



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

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**PREPARATORY COMMISSION FOR THE ESTABLISHMENT OF
THE INTERNATIONAL REGISTRY FOR SPACE ASSETS
PURSUANT TO THE SPACE PROTOCOL**

UNIDROIT 2017
Prep. Comm. Space/5/Doc. 2
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Fifth session
Rome, 6 December 2017

**SUMMARY REPORT
OF THE FIFTH SESSION
(Rome, 6 December 2017)**

1. The Fifth 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 December 2017 (for the List of Participants see Annex II to this report).

Agenda Item 1: Opening of the session and welcome by UNIDROIT

2. Acting as provisional Chairman, the *Secretary-General a.i.* opened the session and welcomed the delegations and observers, noting the time that had spanned between the meetings of this Commission and acknowledging the work that had been carried out by the Commission since its last session.

Agenda Item 2: Adoption of the agenda and organisation of the business of the session

3. *Professor Sergio Marchisio* (Italy) was reappointed Chairman of the session.

4. The agenda sent out with the invitation was adopted (see Annex I to the present report).

Agenda Item 3: Consideration of matters relating to the selection of a Registrar

5. The *Chairman* opened the discussion on Agenda Item 3 and invited the Secretary General a.i. to introduce the topic.

6. The *Secretary General a.i.* recalled the discussions held upon this topic in previous sessions of this Commission. The question of what type of tender process should be initiated to select the Registrar had been discussed with there being either a possibility of a closed tender or an open tender. The Secretary General a.i. proposed that Mr Rob Cowan, Managing Director at Aviareto informed the participants of the prospective requirements that a Registrar needs to fulfil and shared some of his own experiences of managing the Registry for the Aircraft Protocol of the Cape Town Convention. This would not entail a talk specifically about Aviareto, but would rather open a more general discussion on the appointment of a Registrar and the possibility of starting a process for the selection of a Registrar for the Space Protocol. Others participants were also invited to contribute to this discussion.

7. *Mr Rob Cowan, Managing Director at Aviareto*, took the floor to share his experience of managing the Aircraft Registry. He noted that the primary condition that a Registrar would consider before taking on the responsibility of maintaining a register under an international instrument is the economic case presented by that instrument. Despite the Aircraft Registry being a non-profit entity, and the anticipated Space Registry to follow this course, a Registrar would not be willing to take upon the responsibility of maintaining a register unless the international instrument displayed the capacity to allow the Registrar to recover the costs associated with maintaining its register. Mr Rob Cowan cited the example of the Registrar appointed under the Rail Protocol, a sister company of Aviareto called Regulis S.A. and stressed the importance to build a strong economic case for the Registry under the Space Protocol when the tender process, whether closed or open, was initiated.

8. Mr Rob Cowan noted that the parent company for both Aviareto and Regulis was SITA N.V. This company was not seeking to make a profit out of operating these registries and was operating them for a reputational and public interest benefit. Nevertheless, it would not be willing to undertake a project that would only result in losses with no anticipated income. Henceforth, it would be important to have a strong assessment of how many States are willing to ratify the Space Protocol before a Registrar could be appointed. All tenderers would evaluate the risk associated with undertaking the task of a Registrar and would only bid if the proposition was attractive.

9. Mr Rob Cowan further pointed out some of the complexities of maintaining a Registry: maintaining a website and collecting registrations, alongside being open to audit by the Supervisory Authority, ensuring safety and security of the system and maintaining a good relationship with third parties. He added that at the initial point of establishment, the Registry for the Space Protocol need not be as advanced as the one for Aircraft Protocol and that it could be more simply arranged. This would allow the Registrar to keep the initial costs low with the ability to upgrade its capacity when the Space Protocol started to be widely ratified.

10. In the ensuing discussion, in which several participants took part, the opportunity and feasibility of the future Registrar being allowed to carry out ancillary activities was debated. Furthermore, the importance of a well functioning Working Group driving the process of implementation was underlined. Consideration was given to reinitiating the Space Working Group keeping in mind the recent changes in the composition of the space industry and rise of new space actors. It was noted that the rise of this private sector had also caught the interest of financiers who were looking towards legal regimes that offered greater security for their transactions in terms of creditor rights, repossession of a spacecraft's TT&C and remedies in the case of default by the debtor.

Agenda Item 4: Consideration of matters relating to the appointment of a Supervisory Authority

11. *The Chairman* opened the floor for discussion on Agenda Item 4. He noted the importance of this matter and invited a representative of the ITU to take the floor to provide an update to ITU's consideration of taking up the role of Supervisory Authority for the Space Protocol.

12. *The representative of the ITU* recalled the longstanding relationship between the ITU and UNIDROIT and proceeded to inform the participants of the decision made at the 2017 meeting of the ITU Council. The ITU Council noted the absence of objections of principle to ITU becoming the Supervisory Authority and the general agreement that the ITU's PP-18 should decide whether or not the ITU would serve as the Supervisory Authority for the Space Protocol. ITU Council also recommended to PP-18 that the following conditions being agreed on paper between the ITU and the body that would potentially appoint the ITU as the Supervisory Authority: (i) The acceptance of this role would not give rise to any obligation or liability for the Member States of the ITU as obligations under the Space Protocol could only emanate from a State itself ratifying or acceding to it; (ii) Should the ITU accept this role, it would reserve the right to renounce this role at any point in time if the role put the ITU in conflict with its basic texts. This was particularly important for any future amendments to the Space Protocol noting the fact that the ITU itself, not being a party to the Space Protocol, could not be bound by these without its express agreement; (iii) Despite the supremacy of already existing international law being stated in Article XXXV of the Space Protocol, the ITU would like to explicitly restate that in case of any divergence between the Space Protocol and the basic texts of the ITU, the latter would prevail and consequently the ITU reserves the right, without incurring any liability, not to undertake any action as Supervisory Authority that would be in conflict with the ITU's basic texts; (iv) The ITU would also like to explicitly restate Article XXVIII(2) of the Space Protocol so that the ITU, 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. Additionally, the ITU's acceptance 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; (v) Noting the new nature of this position, the ITU, if it decided to accept the role of Supervisory Authority to the Space Protocol at the Plenipotentiary Conference of 2018, would reserve the right to renew and reconsider this role at the Plenipotentiary Conference of 2022. The representative of the ITU lastly noted that this issue would not be discussed again at Council level.

13. In the ensuing discussion, in which several participants took part, the issue of the legal nature of the conditions presented was posed, as well as the need for the ITU and UNIDROIT to work closely to further discuss this matter. Greater consideration needed to be given to the appropriate way to stipulate these conditions in writing, as such a practice was not adopted for the previous Protocols. It was queried whether the condition through which the ITU's decision to act as Supervisory Authority would be reviewed in 2022 was practical, taking into account the fact that the Space Protocol may still not have entered into force by 2022. The *representative of the ITU* responded noting that such was not the spirit of this condition and that it would be phrased in a manner which allows for a review process to be commenced four years after the ITU formally started to perform the role of Supervisory Authority.

Agenda Item 5: Discussion on promotion activities towards signature and ratification of the Space Protocol

14. The *Chairman* opened the floor for discussion on Agenda Item 5. The *Secretary General a.i.* noted that there presently were four States that had signed the Space Protocol and no ratifications. One important consideration related to the question of the European Union's (EU) mixed competence approach to the Cape Town Convention System. In the past, the EU had signed and ratified the Convention, the Aircraft Protocol and the Rail Protocol. Hence, one important activity that must be conducted to promote the Space Protocol was to identify the relevant organs of the EU in order to seek their signature and approval for the Space Protocol.

15. In the ensuing discussion, in which several participants took part, further avenues of promotion for the Space Protocol were considered. It was noted that 2018 would feature many opportunities, including UNISPACE +50 in Vienna. There was consensus among the participants of the need to be proactive in order to promote the Space Protocol in 2018. The usefulness of developing a document that would be used to present the Space Protocol in an easily understandable and agreeable manner was further suggested. The Annual Conference of the International Bar Association (which was to be held in Rome next year) was also considered as a venue to promote the Space Protocol. Another avenue could be the UNOOSA High Level Forum to be organised in Bonn in 2018.

16. The *Secretary General a.i.* thanked all the participants for their input and noted that this meeting had been very helpful. She summarised the discussion noting the conclusions reached on the subjects of selecting a Registrar, moving forward with the selection of a Supervisory Authority and promoting the Space Protocol actively in 2018.

Agenda Item 6: Planning of further work

17. The *Chairman* noted that many of the aforementioned points created substantial future work to be done by the Commission, and that progress should be monitored and the opportunity to hold another meeting of the Commission was to be considered at a later date.

Agenda Item 7: Any other business

18. The *Secretary General a.i.* invited all the participants of the Commission to attend a panel discussion on Space Financing to be held on 7 December 2017 at 14:30 at UNIDROIT.

Agenda Item 8: Closing of the session.

19. The *Chairman* congratulated the Commission for its work and closed the session at 17:10.

ANNEX I**AGENDA**

**PREPARATORY COMMISSION FOR THE
ESTABLISHMENT OF THE INTERNATIONAL REGISTRY
FOR SPACE ASSETS PURSUANT TO THE SPACE
PROTOCOL**

UNIDROIT 2017
Prep. Comm. Space/5/Doc. 1
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Fifth session
Rome, 6 December 2017

ANNOTATED DRAFT AGENDA

1. Opening of the session and welcome by UNIDROIT
2. Adoption of the agenda and organisation of the business of the session
3. Consideration of matters relating to the selection of a Registrar
4. Consideration of matters relating to the appointment of a Supervisory Authority
5. Discussion on promotion activities towards signature and ratification of the Space Protocol
6. Planning of further work
7. Any other business
8. Closing of the session.

ANNOTATIONS TO THE DRAFT AGENDA

Item No. 1 Information on the opening of the session

1. The session will be held at the seat of UNIDROIT (Via Panisperna 28, 00184 Rome, tel. +39-06-696211) and will be opened on **Wednesday, 6 December 2017 at 2.30 p.m.**

Item No. 2 Adoption of the agenda and organisation of the session

2. The tentative time-table for the session is that it will run on Wednesday 6 December from 2.30 p.m. to 6 p.m. Delegates are also invited to attend the **panel discussion on the challenges and opportunities of financing the space industry to be held as part of the General Assembly of UNIDROIT on Thursday, 7 December 2017** (details will follow).

Items No. 3-4 Consideration of matters relating to the selection of a Registrar; Consideration of matters relating to the appointment of a Supervisory Authority

3. The Preparatory Commission will hear a report from the representative of the ITU regarding the appointment of a Supervisory authority and will consider the stand of above-mentioned matters.

Item No. 5 Discussion on promotion activities towards signature and ratification of the Space Protocol

4. The Preparatory Commission is invited to make suggestions on promotion activities towards signature and ratification of the Space Protocol to be held in 2018.

ANNEX II**LIST OF PARTICIPANTS****STATES**

BRAZIL	Mr Vinicius CARDOSO BARBOSA SILVA Secretary Embassy of Brazil in Italy
	Ms Tatiana RIBEIRO VIANA Political Office Embassy of Brazil in Italy
CHINA (PEOPLE'S REPUBLIC OF)	Mr LI Dongchao Third Secretary Economic & Commercial Counsellor's Office Embassy of the People's Republic of China in Italy
GERMANY	Mr Marvin YUEN Head Delegation Federal Ministry of Justice and Consumer Protection Legal Officer Mohrenstrasse 37 10117 Berlin
	Mr Bernhard SCHMIDT-TEDD (Vice-Chair; Chair of Working Group on RFP) Head of Legal and Business Support Space Administration German Aerospace Center
INDIA	Mr A.R. NAYAK Attaché Embassy of India in Italy
ITALY	Mr Enrico PADULA Counselor Directorate General for Cultural and Economic Promotion and Innovation Ministry of Foreign Affairs and International Cooperation
	Mr Sergio MARCHISIO (Chair) Professor of Law Sapienza University of Rome
UNITED STATES OF AMERICA	Mr Louis EMERY Senior Counsel Office of the General Counsel Import-Export Bank of the United States of America

Ms Daleya S. UDDIN
 Alternate Permanent Representative
 U.S. Mission to the UN Agencies in Rome

INTERNATIONAL ORGANISATIONS

INTERNATIONAL TELECOMMUNICATIONS
 UNION (ITU)

Mr Alexandre VALLET
 Chief
 Space Services Department
 Radiocommunication Bureau

Mr Arnaud GUILLOT
 Legal Adviser
 Head Legal Affairs Unit

REPRESENTATIVES OF THE RELEVANT INTERNATIONAL COMMERCIAL AND FINANCIAL COMMUNITIES

Mr Oliver HEINRICH

Partner
 BHO Legal

Mr Vittorio COLELLA

Senior Vice President
 Telespazio
 Legal Affairs

Mr Francesco AMICUCCI
 (*excused*)

General Counsel
 Head of Legal, Contract Management, Export
 Control and Logistics
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Mr Rob COWAN

Managing Director
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Ms Anna VENEZIANO
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