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| **Agenda item: PL 1.15** | **Revision 1 to**  **Document C17/36-E** |
| **14 March 2017** |
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| Report by the Secretary-General | |
| ITU'S ROLE AS SUPERVISORY AUTHORITY OF THE INTERNATIONAL  REGISTRATION SYSTEM FOR SPACE ASSETS UNDER THE SPACE PROTOCOL | |

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| Summary  This document is a follow-up to the discussions that took place at the 2016 session of the Council 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 work of the Preparatory Commission.  Action required  The Council is invited **to endorse** the matter of ITU becoming Supervisory Authority upon or after the entry into force of the Protocol, and to recommend such course of action to the next Plenipotentiary Conference (PP-18), noting that the final decision on the matter of whether or not ITU could become the Supervisory Authority would be taken at the next Plenipotentiary Conference.  The Council is also invited **to review** the conditions which may be necessary should ITU assume the role of Supervisory Authority (paragraphs 4 to 13) and, as appropriate, **to endorse** these conditions for recommendation to PP-18.  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.  \_\_\_\_\_\_\_\_\_\_\_\_  References  *Documents* [*C11/26*](http://www.itu.int/md/S11-CL-C-0026/en)*,* [*C11/100(Rev.1)*](http://www.itu.int/md/S11-CL-C-0100/en)*,* [*C12/36*](http://www.itu.int/md/S12-CL-C-0036/en)*,* [*C12/94*](http://www.itu.int/md/S12-CL-C-0094/en)*,* [*C13/15*](http://www.itu.int/md/S13-CL-C-0015/en)*,* [*C13/19*](http://www.itu.int/md/S13-CL-C-0019/en)*,* [*C13/55*](http://www.itu.int/md/S13-CL-C-0055/en)*,* [*C13/107*](http://www.itu.int/md/S13-CL-C-0107/en)*,* [*C14/13*](http://www.itu.int/md/S14-CL-C-0013/en)*,* [*C14/INF/12*](http://www.itu.int/md/S14-CL-INF-0012/en)*,* [*PP-14/62 + Add.1*](http://www.itu.int/md/S14-PP-C-0062/en)*,*[*PP-14/INF/1*](http://www.itu.int/md/S14-PP-INF-0001/en)*,* [*C15/26*](http://www.itu.int/md/S15-CL-C-0026/en)*,* [*C15/123*](http://www.itu.int/md/S15-CL-C-0123/en)*,* [*C16/36*](http://www.itu.int/md/S16-CL-C-0036/en)*,* [*C16/120*](http://www.itu.int/md/S16-CL-C-0120/en) |

1 Council 2016 noted that there were no objections of principle to the ITU becoming the Supervisory Authority of the International Registration System for Space Assets under the Space Protocol, but that the Council decision should not appear to pre-empt the next Plenipotentiary Conference (PP-18) decision in 2018. Council 2016 also instructed the Secretary-General to address the issues raised during Council 2016, in particular the conditions and limitations that may be necessary should ITU assume the role of Supervisory Authority and any other matter that may need to be addressed in order for Council 2017 to make a decision on a recommended course of action to PP-18.

2 The Preparatory Commission for the establishment of the International Registry for Space Assets to the Space Protocol held its 5th meeting on 6 December 2016 (teleconference). The call focused on the open issues connected with the implementation of the Space Protocol to the Cape Town Convention. As was recalled by participants in the teleconference, the Space Preparatory Commission greatly advanced its work during the time of its operation, with the final adoption of the baseline Registry Regulations as well as the Rules for appointment and functioning of the future Space CESAIR (Commissions of Experts). Participants in the call pointed out that the space industry is changing towards a more open market and participation of smaller actors, with an increase in the volume of assets, which may lead to increased industry support in the future. While many questions, including the appointment of the Registrar, are strictly interrelated, the Preparatory Commission agreed to concentrate on the short-term strategy towards the appointment of a Supervisory Authority, on the one hand, and gaining governmental and industry support, on the other.

3 Regarding the questions and comments raised by administrations during the previous Council sessions relating to the possible role of ITU as Supervisory Authority of the International Registration System for Space Assets, attention is drawn to the list of documents under references above, in particular Annex 1 of Document C14/13 and PP-14 Documents 62 and INF/1, which provide all the necessary information, clarification and background.

4 Regarding the questions raised by the Council at its 2016 meeting concerning the conditions and restrictions which might have to be applied to ITU's agreement should the 2018 Plenipotentiary Conference decide that ITU can assume the role of Supervisory Authority, it is important to recall certain fundamental points.

5 Firstly, it should be emphasized that ITU's acceptance of that role would not give rise to any obligation or liability (direct or indirect) for the Union's Member States since, in legal terms, only ratification of the Space Protocol by a Member State can give rise to legal obligations incumbent on that State.

6 Secondly, regarding ITU's role in relation to the Protocol, it would be very limited since ITU would not be the Depositary of the Protocol, nor would it be the guarantor of its implementation, application or interpretation, still less so with regard to the Convention on International Interests in Mobile Equipment. On the other hand, as the Supervisory Authority, it would be in a position if necessary to communicate the needs of the ITU parties and to prevent divergences arising between the Protocol and the Union's basic texts, in so far as, by virtue of Article XLVII of the Protocol, the Supervisory Authority plays an active part in drawing up the annual reports prepared by the Protocol Depositary and an important advisory role in the Review Conferences responsible for amending or revising the Protocol.

7 Nevertheless if ITU were to accept the role of Supervisory Authority, it **should also make it a condition of acceptance** that it reserves the full right to renounce that role at any time if, in the Union's opinion, that role were to become incompatible or come into conflict with the Union's basic texts as a result in particular of amendments to the Protocol. In that regard it is important to emphasize that ITU, not being a Party to the Protocol, could not be bound by any amendment made to the Protocol in the future without its express agreement. On this point too, **it is recommended** that this condition be stated explicitly in any agreement by which ITU accepts the role of Supervisory Authority.

8 Similarly, even if Article XXXV of the Protocol establishes a hierarchy of standards between the Convention on International Interests in Mobile Equipment and ITU's own legal instruments such that, in the event of divergence, the Union's instruments take precedence, **it is important** to make ITU's acceptance subject to the following conditions:

• In the event of a divergence between the provisions of the Protocol and those of ITU's basic texts, the latter shall take precedence.

• ITU reserves the right, without incurring any liability, not to undertake any action as Supervisory Authority that would be in conflict with the Union's basic texts.

9 With regard to the actual role of Supervisory Authority, it is limited to establishing the International Registry, appointing the Registrar and overseeing the latter's activities, approving and amending the Registry regulations, as well as setting registration fees and the level of insurance required for the Registrar, all of which would be done with the help of a Commission of Experts.

10 ITU would thus not take on the role of Registrar and would not assume the liabilities associated with that function. Similarly ITU would not manage or administer the Registry or keep it up to date. It is thus the Registrar who will bear objective liability and will, if necessary, be responsible for paying compensation for any losses incurred by a person (physical or moral) where those losses arise directly as a result of an error or omission on the part of the Registrar or of a failure in the international registration system (and the Registrar will be required to take out appropriate insurance against that eventuality).

11 The above considerations notwithstanding, it should be recalled that in accordance with Article XXVII (2) of the Protocol, the Supervisory Authority, its officers and employees, enjoy immunity from any legal or administrative process, under the terms of the international agreements applicable to them as an international entity or otherwise.

12 Nevertheless **it is important** to make it a condition that ITU's acceptance of the role of Supervisory Authority shall not constitute or be interpreted as a derogation or renunciation, express or tacit, of the privileges, immunities and facilities enjoyed by ITU and its staff under the applicable international agreements, or as subjecting ITU to any national legislation or jurisdiction.

13 Lastly, **it would be desirable** for any formal ITU agreement to act as Supervisory Authority to be of a reasonable and limited duration (for example, four years, the period between plenipotentiary conferences), and to be not tacitly renewable but renewable only with the express agreement of ITU. This would allow PP-22 to decide, without undue pressure and on an informed basis, whether ITU should or should not continue that activity.

14. In Document C17/94, the Administration of the USA raised several points as to the relevance of the Space Protocol registration process and the burden that this process may cause to the satellite industry. These concerns do not all relate directly to the role of ITU as Supervisory Authority, but may receive the following responses:

a) On the burden for the satellite industry to have to follow additional regulatory steps: the regulations mentioned in the protocol would be applicable only to those operators wishing to secure financing through this registration process, on a voluntary basis;

b) On the possible difficulties to uniquely identify space assets, as previously explained, ITU would be in a better position to have its word on any future improvements to the Protocol to resolves these difficulties if it was the Supervisory Authority rather than being an outside player which is not welcome in the discussion;

c) On the possible distraction at senior management level, if ITU was to become the Supervisory Authority, the amount of work (estimated to less than two additional staff fully recovered) and the level of responsibility involved for ITU do not seem to involve any risk of distraction. This risk would certainly be much higher if ITU had to worry on the possible evolution or interpretation of the protocol once it has declined the offer of being involved in the process.

15 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>.

16 In order to assist the ongoing progress in the establishment of the international registry for space assets, the Councilis invited **to endorse** the matter of ITU becoming Supervisory Authority upon or after the entry into force of the Protocol, and to recommend such course of action to PP‑18, noting that the final decision on the matter of whether or not ITU could become the Supervisory Authority would be taken at the next Plenipotentiary Conference.

17 The Councilis 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.

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