



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

THE IMPLICATIONS OF THE INTERNATIONAL TELECOMMUNICATION UNION ACTING AS SUPERVISORY AUTHORITY OF THE FUTURE INTERNATIONAL REGISTRATION SYSTEM FOR SPACE ASSETS

**I.T.U. Council information meeting
(Geneva, 13 October 2011)**

THE CAPE TOWN CONVENTION REGIMEN

- General rules applicable to the taking of security in mobile equipment contained in Convention
- Special equipment-specific rules adapting general rules contained in Protocols
- Legal and economic objectives:
 - *Overcoming of lack of legal certainty for creditors resulting from equipment's cross-border mobility*
 - *Increasing availability of asset-based financing for such transactions*
 - *Reduction of cost of such financing, especially for smaller and start-up companies*

STATUS OF CONVENTION AND PROTOCOLS TO DATE

- Convention (opened to signature on 16.XI.2001): 49 Contracting Parties
- Aircraft Protocol (opened to signature on 16.XI.2001): 41 Contracting Parties
- Rail Protocol (opened to signature on 23.II.2007): not yet in force
- Draft Space Protocol: to be finalised by a diplomatic Conference to be held in Berlin, at the invitation of the German Government, from 27.II.2012 to 9.III.2012

ELECTRONIC INTERNATIONAL REGISTRY

- For registration of international interests in mobile equipment covered by Convention as applied through relevant Protocol
- Searchable by parties interested in finding out financial status of a particular asset
- Accessible on-line at all times
- Establishing first-in-time priority rule as regards registrations
- Operated by a Registrar who is supervised by a Supervisory Authority (S.A.)
 - *Registrar of International Registry for aircraft objects is Aviareto and S.A. is International Civil Aviation Organization (ICAO)*
 - *more than 265,000 registrations registered in Aircraft Registry against more than 77,000 aircraft objects*

DRAFT SPACE PROTOCOL

- Implements and adapts the Convention to space assets
- Sphere of application:
 - *Definition of “space asset” (Article I(2)(l))*
 - *Drawn broadly to take account of future technological developments*
 - *“payloads” included as separate and distinct asset capable of registration*
 - *Debtor’s rights (Article I(2)(a))*
 - *Includes “rights to payment or other performance due or to become due to a debtor by any person with respect to a space asset”*
 - *Permits creditors to secure rights to revenue stream generated by a space asset*

EXEGESIS OF DRAFT SPACE PROTOCOL

- Preliminary draft prepared by broadly-based industry working group at invitation of President of UNIDROIT
- Preliminary draft reviewed by UNIDROIT Committee of governmental experts over five sessions, involving 57 States, Organisations such as I.T.U. and leading representatives of commercial space sector
- Participation in Committee of governmental experts open to all members of U.N./COPUOS

ROLE OF SUPERVISORY AUTHORITY

- I.T.U. has expressed an interest in being considered for role of Supervisory Authority
- What would be the implications of it assuming such functions?

LEGAL STATUS OF SUPERVISORY AUTHORITY

Relevant rules to be found in Convention and draft
Space Protocol:

- *“There shall be a Supervisory Authority as provided by the Protocol” (Article 17(1) of Convention)*
- *S.A. granted legal personality (Article 27(1) of Convention)*
- *S.A. granted immunity from legal and administrative process with this immunity to be spelled out in the relevant Protocol (Article 27(2) of Convention)*
- *Officers and employees of S.A. granted “such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise” (Article XXVIII(2) of draft Protocol)*

LEGAL STATUS OF SUPERVISORY AUTHORITY

(continued)

- *“The Supervisory Authority shall enjoy exemption from taxes and other such privileges as may be provided by agreement with the host State” (Article 27(3)(a) of the Convention)*
- *“The assets, documents and data bases of the International Registry shall be inviolable and immune from seizure...” (Article 27(4) of the Convention)*
 - *However, claimants can obtain information under:*
 - *Article 28(1) of the Convention: for compensatory damages for loss due to Registrar error or omission or malfunctioning of registration system*
 - *Article 44 of the Convention: for orders against the Registrar*

SUPERVISORY AUTHORITY / REGISTRAR RELATIONS

Relevant rules to be found in Convention:

- Supervisory Authority to:
 - establish International Registry (*Article 17(2)(a)*)
 - appoint and dismiss Registrar (*Article 17(2)(b)*)
 - in event of new Registrar, ensure transfer of rights needed to ensure Registry's continued operation (*Article 17(2)(c)*)
 - prepare and promulgate regulations dealing with operation of International Registry (*Article 17(2)(d)*)
 - establish administrative procedures for dealing with complaints about Registry's operation (*Article 17(2)(e)*)

SUPERVISORY AUTHORITY / REGISTRAR RELATIONS

(continued)

- supervise Registrar and operation of Registry (*Article 17(2)(f)*)
- provide guidance, at request of Registrar (*Article 17(2)(g)*)
- set and review fees for use of Registry (*Article 17(2)(b)*)
- do all things necessary to ensure efficient notice-based electronic registration system (*Article 17(2)(i)*)
- report periodically to Contracting States on discharge of its obligations (*Article 17(2)(j)*)

COST-RECOVERY BASIS OF SUPERVISORY AUTHORITY

- International Registry is NOT intended to be for profit
- “fees... 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...” (Article XXXI(4) of draft Space Protocol:
 - *S.A. entitled to charge for reasonable setting-up costs and reasonable costs of establishing, operating and regulating Registry and of supervising Registrar*
 - *setting-up costs to be recouped over time rather than falling all at once on States Parties to future Protocol*

TECHNICAL ADVISORY NEEDS OF SUPERVISORY AUTHORITY

- Supervisory Authority “may establish a commission of experts... and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions” (Article XXVIII(3) of draft Space Protocol)
- Example of Commission of Experts assisting ICAO Council as Supervisory Authority of Aircraft Registry:
 - *maximum of 15 members to be appointed by S.A. from among persons nominated by Signatory and Contracting States (Cape Town Resolution No. 2)*
 - *Commission of Experts (CESAIR) established upon entry into force of Aircraft Protocol to provide ICAO Council with technical advice*
 - *ICAO Council also receives essence of advice on user-related needs provided to Registrar by International Registry Advisory Board*

DESIGNING PROCEDURE TO ESTABLISH SPACE REGISTRY

- To be determined at Berlin diplomatic Conference
- Example of Cape Town diplomatic Conference
 - ICAO invited and agreed, *in principle*, to act as S.A. of Aircraft Registry
 - Preparatory Commission (made up of 20 States) set up to:
 - act as Provisional Supervisory Authority for establishment of Aircraft Registry, under guidance of ICAO Council, pending entry into force of Convention / Aircraft Protocol
 - ensure that Registry be established in accordance with objective, transparent and fair selection process and be ready to enter into operation by time of entry into force
 - liaise with industry as future users of Registry
 - *negotiating States and private parties urged to provide start-up funding*

DIFFERENT STAGES IN PROCESS TO ESTABLISH SPACE REGISTRY

- Example of process for establishment of Aircraft Registry
 - *following circulation of Request for Proposals, selection by Preparatory Commission of Aviare to act as Registrar (May 2004)*
 - *approval by Preparatory Commission of regulations, prepared by a working group, to govern operation of Registry (January 2005)*
 - *completion of regulations by procedures (October 2005) and promulgation of the two combined in time for*
 - *entry into operation of International Registry for aircraft objects on 1 March 2006*

CONCLUSIONS

- Adoption of draft Protocol is not the end of the journey
- Vital for implementation of future Protocol that Berlin diplomatic Conference comes out with a Supervisory Authority, in particular for timeous establishment of International Registry
- Final thoughts on key specific issues:
 - *Liability*: S.A.'s immunity from legal and administrative process
 - *Funding*: setting-up costs to be recovered from fees for use of Registry
 - *Technical advice*: to be supplied by Commission of experts
 - *Timing*: need in Berlin only for a potential Supervisory Authority to be able to accept the assumption of such functions **in principle**, thus subject to review by competent Authorities of the Organisation concerned at the appropriate time

THANK YOU FOR YOUR ATTENTION

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