria provided for space assets. From the Secretariat's consultations, it had emerged that all manufacturers of space assets affixed serial numbers to their space assets, whether they be satellites as a whole or a single transponder, and that such serial numbers were referred to in the contracts for the manufacturing of any asset. Moreover, it had been confirmed that these assets could be adequately tracked by electronically available public registries to ensure that a unique asset with a particular number could be identified, even if this occurred after launch and the serial numbers could not be verified visually.

18. The Committee decided that, for registration purposes, it would be sufficient for the space asset to be identified by the name of its manufacturer, its manufacturer's serial number and its model designation. It was agreed that any other information that might subsequently be found to be necessary could be laid down in the regulations to be promulgated by the Supervisory Authority of the future International Registry for space assets.¹³

ADDITIONAL ISSUES

(a) *Salvage insurance*

19. The Drafting Committee had not been able to complete its work on Article IV(5) of the revised preliminary draft Protocol during the fourth session of the Committee. It, accordingly, held

¹¹ Cf. Article XVII(3) of the revised preliminary draft Protocol.

¹² Cf. Article XXVII of the revised preliminary draft Protocol.

¹³ Cf. Article XXX of the revised preliminary draft Protocol.

an extraordinary meeting immediately prior to the fifth session of the Committee, in the presence of an adviser from the space insurance community. As a result of that meeting, it was able to recommend to the Committee, as a solution, that revenue salvage not be included in the revised preliminary draft Protocol as a registrable interest but that the right of insurers to revenue salvage should be safeguarded in relation to subsequently registering creditors under the Convention and the future Protocol, with further clarification being provided through the future Official Commentary. This solution was endorsed by the Committee and significant work was done by the Drafting Committee during the session to allay the remaining concerns of the space insurance community on this issue. It, therefore, came as a surprise when, at the very end of the session, the adviser from the space insurance community informed the Committee that that community took the view that, as Article IV(5) had been transformed during the session, it ran the risk of doing more harm than good and, for that reason, proposed its withdrawal. The hour was so late that the Committee could, in the circumstances, only place Article IV(5) in square brackets for decision at the planned diplomatic Conference, with the related provisions on revenue and title salvage also being placed in square brackets pending the taking of a decision on Article IV(5).

(b) Limitations on remedies (controlled goods)

20. Many space assets have a dual purpose, serving both military and civilian purposes. This explains the way in which many countries tend to restrict trade in certain space assets, commonly referred to as "controlled goods", including certain types of technology, command codes, data or services. To reflect this reality, it has to date been provided in the revised preliminary draft Protocol that a Contracting State may, in accordance with its laws and regulations, restrict or attach conditions to the exercise of the default remedies of the Convention as applied to space assets where the exercise of such remedies would involve or require the transfer of such controlled goods.

21. At the recent session of the Committee, one delegation proposed extending this rule to those cases where a Contracting State might also wish to impose restrictions on the creation of an international interest or a rights assignment for reasons of national security or international peace and security or on the exercise of default remedies for the same reasons. However, given the limited time available for the consultations that were felt to be called for on this matter, it was agreed that it was not possible at the session to do more than include the proposal as an alternative text, in square brackets, for decision at the planned diplomatic Conference.

(c) Demarcation between the Aircraft Protocol and the planned Space Protocol

22. Another concern raised at the recent session went to what was seen by one observer as a potential overlap between the revised preliminary draft Protocol and the Aircraft Protocol; his concern was to ensure that an object that was an aircraft object pursuant to the Aircraft Protocol should not be capable of being a space asset pursuant to the revised preliminary draft Protocol. However, there was also concern that any solution adopted on this matter should not inhibit the development of space financing by unintentionally covering objects which, though designed predominantly for use in outer space, could fall within the definition of an airframe or an aircraft engine. It was, therefore, tentatively agreed that, while nothing in the planned Protocol should affect the application of the Aircraft Protocol in respect of an object designed predominantly for use in air space, an object designed predominantly for use in outer space would not constitute an aircraft object for the purposes of the Aircraft Protocol.

(d) Supervisory Authority of the future international registration system

23. One of the major issues to be resolved at the planned diplomatic Conference is the procedure to be employed for designation of the Supervisory Authority of the future international

registration system. At its recent session, the Committee acknowledged the importance of recognising that it might not be possible to designate the Supervisory Authority at the planned diplomatic Conference and of, therefore, leaving open the possibility of the Supervisory Authority being designated, if necessary, pursuant to a Resolution to be passed at the diplomatic Conference, as was done in 2007 at the Luxembourg diplomatic Conference for adoption of the Rail Protocol.¹⁴

24. In a communication addressed to the Secretariat on 25 January 2011, Mr A. Guillot, Head of the Legal Affairs Unit of the International Telecommunication Union (I.T.U.), confirmed that Organisation's continuing interest in being considered as a potential Supervisory Authority. He, nevertheless, pointed out that it would be important for Mr F. Rancy, who had only recently been appointed Director of the I.T.U.'s Radiocommunication Bureau, to inform himself properly about the implications of the idea before being in a position to pledge his own support. The observer representing the I.T.U. at the recent session of the Committee, moreover, welcomed the Committee's recognition of the possibility that the Supervisory Authority might only be designated after, and not necessarily at the planned diplomatic Conference. It is clear that for an Organisation to assume the functions of Supervisory Authority under the future Protocol it will need to have a comprehensive idea of the implications, and in particular the financial implications, of its choice.

25. In this context, it is worth recalling that, already at the Government/industry meeting held in New York in June 2007, the representative of Aviareto, the Registrar of the International Registry for aircraft objects, formally expressed that body's interest in also running the future International Registry for space assets. In support of its expression of interest, it argued that "[t]here is a very small population of space assets, there is a small annual inflow and there is limited secondary trading"¹⁵ and that "[w]ithin any conceivably acceptable level of fees, it is difficult to see how space assets could support a stand-alone registry". Already at that time, it was of the view that the experience it had gained in not only setting up but also running an International Registry¹⁶ made it well placed to accommodate space assets in the International Registry for aircraft objects "before any other solutions are embarked on". To this it is worth adding that, at the recent session of the Committee, the representative of Aviareto pointed out that developments in the software of the International Registry for aircraft objects due to be implemented in October 2011 could assist the creation of the future International Registry for space assets through facilitating the making of multiple registrations simultaneously in respect of multiple space assets, a feature that, through efficiency savings, would be likely substantially to reduce the cost of making such multiple registrations.

26. The interest expressed by Aviareto in running the future International Registry for space assets, not least from the point of view of the economies of scale that might be permitted thereby, led to consideration being given during both the meeting of the Sub-committee of the Committee to examine certain aspects of the future international registration system for space assets¹⁷ and the third session of the Committee to the possibility of ICAO also being considered a potential

¹⁴ Cf. Article XXVIII(1) of the revised preliminary draft Protocol. On the other hand, the Council of the International Civil Aviation Organization (ICAO) already took its decision to accept *in principle* the role of Supervisory Authority of what was then still the future International Registry for aircraft objects - pending the formal invitation issued by the Cape Town diplomatic Conference, in Resolution No. 2 passed by that Conference - on the basis of a recommendation received by the ICAO Council from the ICAO Legal Committee - following the preparation, by Joint Sessions of a Sub-Committee of the ICAO Legal Committee and a UNIDROIT Committee of governmental experts, of the draft Convention and the draft Aircraft Protocol that were subsequently submitted for adoption to the Cape Town diplomatic Conference - that it give careful consideration to accepting the role of Supervisory Authority of the future International Registry for aircraft objects.

¹⁵ Registration of International Financial Interests in Space Assets, a memorandum submitted by Aviareto to the New York meeting.

¹⁶ By 24 March 2011 approximately 260,000 registrations had been made in the International Registry for aircraft objects, against 110,000 aircraft objects (airframes, aircraft engines and helicopters) since its entry into operation (on 1 March 2006).

¹⁷ Cf. Sub-committee to examine certain aspects of the future international registration system for space assets: report (prepared by the Secretariat) (C.G.E./Space Pr./3/W.P. 7 rev., in particular at p. 12).

Supervisory Authority. At the fourth session of the Committee, the observer from ICAO indicated that Organisation's appreciation at being considered a potential candidate for the role of Supervisory Authority and that the Committee's work was being closely monitored by his Organisation. He added that discussions were underway within ICAO regarding this possibility and, in view of the fact that the ICAO Council was already acting as Supervisory Authority under the Aircraft Protocol, one issue being considered was whether it would also be appropriate for Aviareto to be able to engage in activities other than operation of the International Registry for aircraft objects.¹⁸ In a communication addressed to the Secretariat on 22 February 2011, Mr D. Wibaux, Director of the ICAO Legal Bureau, indicated that he was not able to add anything to what he had said at the previous session of the Committee, explaining that the ICAO Secretariat was neither for nor against ICAO being assigned the functions of Supervisory Authority but that, if it were to be asked to do so, it would be for the ICAO Council to make such a decision, bearing in mind, in particular, that the functions being exercised by the ICAO Council in respect of the International Registry for aircraft objects were carried out on a cost-recovery basis.¹⁹

THE NEXT STEP

27. As mentioned above,²⁰ the substantial progress made at its recent session, not least on the key outstanding issues in general and on the hitherto vexed issue of public service in particular, led the Committee to recommend that the Governing Council authorise the transmission of the revised preliminary draft Protocol as established at the conclusion of its work to a diplomatic Conference, for adoption. It is true that there are still some issues needing to be resolved but, as the Secretariat has sought to demonstrate, virtually all the key outstanding issues were satisfactorily resolved at the session and it is confident that the issues remaining to be resolved are all eminently capable of resolution at a diplomatic Conference, on the basis of the internal consultations that are, as indicated above,²¹ contemplated between now and such a Conference.

28. The Secretariat informed the Council at its 89th session that, in the light of the decision communicated to it in March 2010 by the Government of the member State that had previously announced its preparedness, in the event of the successful completion of a draft Space Protocol, to consider hosting the diplomatic Conference that it would not, after all, be in a position to play host, it was negotiating with a Council member with a view to securing the agreement of that member's Government to host the planned Conference.²² The Secretariat has subsequently learned, unofficially, though, that there must be some question as to whether that Government will indeed be able to undertake such a commitment. It continues, however, to hope that, notwithstanding the difficulty that has arisen in the meantime, the Council member in question may still be able to bring good news to the Council's forthcoming session. With a view though, to arranging a possible fall-back solution, the Secretariat is contemplating the possibility of the planned Conference being held in Rome, on the premises of the Food and Agriculture Organization of the United Nations (F.A.O.), which have been used for each of the five sessions of the Committee and which the Institute has access to without the payment of rent, on the basis, though, of its paying for the individual services that it makes use of, such as security and audio/visual technicians.

29. Experience demonstrates the importance of maintaining momentum in the development of a project and, for this reason, the Secretariat would recommend that, should the Council decide to authorise transmission of the revised preliminary draft Protocol to a diplomatic Conference, for adoption, such a Conference ought to be held, at the latest, within the first quarter of 2012.

¹⁸ Cf. C.G.E./SpacePr./4/Report, § 101.

¹⁹ Cf. C.G.E./SpacePr./5/Report, § 126.

²⁰ Cf. § 6 *in fine, supra*.

²¹ Cf. § 21, *supra*.

²² Cf. C.D. (89) 17, § 43.

KEEPING UP THE MOMENTUM

30. With a view to maintaining momentum, the Secretariat would propose that the time remaining before any diplomatic Conference the convening of which the Council may wish to authorise be spent in seeking to create further consensus around the solutions advocated in the revised preliminary draft Protocol, notably on the key issues, in particular in the commercial space, financial and insurance communities but also in countries that might be considered to be the principal potential beneficiaries of the planned Protocol.

31. The Secretariat has already been asked by the Government of Indonesia to organise a workshop on the revised preliminary draft Protocol and is giving thought to holding this back-to-back, towards the end of the year, with the seminar that it has been invited to organise in the same country on the UNIDROIT Model Law on Leasing. In the course of the development of the revised preliminary draft Protocol, the Secretariat has got to know a number of parties particularly fitted to act as experts at such a workshop.

32. The Secretariat also believes that it would be helpful to organise a similar workshop with a trade federation bringing together representatives of the NewSpace community,²³ with a view to illustrating the benefits that the planned Protocol stands to bring to that community and to build support among that community for the planned Protocol.

33. As already indicated,²⁴ an important task for the planned diplomatic Conference will be to determine the procedure to be followed for designation of the Supervisory Authority. Given the fundamental importance of this question and the establishment of the future international registration system in general, the Secretariat believes that it would also be helpful for consultations to be held in advance of a diplomatic Conference on these matters, to prepare the ground for the decisions to be taken there.

34. All these proposals are, of course, for initiatives supplementary to those consultations that will need to be held in respect of specific outstanding issues, such as default remedies in relation to components, limitations on remedies (controlled goods) and salvage insurance. The Secretariat will, naturally, need to be on hand to facilitate such consultations, where it is requested to do so.

ACTION TO BE TAKEN

35. *The Secretariat would, accordingly, invite the Council, to authorise it to transmit the text of the revised preliminary draft Protocol established at the fifth session of the Committee, as a draft Protocol, to a diplomatic Conference for adoption, in the first quarter of 2012, at a venue to be settled upon by the Council, in the light of the latest information available to it.*

²³ Cf. § 7, *supra*.

²⁴ Cf. § 23, *supra*.