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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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| SummarySince 2011, the International Telecommunication Union (ITU) has discussed its possible role as Supervisory Authority of the International Registration System for Space Assets under the Space Protocol. This document reports the activities of the 2015, 2016, and 2017 Council sessions, as well as the 4th and 5th sessions of the Preparatory Commission, related to the possible role of ITU as Supervisory Authority of the International Registration System for Space Assets. This report also presents the conclusions and recommendations of Council 2017. Action requiredBased on the recommendations of Council 2017, the Plenipotentiary Conference is invited to **consider** this report, **decide** whether ITU should become the Supervisory Authority of the International Registration System for Space Assets under the Space Protocol.\_\_\_\_\_\_\_\_\_\_\_\_References*Documents* [*C11/26*](http://www.itu.int/md/S11-CL-C-0026/en)*,* [*C11/92*](http://www.itu.int/md/S11-CL-C-0092/en)*,* [*C11/100(Rev.1)*](http://www.itu.int/md/S11-CL-C-0100/en)*,* [*C11/120*](http://www.itu.int/md/S11-CL-C-0120/en)*,* [*C11/121*](https://www.itu.int/md/S11-CL-C-0121/en)*,* [*C12/36*](http://www.itu.int/md/S12-CL-C-0036/en)*,* [*C12/68*](http://www.itu.int/md/S12-CL-C-0068/en)*,* [*C12/77*](http://www.itu.int/md/S12-CL-C-0077/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)*,* [*C13/55*](http://www.itu.int/md/S13-CL-C-0055/en)*,* [*C13/78*](http://www.itu.int/md/S13-CL-C-0078/en)*,* [*C13/107*](http://www.itu.int/md/S13-CL-C-0107/en)*,*[*C13/119*](https://www.itu.int/md/S13-CL-C-0119/en)**,** [*C13/120*](https://www.itu.int/md/S13-CL-C-0120/en)**,** [*C13/121*](https://www.itu.int/md/S13-CL-C-0121/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)*,* [*C14/51*](http://www.itu.int/md/S14-CL-C-0051/en)*,* [*C14/65*](http://www.itu.int/md/S14-CL-C-0065/en)*,* [*C14/71*](http://www.itu.int/md/S14-CL-C-0071/en)*,* [*C14/94*](http://www.itu.int/md/S14-CL-C-0094/en)*,* [*C14/96*](http://www.itu.int/md/S14-CL-C-0096/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)*,* [*PP-14/161(Rev.1)*](https://www.itu.int/md/S14-PP-C-0161/en)*,* [*PP-14/175*](https://www.itu.int/md/S14-PP-C-0175/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)*,* [*C16/82*](https://www.itu.int/md/S16-CL-C-0082/en)*,* [*C16/118*](https://www.itu.int/md/S16-CL-C-0118/en)*,* [*C16/119*](https://www.itu.int/md/S16-CL-C-0119/en)*,* [*C16/120*](http://www.itu.int/md/S16-CL-C-0120/en)*,* [*C17/36(Rev.1)*](https://www.itu.int/md/S17-CL-C-0036/en)*,* [*C17/94*](https://www.itu.int/md/S17-CL-C-0094/en)*,* [*C17/111*](https://www.itu.int/md/S17-CL-C-0111/en)*,* [*C17/128*](https://www.itu.int/md/S17-CL-C-0128/en)*.* |

**1 Introduction**

1.1 The 2014 Plenipotentiary Conference approved that the Council continue to monitor any further developments on the matter of the ITU’s role as Supervisory Authority of the International Registration System for Space Assets under the Space Protocol and that the secretariat continue to express interest in ITU becoming the Supervisory Authority and respond to any questions raised by Member States until the next Plenipotentiary Conference.

1.2 Since the last Plenipotentiary Conference, this matter was discussed during the 2015, 2016, and 2017 Council sessions, which reached a conclusion that is submitted to the Conference for decision.

**2 Background**

2.1 The [Space Protocol](http://www.itu.int/en/ITU-R/space/spaceAssetsProtocol/potocolSpaceAssets09032012-EN.pdf) is part of a family of international treaties beginning with the [Convention on International Interests in Mobile Equipment](https://www.unidroit.org/instruments/security-interests/cape-town-convention) (hereinafter referred to as the Convention) and [the Protocol on Matters specific to Aircraft Equipment](https://www.unidroit.org/instruments/security-interests/aircraft-protocol), 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. The text of the Space Protocol and of the associated Resolutions are available at the following address: <https://www.itu.int/en/ITU-R/space/spaceAssets/Forms/spaceAssetsWebView.aspx>.

2.2 Annexes 2 and 3 to the present Report provide additional information on the Space Protocol and the role of the Supervisory Authority under this Protocol.

2.3 Annex 1 summarizes discussions on ITU’s role as Supervisory Authority of the International Registration System for Space Assets under the Space Protocol since 2011.

**3 Recommendation from Council 2017**

3.1 At its 2017 session, the Council considered the topic of the ITU’s role as Supervisory Authority of the International Registration System for Space Assets under the Space Protocol as it had done since 2011. During the consideration, it was recalled that the acceptance by ITU of the role of Supervisory Authority would have to be formalized through an agreement between UNIDROIT and ITU.

3.2 The Chairman of the Council **noted** from the discussions on this topic “the absence of objections of principle to ITU becoming the Supervisory Authority” and the “general agreement that the final decision should be taken by the ITU Plenipotentiary Conference (PP-18)” (see §3.9 of [Document C17/128](https://www.itu.int/md/S17-CL-C-0128/en)).

3.3 Notwithstanding this absence of objection, the Council **endorsed** a set of conditions for **recommendation** to PP-18, should it decide that ITU will assume the role of Supervisory Authority. These conditions are set out in §§4 to 13 of [Document C17/36(Rev.1)](https://www.itu.int/md/S17-CL-C-0036/en) and reproduced below:

“*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.*”

3.4 Moreover, the Council authorized the ITU Secretary-General (or his representative) to continue to participate in the work of the Preparatory Commission and its working groups.

**4 Preparatory Commission (Rome, 5th session, 6 December 2017)**

4.1 The Preparatory Commission for the establishment of the International Registry for Space Assets to the Space Protocol held its fifth session on 6 December 2017 at the headquarters of UNIDROIT in Rome. The conclusions and recommendations (notably the set of conditions listed in § 3 above) of the 2017 session of the Council related to the appointment of ITU as Supervisory Authority in the Space Protocol were reported to the Preparatory Commission. The Preparatory Commission welcomed this development. UNIDROIT offered its help in developing information material in order for delegations attending the Plenipotentiary Conference of 2018 to be better informed about the Space Protocol.

4.2 Following the report on the outcome of Council 2017, UNIDROIT informed ITU that it “has no objections to the aforementioned conditions put forward by the ITU. These conditions are restatements of Articles already present within the Cape Town Convention and its Space Protocol. If the ITU were to undertake the role of Supervisory Authority for the Space Protocol, it would only take upon the responsibilities accrued by this role as stated within Articles 17 and XXVIII of the Cape Town Convention and its Space Protocol respectively.”

4.3 UNIDROIT also mentioned that the wording of condition in §13 of [Document C17/36(Rev.1)](https://www.itu.int/md/S17-CL-C-0036/en) raises a practical issue as there is a possibility that the Space Protocol might not enter into force by 2022. Hence, this condition should be worded in a manner which allows for a review process to be commenced four years after ITU formally starts to perform the role of Supervisory Authority.

**5 Conclusion**

5.1 Based on the recommendations from the Council at its 2017 session (see §3.2 above) and noting that UNIDROIT indicated that it has no objections to the conditions put forward by ITU (see §4.2 above), the Plenipotentiary Conference is invited to: **consider** the present report; **decide** whether ITU should become the Supervisory Authority of the International Registration System for Space Assets under the Space Protocol, upon or after the entry into force of the Protocol, under the conditions listed in §3.3 above.

ANNEX 1

**Summary of discussions on the ITU’ role as Supervisory Authority of the international registration system for Space Assets under the Space Protocol**

**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)](http://www.itu.int/md/S11-CL-C-0100/en)). 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]](#footnote-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](http://www.itu.int/en/ITU-R/space/spaceAssetsProtocol/potocolSpaceAssets09032012-EN.pdf) (Space Protocol) and also by consensus the five Resolutions that are set out in annexes to [the Final Act of the diplomatic Conference](http://www.itu.int/en/ITU-R/space/spaceAssets/DCME-SP-Doc43-finalAct-EN.pdf).

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](http://www.itu.int/en/ITU-R/space/spaceAssets/DCME-SP-Doc43-resolution1-EN.pdf) 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.

2.5 In its [Resolution 2](http://www.itu.int/en/ITU-R/space/spaceAssets/DCME-SP-Doc43-resolution2-EN.pdf), 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 report on the diplomatic Conference was presented at Council 2012 (see Document [C12/36](http://www.itu.int/md/S12-CL-C-0036/en)) 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](http://www.itu.int/md/S13-CL-C-0055/en)), 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](http://www.itu.int/md/S13-CL-C-0107/en)).

**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 3).

**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**](http://www.itu.int/md/S14-CL-C-0013/en)and [**C14/INF/12**](http://www.itu.int/md/S14-CL-INF-0012/en)). 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**](http://www.itu.int/md/S14-CL-C-0071/en)), Japan (see Document[**C14/51**](http://www.itu.int/md/S14-CL-C-0051/en)), and the United States of America (see Document[**C14/65**](http://www.itu.int/md/S14-CL-C-0065/en)) as well as by councilors during the sixth and seventh plenary meetings of the Council (see Documents [**C14/94**](http://www.itu.int/md/S14-CL-C-0094/en) and [**C14/96**](http://www.itu.int/md/S14-CL-C-0096/en)).

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**](http://www.itu.int/md/S14-CL-C-0013/en) 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 Preparatory Commission (Rome, 3rd session, 11-12 September 2014)**

8.1 The third 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 11 and 12 September 2014. The meeting focused on the open issues of the revised draft Space Regulations for the International Registry for space assets prepared by Prof. Roy Goode and comments by administrations and on the draft a request for proposals for the selection of a Registrar for the space assets.

8.2 Progress were made on the Space Regulations and for the last issue still open, the categories of space assets other than a spacecraft, that may be registered, a correspondence group has been created to complete the work by mid-December 2014. 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.

8.3 Regarding the issues for the selection of a Registrar, a first draft Invitation to participate in the solicitations for the International Registry for Space was reviewed. Taken into account the comments expressed during the discussions, a new draft will be circulated by beginning of next year with a view for the invitation to interested parties to submit offers to be formally sent later on in 2015.

8.4 The Preparatory Commission indicated that it was continuing to work on the assumption that ITU would eventually accept the role of Supervisory Authority, and that it would be premature to speculate on possible alternatives at this stage.

**9 Plenipotentiary Conference 2014**

9.1 Based on Document 62 and its Addendum 1 and having considered information contained in Document INF/1, the Conference approved Recommendation 2 from Committee 5 as follows:

 “Recommendation 2: Committee 5 recommends that Council continue to monitor any further developments on this matter, and that the Secretariat continue to express interest in ITU becoming the Supervisory Authority and respond to any questions raised by the Member States between now and the next Plenipotentiary Conference.”

**10 Council 2015**

10.1 The decision taken by PP-14 was recalled. Moreover a report of the third session of the Preparatory Commission for the establishment of the International Registry for Space Assets (September 2014) was presented: the Commission focused on the open issues of the revised draft Space Regulations for the International Registry for space assets, and on the draft request for proposals for the selection of a Registrar for the space assets.

10.2 It was indicated by some councillors that the time had come to decide on the substance of the matter. The Council had submitted the matter to PP-14, but the latter had sent the matter back to it. The Council has therefore to take a position on the subject and make a recommendation to the next plenipotentiary conference.

10.3 A majority of councillors wanted ITU to take on the role of supervisory authority. All speakers considered that the Council should be informed of all elements required for it to take a decision on the matter at its next session, recognizing that it would be up to PP-18 to take the final decision.

10.4 The Council agreed to instruct the secretariat to submit to its next session a report containing a complete assessment of the situation together with a timeline and welcomed any contributions from Member States on the subject. The Council also 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 that stage. The Council finally 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, in accordance with the relevant decision taken by PP-14.

**11 Preparatory Commission (Rome, 4th session, 10-11 December 2015)**

11.1 The fourth session of the Preparatory Commission for the establishment of the International Registry for Space Assets to the Space Protocol took place at the headquarters of UNIDROIT in Rome on 10 and 11 December 2015. After consideration of the explanatory note to the revised draft space regulations and a note on linked asset, the draft Space Regulations was unanimously approved. Regarding the request for proposal for the selection of a Registrar, the Preparatory Commission agreed with a simplified and more efficient approach to initiate discussions with the two current Registrars (Aircraft and Rail). The draft Rules of Procedure for the Commission of Experts of the Supervisory Authority established by the Protocol was discussed and further agreed by correspondence.

11.2 The Preparatory Commission, established pursuant to Resolution 1 of the diplomatic Conference held in Berlin in February 2012, completed all the preliminary work for adopting the first regulations, establishing the Commission of Experts of the Supervisory Authority, initiating negotiation of the contract to establish and maintain the Registry and appoint the first Registrar. The Preparatory Commission, acting with full authority as provisional Supervisory Authority, is continuing working under the assumption in Resolution 2 of the 2012 Diplomatic Conference that ITU would become the Supervisory Authority. Meanwhile, and as long as the governing bodies of ITU consider the matter, the Preparatory Commission will continue acting with full authority as Provisional Supervisory Authority.

**12 Council 2016**

12.1 Following the instruction of Council 2015, a document presenting the progress made by the Preparatory Commission at its December 2015 meeting was introduced (see § 11 above). It was highlighted that the Preparatory Commission may be in a position to hand over responsibility to ITU in 2017, subject to the entry into force of the Space Protocol and provided that ITU officially notified its decision to assume the role of Supervisory Authority.

12.2 Several councillors considered that it would be premature for the Council to endorse the ITU becoming the Supervisory Authority, given that a Registrar remained to be identified. Instead, the Council should continue to monitor developments in the matter and the secretariat to express interest in ITU becoming the Supervisory Authority and to respond to any questions raised by the Member States in the run-up to PP-18.

12.3 Several other councillors said that the smooth implementation of the Space Protocol was predicated on ITU becoming the Supervisory Authority, for which no objections were being raised. The Council was therefore invited to set its own deadline for making a recommendation to PP-18. Council 2017 had to be able to recommend that PP-18 approve ITU becoming the Supervisory Authority, albeit by making that recommendation subject to certain conditions.

12.4 Noting that there were no objections of principle to the ITU becoming the Supervisory Authority, but that the Council decision should not appear to pre-empt the plenipotentiary conference decision in 2018, the Council decided to:

* Continue addressing the matter of ITU becoming Supervisory Authority, noting that the final decision on the matter of whether or not ITU could become the Supervisory Authority should be taken at the next Plenipotentiary Conference.
* 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 and to continue to express interest in ITU becoming Supervisory Authority.
* Instruct the Secretary General to address the issues raised during Council 2016, in particular the conditions and limitations that may be necessary should the 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.

**13 Preparatory Commission (Teleconference, 6 December 2016)**

13.1 The Preparatory Commission for the establishment of the International Registry for Space Assets to the Space Protocol held a teleconference on 6 December 2016. The call focused on the open issues connected with the implementation of the Space Protocol to the Cape Town Convention. It was recalled that 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.

ANNEX 2

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

**Background** – The [Space Protocol](http://www.itu.int/en/ITU-R/space/spaceAssetsProtocol/potocolSpaceAssets09032012-EN.pdf) is part of a family of international treaties beginning with the [Convention on International Interests in Mobile Equipment](https://www.unidroit.org/instruments/security-interests/cape-town-convention) (hereinafter referred to as the Convention) and [the Protocol on Matters specific to Aircraft Equipment](https://www.unidroit.org/instruments/security-interests/aircraft-protocol), 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 3

**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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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. [↑](#footnote-ref-1)