

PLENARY MEETING

Document 62-E
8 August 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

During the last few years, the International Telecommunication Union (ITU) has shown a strong interest in becoming the Supervisory Authority of the future International Registration System for Space Assets under the Space Protocol. This report is a follow-up to the 2011, 2012, 2013 and 2014 Council sessions as well as the 1st and 2nd session of the Preparatory Commission relating to the possible role of ITU as Supervisory Authority of the International Registration System for Space Assets and presents some background, clarification and information in this regard.

Action required

This report is transmitted to the Plenipotentiary Conference for consideration and appropriate action.

References

Documents [C11/26](#), [C11/92](#), [C11/100\(Rev.1\)](#), [C11/120](#), [C12/36](#), [C12/68](#), [C12/77](#), [C12/94](#), [C13/15](#), [C13/55](#), [C13/78](#), [C13/107](#), [C14/13](#), [C14/INF/12](#), [C14/51](#), [C14/65](#), [C14/71](#), [C14/94](#), [C14/96](#).

1 Council 2011

1.1 ITU's role as Supervisory Authority of the future international registration system for Space Assets under the draft Space Protocol was first discussed at Council 2011. The Secretary-General stated that the adoption of this protocol could be expected to be a landmark for the industry and would have no financial impact on the Supervisory Authority since the latter would be financed out of fees from international registration. He encouraged councilors not to let this opportunity pass ITU by.

1.2 The major issues discussed at Council 2011 concerned the scope and obligations of the Supervisory Authority and the extent and definition of enforcement, litigation, liability, dispute resolution, financial implications, accountability and responsibility. The questions raised by Member States were addressed during the Council – and the Conference in Berlin in 2012 was expected to clarify certain issues.

1.3 The Council agreed to authorize the Secretary-General to attend the Berlin Conference as an observer and that the matter of whether or not ITU could become the Supervisory Authority should not be prejudged, but ITU Secretary-General could continue to express interest (see Document [C11/100 \(Rev.1\)](#)). The Secretary-General would report back to Council 2012 which would consider the matter further in the light of the output of the diplomatic Conference taking into account the financial, juridical and technical implications.

2 Diplomatic Conference (Berlin, 27 February - 9 March 2012)

2.1 The diplomatic Conference to adopt a Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets was held, under the auspices of UNIDROIT,¹ at the invitation of the Government of the Federal Republic of Germany, in Berlin, from 27 February to 9 March 2012. Forty States and ten international organizations, including ITU, participated in the diplomatic Conference.

2.2 The Conference adopted the text of the [Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets](#) (Space Protocol) and also by consensus the five Resolutions that are set out in annexes to [the Final Act of the diplomatic Conference](#).

2.3 As instructed by Council 2011, the observer representing the ITU Secretary-General expressed the interest for ITU to become the Supervisory Authority of the International Registry for Space Assets, subject to consideration of the matter by the governing bodies of ITU and without prejudice to the decision to be taken by them in this regard, in the light of the outcome of the Conference, taking into account the financial, juridical and technical implications of such a decision.

2.4 The Conference adopted [Resolution 1](#) relating to the setting up of the Preparatory Commission for the Establishment of the International Registry for Space Assets, which resolves “to establish, pending the entry into force of the Protocol, a Preparatory Commission to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry for space assets, under the guidance of the General Assembly of UNIDROIT”. Such Preparatory Commission shall be composed of persons, having the necessary qualifications and experience, nominated by one-third of the negotiating States, with ITU, the International Civil Aviation Organization (ICAO), the Intergovernmental organization for Carriage by Rail (OTIF) and representatives of the commercial space, financial and insurance communities and other interested parties being invited to participate in the work of the Preparatory Commission as observers.

¹ The International Institute for the Unification of Private Law (UNIDROIT) is an independent intergovernmental organization which was set up in 1926 in Rome. Its statutory purposes are to study needs and methods for modernizing, harmonizing and coordinating private law as between States and groups of States as well as to formulate uniform law instruments, principles and rules to achieve those objectives.

2.5 In its [Resolution 2](#), relating to the establishment of the Supervisory Authority for the international registry for Space Assets, and taking account ITU's interest, the Conference invites the governing bodies of ITU:

- (1) to consider the matter of the ITU becoming Supervisory Authority upon or after the entry into force of the Protocol and take the necessary action, as appropriate; and
- (2) to inform the Secretary-General of UNIDROIT accordingly.

3 Council 2012

3.1 Following the Council's discussions in 2011 on the possible role of ITU as Supervisory Authority of the future international registration system for space assets under the draft Space Protocol, a status 2 report on the diplomatic Conference was presented at Council 2012 (see Document [C12/36](#)) with the suggested follow-up actions. Council 2012 agreed to authorize the Secretary-General to continue to express interest in the ITU becoming the Supervisory Authority, noting that the matter of whether or not ITU could do so should not be prejudged at this stage, and also authorized the Secretary-General or his representative to participate in the work of the Preparatory Commission as observer once this Commission was established. The Secretary-General was invited to report back to Council 2013 which would consider the matter further in light of the development on the establishment of the Preparatory Commission and progress if any, taking into account the financial, juridical and technical implications for ITU.

4 Preparatory Commission (Rome, 1st session, 6-7 May 2013)

4.1 The first 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 6 and 7 May 2013. In accordance with Resolution 1 of the diplomatic Conference relating to the setting up of the Preparatory Commission and pending the entry into force of the Protocol, the Commission is currently acting with full authority as the Provisional Supervisory Authority.

4.2 The Commission established two working groups: Working Group I to develop draft regulations for the International Registry for space assets to be chaired by Mr Igor Porokhin (Russian Federation) with the participation of the People's Republic of China, France, Germany, Russian Federation, South Africa, and United States of America, as well as ITU, SES and Thales Alenia Space as observers; and Working Group II to draft a request for proposals for the selection of a Registrar for the space registry to be chaired by Mr Bernhard Schmidt-Tedd (Germany) with the participation of the People's Republic of China, Czech Republic, France, Germany, Italy, and Russian Federation, as well as ITU as observer. The Commission also agreed on a time-frame proposing that a meeting of Working Group I be organized at the beginning of 2014 depending on the inter-sessional work conducted, followed by a possible meeting of Working Group II by April 2014.

5 Council 2013

5.1 As a follow-up to the discussions that took place at the 2012 session of the Council and the first session of the Preparatory Commission held in Rome, Italy on 6 and 7 May 2013 (see Document [C13/55](#)), Council 2013 discussed in depth the issue relating to the possible role of ITU as Supervisory Authority of the international registration system for space assets under the Space Protocol. The major questions and comments raised by the Member States were related to the financial impacts and logistical considerations in the event of ITU assuming the function of Supervisory Authority; the linkage between the purposes of the Union, as laid down in the ITU Constitution, and the Space Protocol; the rights and obligations of the Supervisory Authority; the document that would associate ITU with the Protocol; and the possibility for the Union to set freely the amount of the registration fees.

5.2 In line with its previous decisions, Council 2013 adopted Decision 576 on Consideration of the possible role of ITU as Supervisory Authority of the International Registration System for Space Assets Under the Space Protocol. This Decision instructed the Secretary-General:

- 1) to submit to Council-2014 and the next Plenipotentiary Conference a report on the outcomes of the Preparatory Commission and the financial, juridical and technical implications of the 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,
- 2) to report on financial implications of its participation in the meetings of the Preparatory Commission as well as on any financial implications of the ITU serving as the Supervisory Authority upon or after the entry into force of the Protocol, and
- 3) to identify mechanisms by which ITU Member States and Sector Members can review or provide comment on the ITU role as the Supervisory Authority (see Document [C13/107](#)).

6 Preparatory Commission (Rome, 2nd session, 27-28 January 2014)

6.1 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. There were no meetings of 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.

6.2 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.

6.3 Regarding the pending issues for the selection of a Registrar, as well as the finalization of the draft Regulations, the Preparatory Commission agreed to meet at

UNIDROIT headquarters 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.

6.4 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. 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 2).

7 Council 2014

7.1 Keeping in mind the upcoming Plenipotentiary Conference, Council 2014 was given detailed information relating to the possible role of ITU as Supervisory Authority of the International Registration System for Space Assets under the Space Protocol (see Documents **C14/13** and **C14/INF/12**). Nevertheless, some uncertainties still have to be clarified before PP-14. The question and comments were raised by the People's Republic of China (see Document **C14/71**), Japan (see Document **C14/51**), and the United States of America (see Document **C14/65**) as well as by councilors during the sixth and seventh plenary meetings of the Council (see Documents **C14/94** and **C14/96**).

7.2 The main concerns remain focused on the financial, juridical as well as the technical implications on ITU assuming the role of Supervisory Authority; the correlation between the functions of the Supervisory Authority and ITU's mandate, the immunity of ITU, the role of ITU towards the Registrar, the participation of ITU within the Space Protocol, the evaluation of the impact that the acceptance or the refusal of ITU to play the role of Supervisory Authority could cause.

7.3 In line with its previous decisions, Council 2014 noted Document **C14/13** and authorized 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 the current stage. In addition, it authorized 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 also authorized the Secretary-General to submit a report on the matter to PP-14 and to report on progress to Council 2015.

7.4 Following a proposal that the Council should recommend that PP-14 take a decision on the matter, the Council noted the suggestion by an observer that it would be preferable to recommend that PP-14 consider the matter and take necessary action, as appropriate.

7.5 Regarding the questions and comments raised by various administrations, in particular the Administrations of Japan, Australia, the Philippines, Germany, France, India, Mali, Nigeria, Argentina, Sweden, China, Turkey, and the United States of America during Council 2012, Council 2013 and Council 2014 relating to the possible role of ITU as Supervisory Authority of the International Registration System for Space Assets, the secretariat has completed an information document with all necessary information, clarification and background.

7.6 To allow the ITU Secretary-General to carry out this task in a fully transparent manner, a SharePoint on the space protocol issue was created, 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>.

8 The Plenipotentiary Conference is invited to consider this document and to take appropriate action.

ANNEX 1

Supervisory Authority of the international registration system for Space Assets under the Space Protocol

Background – The [Space Protocol](#) is part of a family of international treaties beginning with the [Convention on International Interests in Mobile Equipment](#) (hereinafter referred to as the Convention) and [the Protocol on Matters specific to Aircraft Equipment](#), both opened to signature in Cape Town on 16 November 2001. The Space Protocol is an instrument designed to facilitate asset-based financing for the acquisition and use of space assets, such as satellites and transponders that move beyond frontiers.

Asset-Based Financing - Under an international legal framework of asset-based financing, a creditor could enforce its rights against the equipment in the event of default by the debtor. Such financing lends itself to borrowing involving high-value space assets. Under the current legal regime, it is the law governing the location of the equipment that will normally decide questions regarding the validity, priority ranking and enforcement of security and leasing rights in such equipment. However, there was currently no applicable law governing the location of equipment in space. From the viewpoint of a lender, this situation made the risks of asset-based financing less acceptable.

The International Registry - The Space Protocol has established the legal foundation for the creation, priority ranking and enforcement of security and leasing rights in space-based equipment. One of the key features of the Space protocol is the creation of an international registry for space assets (hereinafter referred to as the Registry) in which those rights may be registered. The Registry would determine priority among rights on the basis of the first-come, first-served principle to give lenders a degree of legal certainty relating to asset-based financing. The Registry would be operated and administered by the Registrar on a twenty-four hour /seven days a week basis.

Space Assets - “Space asset”, as preliminary defined in the Space protocol means any man-made uniquely identifiable asset in space or designed to be launched into space, and comprising

(i) a spacecraft, such as a satellite, space station, space module, space capsule, space vehicle or reusable launch vehicle [in respect of which a registration may be effected in accordance with the regulations], whether or not including a space asset falling within (ii) or (iii) below;

(ii) a payload (whether telecommunications, navigation, observation, scientific or otherwise) in respect of which a separate registration may be effected in accordance with the regulations; or

(iii) a part of a spacecraft or payload such as a transponder, in respect of which a separate registration may be effected in accordance with the regulations, together with all installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto.

Role and Functions of the Supervisory Authority - The Supervisory Authority would oversee the operation of the Registry by the Registrar. In particular, it would appoint and, where necessary, dismiss the Registrar, monitor its activities, establish regulations in relation to the functioning of the Registry after approval by Contracting States and could be assisted by a commission of experts nominated by Signatory and Contracting States. It would determine and periodically review the structure of fees for the Registry's services.

Procedures for Selecting the Supervisory Authority - The States represented at the diplomatic Conference (Berlin, February/March 2012) adopted Resolution 1 relating to the setting up of the Preparatory Commission for the Establishment of the International Registry for Space Assets and Resolution 2 relating to the Establishment of the Supervisory Authority, taking account of the interest expressed at the Conference by ITU observers for ITU to possibly become the Supervisory Authority, subject to consideration of the matter by the governing bodies of ITU. Pending the entry into force of the Space Protocol, the Preparatory Commission will act as the Provisional Supervisory Authority, and in the event that the governing bodies of ITU deciding that ITU should not become the Supervisory Authority, the Commission will appoint another international organization or entity for such a role.

Financing - The Supervisory Authority will be financed out of the fees to be paid to the international registry. The future International Registry for space assets is not intended to be a for-profit operation. Article XXXI (4) of the Space Protocol provides that "the fees referred to in Article 17(2)(h) of the Convention shall 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 the performance of the functions, exercise of the powers and discharge of the duties contemplated by Article 17(2) of the Convention". The Supervisory Authority, in setting the fees to be charged, will be entitled to charge for reasonable setting-up costs and the reasonable costs of establishing, operating and regulating the future International Registry and of supervising the Registrar and performing the other functions of the Supervisory Authority.

ANNEX 2

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.
