

Agenda item: PL 4.5

**Document C14/13-E**  
**10 March 2014**  
**Original: English**

## **Report by the Secretary-General**

### **ITU'S ROLE AS SUPERVISORY AUTHORITY OF THE INTERNATIONAL REGISTRATION SYSTEM FOR SPACE ASSETS UNDER THE SPACE PROTOCOL**

#### **Summary**

This document is a follow-up to the discussions that took place at the 2012 and 2013 sessions of the Council (Document C12/94 and C13/55), to Council Decision 576 on the possible role of ITU as Supervisory Authority of the International Registration System for Space Assets under the Space Protocol, and presents a status report on the second session of the Preparatory Commission held in Rome, Italy on 27-28 January 2014.

#### **Action required**

The Council is invited **to note** this document and authorize the Secretary-General to continue to express ITU's interest in becoming the Supervisory Authority, noting that the matter of whether or not ITU could become the Supervisory Authority should not be prejudged at this stage.

The Council is also invited **to authorize** the Secretary-General or his representative, to continue to participate in the work of the Preparatory Commission and its Working Groups as an observer.

The Council is invited **to authorize** the Secretary-General to submit a report on this issue to the next Plenipotentiary Conference.

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#### **References**

*Documents [C12/36](#), [C12/94](#), [C13/55](#), [C13/107](#)*

1. In Decision 576 (Document C13/107), Council-13 authorized the Secretary-General to continue to express interest in the ITU becoming the Supervisory Authority, upon or after the entry into force of the Protocol, and to authorize the Secretary-General or his representative to continue to participate in the work of the Preparatory Commission as an observer. Council also instructed the Secretary General to submit to Council-14 and the next Plenipotentiary Conference a report on the outcomes of the Preparatory Commission and the financial, juridical and technical implications of ITU taking on the role of the Supervisory Authority, taking into account developments of the Preparatory Commission up to that time and addressing the clarifications sought by the Council at previous sessions. A report was also requested on financial implications of Secretary General's participation in the meetings of the Preparatory Commission as well as on any financial implications of ITU serving as the Supervisory Authority upon or after the entry into force of the Protocol. Council-13 also instructed the Secretary General to identify mechanisms by which ITU Member States and Sector Members can review or provide comment on the ITU role as the Supervisory Authority.
2. Regarding the questions and comments raised by the Administrations of Japan, Australia, the Philippines, Germany, France, India, Mali, Nigeria, Argentina, Sweden, China, Turkey and the United States of America during Council-12 and Council-13 relating to the possible role of ITU as Supervisory Authority of the International Registration System for Space Assets, the General Secretariat is completing an information document with all necessary information, clarification and background.
3. The second session of the Preparatory Commission for the establishment of the International Registry for Space Assets pursuant to the Space Protocol took place at the headquarters of UNIDROIT in Rome on 27 and 28 January 2014. Prof. Sergio Marchisio (Italy) was reappointed Chairman of the session. There were no meetings of the Working Group I in charge of developing draft regulations for the International Registry for space assets and Working Group II to draft a request for proposals for the selection of a Registrar for the space.
4. The meeting focused on the consideration of the Explanatory Note to the revised draft Space Regulations prepared by Prof. Roy Goode and consideration of other points concerning the revised text of the draft Space Regulations with most of the time taken to discuss the issue of the identification criteria for registration of space assets, in particular satellites and physically linked assets. The question of the determination of the fees for use of the Registry facilities was deferred for a later stage of the discussions, possibly through inclusion in the Procedural Rules following the Regulations.
5. The representative of ITU reaffirmed the interest of this organization for accepting the role of Supervisory Authority for the future Registry for space assets. He informed the Preparatory Commission on the forthcoming ITU meetings during which the question would be discussed, the ITU Council Session in May and the Plenipotentiary Conference at the end of October 2014. In response to practical questions asked by the representative of ITU concerning the precise role of the Supervisory Authority and its liabilities, and the experience of ICAO as Supervisory Authority for the Aircraft Registry, the UNIDROIT Secretariat subsequently provided a memorandum clarifying the precise role of the Supervisory Authority. (See Annex 1)
6. The Preparatory Commission indicated that it was working on the assumption that ITU would eventually accept the role of Supervisory Authority, and that it would be premature to speculate on possible alternatives. Members of the Preparatory Commission were encouraged to contact the delegates of their Administration at ITU in order to give clarifications if needed on the issue to be decided by ITU.

7. Regarding the issue of the drafting of a request for proposals for the selection of a Registrar, the Chairman of Working Group II reported that informal discussions had been commenced on how to proceed with the Request for Proposals but that the relevant paperwork could be prepared for the 3rd session of the Preparatory Commission in September 2014.
8. The Preparatory Commission concluded that the text of the draft Regulations to be reviewed would be limited to a few points that were identified while the remaining sections of the Regulations were considered to have been approved in principle by the Commission. Thus, even if the revised draft was not yet definitively approved, 90% of the Regulations have been approved in principle and the entire Regulations would be presented for final approval at the September session of the Commission. At the same session a clearer picture of the proceedings for a Request for Proposals for the selection of the Registrar would also be available.
9. Finally, the Secretary-General of UNIDROIT observed that a 3rd meeting of the Commission would be needed in 2014 in order to discuss the draft Request for Proposals and he suggested that the Preparatory Commission could meet at the headquarters of UNIDROIT on 11-12 September 2014. The Inter-sessional period would be used to finalize the Regulations and prepare a draft Request for Proposals for the selection of the Registrar.
10. All documents related to the second session of the Preparatory Commission have been made available on the SharePoint, open to Council Member States, to share information and comments online (letter DM-12/1031, dated 15 October 2012) at <https://extranet.itu.int/ITU-R/space-assets>.
11. The **Council is invited** to authorize the Secretary-General to continue to express interest in ITU becoming the Supervisory Authority, noting that the matter of whether or not ITU could become the Supervisory Authority should not be prejudged at this stage.
12. The **Council is also invited** to authorize the Secretary-General or his representative, to continue to participate in the work of the Preparatory Commission and its Working Groups.
13. The Secretary-General will prepare a report to PP-14, taking account of the latest development at the 3rd meeting of the Preparatory Commission and the financial, juridical and technical implications for ITU.

## ANNEX 1

### **CLARIFICATION NOTE ON THE ROLE OF THE SUPERVISORY AUTHORITY OF THE INTERNATIONAL REGISTRATION SYSTEM FOR SPACE ASSETS UNDER THE SPACE ASSETS PROTOCOL TO THE CAPE TOWN CONVENTION**

**(prepared by the UNIDROIT Secretariat - 10 February 2014)**

This brief Note is intended to provide information on the implications of ITU acting in the capacity of Supervisory Authority of the international registration system for space assets which is to be established under the Space Protocol to the 2001 Cape Town Convention on International Interests in Mobile Equipment.

It draws on the rules of the Convention and the Space Protocol but will especially point to the practical and successful experience of the International Civil Aviation Organization (ICAO) that has been acting as Supervisory Authority for the International Registry for aircraft objects under the Aircraft Protocol to the Convention since the Registry entered into operation in March 2006.

#### **The role of the Supervisory Authority**

1. The role of the Supervisory Authority is to provide for the establishment of the International Registry, to appoint and supervise the Registrar, to make or approve regulations for the operation of the International Registry, to set fees and the amount of insurance or a financial guarantee to be procured by the Registrar against its liability under the Convention (see paragraph 8 below) and to perform other activities set out in Article 17 of the Cape Town Convention. These include periodic reports to Contracting States on the discharge of its obligations under the Convention and Space Protocol.

2. The Supervisory Authority is concerned solely with the International Registry. It has no responsibility for interpretation of the Protocol, its implementation in matters not pertaining to the Registry or any other functions or activities not related to the Registry. Interpretation is ultimately a matter for national courts, which for this purpose can have regard to the Official Commentary on the Convention and Space Protocol. Similarly, the Supervisory Authority is not responsible for adjudicating on a particular registration, nor does it give instructions to the Register to change any data relating to a particular registration.

#### **The Preparatory Commission**

3. If ITU decides to assume the office of Supervisory Authority it will be in the position of taking over responsibility for an International Registry that will already be fully operational. All the preliminary work in setting up the International Registry, including negotiation of the contract to establish and maintain the Registry, the preparation of the first regulations and the appointment of the first Registrar, will have been done in advance by the Preparatory Commission established pursuant to Resolution 1 of the diplomatic Conference held in Berlin in February 2012. The Preparatory Commission, acting as provisional Supervisory Authority, would hand over responsibility to ITU only at the point when the International Registry is fully functional and the regulations governing its operations have been established. It would, of course, be open to ITU to amend, add to or replace the regulations as it sees fit.

4. The Preparatory Commission is well advanced in the preparation of the regulations, which are based on the latest (6th) edition of the regulations for the aircraft Registry. The Preparatory Commission has held two meetings and the draft regulations are very nearly complete. Indeed, there remains only the question of identification criteria for payloads and parts of a spacecraft or payload.

#### **The Committee of experts and the International Registry Advisory Board**

5. Resolution 3 invites the Supervisory Authority to establish a Commission of Experts, consisting of not more than 20 members nominated by the Signatory and Contracting States to the

Protocol, having the necessary qualifications and experience, to assist the Supervisory Authority in the discharge of its functions. A similar committee, CESAIR, a body of governmental civil aviation officials, was set up to advise ICAO as Supervisory Authority for aircraft objects. The International Registry for aircraft objects set up an International Registry Advisory Board (IRAB), which is a group of industry special legal and technical experts, to advise the Registrar on the needs of users of the registration system. IRAB makes recommendations to CESAIR which considers them and, with such modifications as it considers necessary, recommends them to the Council of ICAO.

#### **The work involved for ITU**

6. It will be apparent from the preceding paragraphs that while ITU as Supervisory Authority would be responsible for the superintendence of the International Registry for space assets the burden on it would be relatively light. The registry would be fully operational when ITU takes over from the Preparatory Commission, the necessary industry expertise will come from the equivalent of IRAB if the International Registry establishes this and the committee of government experts will evaluate any proposals and submit them to ITU with such amendments as it considers appropriate. Over the past eight years of Registry operations, this arrangement has worked extremely well for ICAO, which has not found it necessary to recruit a single extra member of its staff to fulfil its functions.

#### **Would ITU incur any potential liability?**

7. The short answer is no. Under Article 27(2) the Supervisory Authority and its officers and employees enjoy such immunity from legal or administrative process as is specified in the Protocol. Article XXVIII(2) of the Space Protocol provides that the Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise. As a United Nations specialized agency ITU already enjoys, on the plane of international law, the privileges and immunities set out in the standard clauses in the 1947 United Nations Convention on the Privileges and Immunities of the Specialized Agencies and Annex IX to that Convention with respect to countries that are parties to the Convention (there are currently 123 parties). ITU itself will be familiar with Sections 4-6 of Article III of the Convention, which provide that the specialized agencies, together with their property, assets, premises and archives are inviolable and that they enjoy immunity from every form of legal process except so far as in any particular case they have waived their immunity.

#### **Liability of the Registrar**

8. By contrast, under Article 28 of the Cape Town Convention the Registrar is strictly liable for compensatory damages for loss suffered by a person directly resulting from an act or omission of the Registrar and its officers and employees or from a malfunction of the international registry system and is required to cover this liability by insurance or a financial guarantee in an amount determined by the Supervisory Authority. In the case of the International Registry for aircraft objects the current level of cover is USD 130 million. In its eight years of operation, in which it has effected some 420,000 registrations, the Registry has not received a single claim.

#### **Immunity of Registry assets**

9. The assets, documents, data bases and archives of the International Registry are inviolable and immune from seizure or other legal or administrative process but may be accessed by any claimant pursuing a claim against the Registrar.

#### **Amending/revision process for the Space Protocol**

10. Article XLVII of the Protocol provides that at the request of not less than 25 per cent of the States Parties, Review Conferences of the States Parties shall be convened by UNIDROIT as Depositary in consultation with the Supervisory Authority. UNIDROIT would thus be responsible

for the organization of any Review Conference but would, of course, act in close collaboration with ITU if it assumed the position of Supervisory Authority.

**Fees and costs**

11. Under Article XXXII of the Protocol the fees for the services and facilities of the International Registry are to be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with its functions under Article 17(2) of the Convention. This corresponds to Article XX(3) of the Aircraft Protocol. Thus ITU, like ICAO, would be able to recover from Registry fees its reasonable costs in performing its functions, and of course the fees would also be set to cover the costs of the Registrar and Registry staff but not to provide a profit.

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