



**UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS
FOR THE PREPARATION OF A DRAFT PROTOCOL TO
THE CONVENTION ON INTERNATIONAL INTERESTS IN
MOBILE EQUIPMENT ON MATTERS SPECIFIC TO
SPACE ASSETS
Fourth session
Rome, 3/7 May 2010**

UNIDROIT 2010
C.G.E./Space Pr./4/W.P. 5
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REPORT

*ON THE RESPONSES TO THE ENQUIRIES MADE OF
POTENTIAL CANDIDATES TO EXERCISE THE FUNCTIONS OF SUPERVISORY AUTHORITY OF THE
INTERNATIONAL REGISTRATION SYSTEM FOR SPACE ASSETS
TO BE ESTABLISHED UNDER THE FUTURE PROTOCOL*

(prepared by the UNIDROIT Secretariat)

1. At its third session, held in Rome from 7 to 11 December 2009, the Committee of governmental experts requested Mr J.A. Estrella Faria, Secretary-General of UNIDROIT, on behalf of the Governing Council of UNIDROIT, to approach those Organisations that might, in the light of the Committee of governmental experts' consideration of this matter during that session and the conclusions reached on this issue by the Sub-committee of the Committee of governmental experts to examine certain aspects of the future international registration system for space assets at its meeting held in Rome on 26 and 27 October 2009,¹ be considered as potential candidates for the role of Supervisory Authority of the international registration system for space assets to be established pursuant to the future Space Protocol, with a view to giving these Organisations an adequate opportunity to consider their potential suitability for such a role and, as appropriate, to give them the time required to obtain the internal authorisations that would be needed for them to be in a position to respond, in principle, to any invitation that might be addressed to them by the diplomatic Conference for the adoption of the future draft Space Protocol.²
2. On 3 February 2010 the Secretary-General of UNIDROIT sent such letters to Mr Raymond Benjamin, Secretary-General of the International Civil Aviation Organization (I.C.A.O.), Captain Esteban Pacha-Vicente, Director-General of the International Mobile Satellite Organization (I.M.S.O.), and Mr Hamadoun Touré, Secretary-General of the International Telecommunication Union (I.T.U.), namely the Organisations that had been discussed in this context both at the third session of the Committee of governmental experts and at the meeting of the aforementioned Sub-committee.³

¹ Cf. C.G.E./Space Pr./3/W.P. 7 rev.

² Cf. C.G.E./Space Pr./3/Report rev., § 53.

³ Cf. C.G.E./Space Pr./4/W.P. 2 rev., § 9.

3. As already reported elsewhere,⁴ in his letter of 22 March 2010,⁵ Captain Pacha-Vicente informed the Secretary-General of UNIDROIT that, pursuant to the decision taken by the Advisory Committee of I.M.S.O. at its Twenty-Sixth Session, held in London from 17 to 19 March 2010, I.M.S.O. would not be in a position to assume the functions of Supervisory Authority.

4. In an e-mail message of 29 April 2010, Mr Arnaud Guillot, Legal Adviser to, and Head of the Legal Affairs Unit of I.T.U., informed Mr M.J. Stanford, Deputy Secretary-General of UNIDROIT, that "the I.T.U. continues to follow with the keenest interest the work being carried out under the auspices of UNIDROIT and in particular that for the preparation of a Space Protocol, in which the Union has taken an extremely active part, through the constant participation of a representative of the Radiocommunications Bureau".

He went on to say that "[r]egarding the functions of Supervisory Authority of the International Registry for space assets under the future Protocol, I can confirm the interest manifested by both the Secretary-General of the I.T.U. and the Director of the Radiocommunications Bureau in the Union, if judged appropriate, being assigned this prestigious and fundamental task for the management and operability of the registration system. This interest is, however, of course, subject to endorsement in principle by the executive organs of the Union (the Council and the Plenipotentiary Conference), which will only be able to give their opinion at such time as the role of the Authority has been established precisely and definitively and the structural, operational and, above all, the financial consequences very clearly identified".

5. While the International Registry for aircraft objects has now been in operation since 2006 and works to the satisfaction of both users and States and the I.C.A.O. Council decided in November 2009 to renew the contract of Aviareto Ltd as Registrar of the International Registry for aircraft objects, there have, to date, been no deliberations in the I.C.A.O. Council on the question as to whether it would be prepared to assume the functions of Supervisory Authority of another International Registry under the Cape Town system. The I.C.A.O. Secretariat has, however, indicated that it would not exclude the possibility of I.C.A.O. being, in principle, prepared to assume such functions if invited to do so by the diplomatic Conference for the adoption of the future draft Space Protocol, subject, of course, to the matter being discussed and decided by the I.C.A.O. Council.

⁴ *Idem.*

⁵ This letter is reproduced in Appendix I to this report, together with the extract from the report of the Twenty-sixth session of the I.M.S.O. Advisory Committee appended to that letter.

APPENDIX I

LETTER SENT ON 22 MARCH 2010 BY CAPTAIN ESTEBAN PACHA-VICENTE,
DIRECTOR GENERAL OF THE INTERNATIONAL MOBILE SATELLITE
ORGANIZATION, TO MR J.A. ESTRELLA FARIA, SECRETARY-GENERAL OF
UNIDROIT

Mr Jose Angelo Estrella Faria
Secretary General
International Institute for the Unification of Private Law
Via Panisperna 28
00184 Rome Italy

Ref: IMSO/2010/GEN/172

22 March 2010

Dear Mr Estrella

Many thanks for your letter IGO/S72J(6)/I 13 of 3 February 2010, asking me to let you know before *May 2010* "*whether IMSO wishes to be considered as a potential Supervisory Authority of the International Registry under the future Space Protocol, and if so, the internal procedures that would need to be complied with in order to permit IMSO to be in a position to respond, at least in principle, to any invitation to assume such functions that might be addressed to it by the future Diplomatic Conference*".

As you are aware, I indicated to the UNIDROIT Committee of governmental experts held in Rome in October 2009, that "*at this stage I am not in a position to advise UNIDROIT of any certain possibility that IWO could assume functions of Supervisory Authority as envisaged by the draft Protocol on Space Assets under preparation*".

I reported fully on this matter to the Twenty-Sixth Session of the IMSO Advisory Committee, which met in London last week, asking for comments and advice, as appropriate, taking in account that undertaking such a function would require amendment to the IMSO Convention as well as the securing of start up funds and running costs.

After a full and frank discussion, and taking into account the need for a response in advance of the next session of the Committee of governmental experts to be held in early May 2010, the Advisory Committee "*agreed that IMSO could not assume the functions of Supervisory Authority as envisaged by the draft Protocol on Space Assets under preparation*".

An extract from the Report of the IMSO Advisory Committee is attached for your information.

In the light of the afore mentioned agreement of the Advisory Committee, your request for a response, "*at least in principle*", and recognizing that a reply is required by May 2010, indicating IMSO's preliminary position, I regret to inform you that IMSO is not in a position to assume the functions of Supervisory Authority as envisaged by the draft Protocol on Space Assets under preparation.

I will be reporting to the IMSO Assembly on this matter in July 2010, with a recommendation IMSO does not assume the functions of Supervisory Authority.

I will of course keep you fully informed of any discussions which take place during the Assembly session.

May I wish you every success in achieving a positive response from the ITU or ICAO which will enable these important functions to be undertaken. I look forward to being kept apprised of developments.

Yours sincerely

Esteban Pacha
Director General

**EXTRACT FROM THE REPORT OF THE
TWENTY-SIXTH SESSION OF THE IMSO ADVISORY COMMITTEE
17-19 MARCH 2010**

"3.4 **UNIDROIT**

The Committee noted that IMSO is one of the organizations that have been considered by the Committee of Governmental Experts of UNIDROIT as a potential candidate to exercise the functions of Supervisory Authority of the future international Registry for Space Assets. UNIDROIT considers that it would be advisable for these functions to be exercised by an intergovernmental organization, where possible, with a specific competence related to the subject-matter of the Protocol in question. The Director General attended a meeting of the UNIDROIT Committee of governmental experts in Rome in December 2009, at which he made a statement that: "*At this stage I am not in a position to advise UNIDROIT of any certain possibility that IMSO could assume functions of Supervisory Authority as envisaged by the draft Protocol on Space Assets under preparation*". He explained to the UNIDROIT Committee the process that would be involved in IMSO's consideration of any possible future role of IMSO as Supervisory Authority, including the fact that the IMSO Convention as amended in 2008 does not provide for IMSO to undertake any function different than those specifically referred in the Convention. He advised the UNIDROIT Committee of the difficulties which would be involved in considering new amendments to the IMSO Convention which would be necessary if IMSO were to assume the functions of Supervisory Authority of the International Registry for Space Assets.

The Secretary General of UNIDROIT, on behalf of UNIDROIT Governing Council, had formally written on 3 February 2010 to the Director General of IMSO asking "*whether IMSO wishes to be considered as a potential Supervisory Authority of the International Registry under the future Space Protocol, and if so, the internal procedures that would need to be complied with in order to permit IMSO to be in a position to respond, at least in principle, to any invitation to assume such functions that might be addressed to it by the future Diplomatic Conference*". An Aide-Memoire provided by UNIDROIT was provided attached at Annex II to document AC/26/3.

The Committee noted that the Director General will be reporting to the Assembly on this matter and requested the Committee to comment and provide advice, as appropriate, taking in account that undertaking such a function would require amendment to the IMSO Convention as well as the securing of start up funds and running costs.

The Committee agreed that IMSO could not assume the functions of Supervisory Authority as envisaged by the draft Protocol on Space Assets under preparation. The Committee noted that the Director General will write to the Secretary General of UNIDROIT in this regard, recognizing that a reply was required by May 2010, indicating IMSO's preliminary position. The Director General will report to the Assembly and will recommend that IMSO does not assume the functions of Supervisory Authority.

APPENDIX II

EXTRACT FROM E-MAIL MESSAGE SENT ON 9 APRIL 2010 BY MR ARNAUD GUILLOT, LEGAL ADVISER / HEAD OF LEGAL AFFAIRS UNIT OF THE INTERNATIONAL TELECOMMUNICATION UNION TO MR M.J. STANFORD, DEPUTY SECRETARY-GENERAL OF UNIDROIT

Cher Monsieur Stanford,

(Omissis)

... je puis vous assurer que l'UIT continue à marquer un intérêt très vif pour les travaux menés sous l'égide de l'UNIDROIT et, en particulier, pour la préparation du Protocole portant sur les biens spatiaux auxquels l'Union a pris une part extrêmement active au travers de la participation constante d'un représentant du Bureau des radiocommunications.

(Omissis)

En ce qui concerne les fonctions d'Autorité de surveillance du Registre international pour les biens spatiaux au terme du futur Protocole, je peux vous confirmer l'intérêt manifesté tant par le Secrétaire général de l'UIT que par le Directeur du Bureau des radiocommunications pour que l'Union se voit confier, le cas échéant, cette tâche à la fois prestigieuse et fondamentale pour l'administration et l'opérabilité du système d'enregistrement. Néanmoins, cette manifestation d'intérêt est, bien entendu, assujettie à l'aval de principe des organes exécutifs de l'Union (Conseil et Conférence de Plénipotentiaires) qui ne pourront, vous le comprendrez, se prononcer sur le sujet qu'une fois le rôle de l'Autorité précisément et définitivement arrêté et les conséquences structurelles, opérationnelles et surtout financières très clairement identifiées.

Restant à votre disposition pour vous fournir de plus amples explications, je vous prie d'agréer, cher Monsieur, l'assurance de mes sentiments distingués.

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