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**Item No. 7 (b) on the Agenda: International interests in mobile equipment -
preliminary draft Protocol to the Cape Town Convention
on Matters specific to Railway Rolling Stock**

(memorandum prepared by the UNIDROIT Secretariat)

<i>Summary</i>	<i>State of progress on the preliminary draft Protocol on Matters specific to Railway Rolling Stock (regional seminars, Rail Registry Task Force and diplomatic Conference)</i>
<i>Action to be taken</i>	<i>Authorisation of the transmission of the text of the preliminary draft to a diplomatic Conference of adoption</i>
<i>Related documents</i>	<i>None</i>

Regional seminars

1. At its 82nd session, the Governing Council took note with satisfaction of the consensus that had been established around the latest version of the preliminary draft Rail Protocol as it had emerged from the third session of governmental experts (Berne, May 2003) (UNIDROIT 2003 - Study LXXIIH - Doc. 14) and encouraged the organisation of regional seminars as advocated by the Secretariats of UNIDROIT and the Intergovernmental Organisation for International Carriage by Rail (OTIF) with a view to publicising the preliminary draft Rail Protocol and the benefits that might accrue thereunder for countries that stood in clear and urgent need of foreign private investment in their railway infrastructure but that had not taken part in the meetings of governmental experts.
2. The Secretariat reported on the holding of the first seminar, for the countries of Central and Eastern Europe, held in Warsaw in April 2004 (see UNIDROIT 2004 - C.D. (83) 9 (b)), to the Governing Council at its 83rd session.
3. The second seminar, for the Americas, was held on 11 and 12 October 2004, at the kind invitation of the Government of Mexico and the Mexican Center of Uniform Law, the Director of which is Mr Jorge Sánchez Cordero, member of the Governing Council. The seminar was opened by the Mexican Minister of Foreign Affairs. The Mexican Minister of Transport also attended. The seminar saw in-depth presentations of the Cape Town Convention on International Interests in Mobile Equipment, the Protocol thereto on Matters specific to Aircraft Equipment and the Inter-American Model Law on Secured Transactions of the Organization of American States (O.A.S.). Then it looked at the future Rail Protocol from the point of view of its practical interest for lenders, manufacturers and operators. Afterwards there were several presentations on specific provisions of the preliminary draft, followed by discussion among participants and a round table

on the regional application of the future Protocol. The seminar was held in English and Spanish. The seminar programme is reproduced as an Appendix to this memorandum.

4. The Secretariat is also working on the organisation of a regional seminar for Africa and a working group has been constituted for this specific purpose in South Africa. It had been hoped to hold this seminar during the first half of 2005 but, at the time of writing, the Secretariat was still waiting for a final answer from the Government of South Africa. The Secretariat would hope to be in a position to give the Governing Council more details at its next session.

Rail Registry Task Force

5. The Rail Registry Task Force established by the Joint Committee of governmental experts at its first session held its third session in Brussels from 21 to 23 September 2004. In accordance with its terms of reference, the Task Force considered various documents dealing, in particular, with the description of the international registration system, the draft regulations for the Supervisory Authority and the capacity, immunity and domicile of the Supervisory Authority and the Registrar. The Task Force will hold its fourth session in Rome from 22 to 25 February 2005, to consider in particular the questions raised by the fee structure of the Registry. Two members of the Drafting Committee will also be present to review the drafting of the Articles relating to the international registration system, in the light of the decisions to be taken by the Task Force. These proposals will subsequently be laid before governmental experts on behalf of the Task Force.

6. The fourth session of the Rail Registry Task Force will be preceded by a Cape Town Registry Workshop on 21 February 2005. This workshop will give Mr Jeffrey Wool, Secretary and General Counsel to the Aviation Working Group, the opportunity to introduce and illustrate the solutions chosen for the international registration system under the Aircraft Protocol. The idea is for those present then to discuss the case for some of these also being taken over for the international registration systems to underpin the future Rail and Space Protocols.

Diplomatic Conference

7. At its 82nd session, held in 2003, the Governing Council noted that “regional seminars would need to be organised in particular in those parts of the world which did not yet form part of that consensus before there could be any question of it authorising the transmission of the preliminary draft Rail Protocol to a diplomatic Conference” (UNIDROIT 2003 - C.D. (82) 21, p. 12).

8. As reported above (see §§ 2/4), two seminars have already taken place, one for the countries of Central and Eastern Europe and the other for the Americas, with another one being due to take place for part of Africa. The States that took part in the sessions of the Committee of governmental experts noted that not all the questions raised had been solved during the three sessions of the Committee, in particular those concerning the international registration system, but that some of these could be solved at the diplomatic Conference. It is also to be recalled that the Rail Registry Task Force has held several successful sessions with a view to seeking to resolve some problems.

9. The Secretary-General of UNIDROIT has approached certain Governments regarding the hosting of a diplomatic Conference but, to date, no State has offered to host such a Conference. The UNIDROIT and OTIF Secretariats continue to use their best efforts to come up with an offer. In the meantime, they would invite the Governing Council formally to authorise the submission of the text of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock to a diplomatic Conference for adoption. Such authorisation could be given by the Council during its annual session but it could also be given in writing at such time as the UNIDROIT and OTIF Secretariats are in possession of an offer from a State to host the Conference.

10. *The Governing Council is invited to take note of the probable holding of a regional seminar in South Africa and of the efforts of the UNIDROIT and OTIF Secretariats to organise a diplomatic Conference. The Council is also called upon to authorise, by the procedure that it judges the most appropriate, the submission of the text of the preliminary draft Rail Protocol to a diplomatic Conference just as soon as a State has offered to host such a Conference.*

APPENDIX



Government of
Mexico

OTIF



**THE INTERNATIONAL LEGAL REGIMEN FOR THE TAKING OF SECURITY IN HIGH-VALUE MOBILE EQUIPMENT.
POSSIBILITIES AND CHALLENGES**

(A colloquium organised by the International Institute for the Unification of Private Law (UNIDROIT), the Intergovernmental Organisation for International Carriage by Rail (OTIF), the Organization of American States (OAS) and the Rail Working Group, in consultation with ICAO, under the auspices of the Government of MEXICO and the Mexican Center of Uniform Law,
Ex-Colegio de la Santa Cruz de Tlatelolco, Mexico City, **11-12 October 2004**)

The 2001 Cape Town Convention on International Interests in Mobile Equipment and Aircraft Equipment Protocol represent one of the most ambitious and imaginative private commercial law projects ever to have been concluded. By providing an international regimen for security and related interests in aircraft objects, railway rolling stock and space assets, the Convention and Protocol help to reduce legal uncertainty caused by differences in national laws and thereby open up to developing countries access to finance at reasonable cost.

The proposed Rail Protocol to the 2001 Cape Town Convention on International Interests on Mobile Equipment offers a new method of financing rolling stock which should serve to increase the number of funders willing to finance of rolling stock and decrease the cost of the finance due to reduced risks and a greater number of funding sources ready to invest in this market. The Rail Protocol will work by extending to both passenger, freight and other rolling stock, the concept of a international security interest created in an asset which will be recognised in every country which signs and ratifies the Convention and Protocol. In so doing, it will protect the manufacturer selling the equipment on credit, where it takes a reservation on title, protect the banks lending against the rolling stock when taking security on the assets as well as a lessor (and lessee) of rolling stock. Each of these parties will be able to register its interest at an international registry accessible “24/7” via the Internet. By guaranteeing the priority of the creditor, it will facilitate secure financing and by having the security registered in an open registry, it will facilitate other parties being able to check status of specific items of rolling stock. The Protocol will also give additional remedies to creditors if monies due are not paid by the debtor both in relation to interim relief and final judgements as well as offering some new support if debtors become insolvent.

At the moment this is a project but well advanced. Government experts are currently considering the preliminary draft Protocol (three meetings have already taken place) and the final version of the Protocol should go to a diplomatic Conference for approval in 2005.

PROGRAMME

Monday 11th October 2004

- 8.30 a.m. *Distribution of badges and documentation*
- 9.00 a.m. *Opening*
- Welcome from the Minister of Foreign Affairs of Mexico – *Luis Ernesto Derbez*
 - Welcome from UNIDROIT – *Herbert Kronke, Secretary General of UNIDROIT*
 - Welcome from OTIF – *Gerfried Mutz, Deputy to the Director General of OTIF*
 - Welcome from the Mexican Center of Uniform Law – *Jorge Sánchez Cordero Davila, Director, Member of the Governing Council of UNIDROIT*
- 10.30 a.m. *Introductory session – The Cape Town Convention and Aircraft Protocol*
- Objectives and Main Features of the Cape Town Convention on International Interests in Mobile Equipment - An Overview
– *Herbert Kronke, Secretary General of UNIDROIT*
 - Objectives and Main Features of the Aircraft Protocol to the Cape Town Convention - An Overview – *Jeffrey Wool, Aviation Working Group, Secretary*
- 11.40 a.m. *Morning refreshments*
- 12.00 a.m. *Introductory session (continued)*
- Importance of the Cape Town Instruments for the Latin American Countries – *Alejandro Garro, Professor at the Columbia Law School, New York*
 - The Common Objectives of OAS and UNIDROIT Instruments concerning International Interests in Mobile Equipment – *John Wilson, Legal Officer, Office of the Assistant Secretary for Legal Affairs, Department of International Law, Organization of American States (OAS)*
 - The Inter-American Model Law on Secured Transactions: a Mexican point of view – *Leonel Pérez Nieto, Adviser of “Von Wobeser y Sierra S.C.”, representative of Mexico to the Conference on International Private Law (CIDIP)*
 - The fundamentals of asset-based financing from the perspective of a lender/lessor – *Rafael Castillo-Triana, Esq., President and CEO, FTA Consulting, Inc.*
 - Framework for Analysing Economic and Contractual Implications of the Convention – *Jeffrey Wool, Aviation Working Group, Secretary*
- 2.00 p.m. *Luncheon*
- 4.00 p.m. *The draft Protocol to the Cape Town Convention on Matters specific to Railway Rolling Stock*
- The case for a Rail Protocol: the role of the Rail Working Group and the view of the rail sector – *Howard Rosen, Solicitor; Chairman of the Rail Working Group*
- 4.30 p.m. *Practical interest of the future Rail Protocol from the points of view of*
- Manufacturers – *Jose Luis Paz Bolanos Cacho, Sales and Project Finance Director, Bombardier-Concarril S.A. de C.V. Structured Finance, Mexico*
 - Financiers – *Kevin O’Gara, Managing Partner, Equitum LLC.*
- 6.00 p.m. *End of session*

Tuesday 12th October 2004

- 10.00 a.m. *Specific issues of particular importance under the preliminary draft Rail Protocol*
- Definition and identification of railway rolling stock (Articles I(2)(g) and 5) – *Peter Bloch (Department of Transportation, United States of America; Co-Chairman of the Rail Registry Task Force)*
 - Specific Remedies – *Howard Rosen, Solicitor; Chairman of the Rail Working Group*
- 11.00 a.m. *Morning refreshments*
- 11.20 a.m. – Registration system
- (i) Supervisor and Registrar – *Gerfried Mutz, Deputy to the Director General of OTIF*
 - (ii) Integration with existing registries – *Peter Bloch (Department of Transportation, United States of America; Co-Chairman of the Rail Registry Task Force)*
- 12.00 a.m. Round table on the application of the Cape Town Convention and Aircraft and future Rail Protocol to the American continent – Why it makes sense
- Speakers of the previous sessions as well as representatives of countries in the continent*
- 2.00 p.m. *Conclusions and closing ceremony*

[[Documents 84th session Governing Council \(2005\): Main page](#)]