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**Item No. 11 on the agenda: Implementation and promotion of
UNIDROIT instruments: (b) Exercising of the Institute's depositary functions under
the Cape Town Convention and the Aircraft Protocol**

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Update on the exercising of the Institute's depositary functions under the Cape Town Convention and the Aircraft Protocol</i>
<i>Action to be taken</i>	<i>See § 12</i>
<i>Related documents</i>	<i>None</i>

DISCUSSION LEADING PARAMETERS AS PROPOSED BY THE SECRETARIAT

Priority	  
	high medium low
Staffing implications / Budget implications	1 Officer currently funded from extra-budgetary contributions to be integrated into organisational structure and regular budget.
Recommendations/ Guidance sought/ Decisions to be taken/ Alternatives?	Primary objective: see above. Only alternatives: extra-budgetary contributions or secondment of officer attending to depositary functions. French version of the Acts and Proceedings of the diplomatic Conference

INTRODUCTION

1. The Convention on International Interests in Mobile Equipment (*the Convention*) and the Protocol thereto on Matters specific to Aircraft Equipment (*the Aircraft Protocol*) were opened to signature in Cape Town on 16 November 2001. This memorandum provides an update on the implementation of the Convention and the Aircraft Protocol and the exercise of the Institute's depositary functions under the Convention and Aircraft Protocol.

ENTRY INTO FORCE OF THE AIRCRAFT PROTOCOL

2. The Convention entered into force on 1 April 2004 following the deposit of the third instrument of ratification/accession, *but only as regards a category of objects to which a Protocol applies* (Convention, Article 49(1)). The Aircraft Protocol, and the Convention as applied to aircraft objects, entered into force on 1 March 2006 following the deposit of the eighth instrument of ratification/accession. That entry into force was notified by Note Verbale to all UNIDROIT member States and all Contracting States. The appendix to this memorandum lists the status of the Convention and the Aircraft Protocol as at 1 March 2006.

DEPOSITARY FUNCTIONS

3. UNIDROIT'S responsibilities as Depositary under the Convention and the Aircraft Protocol include the establishment of a system for the receipt and notification of all instruments of ratification, declarations and other documents lodged with the Depositary. This encompasses not just the formal receipt and notification of the deposit of the instruments, but also pre-deposit advice and review of the instruments and subsequent communication with the Supervisory Authority, the International Registry and other Contracting States. Since the preparation of the memorandum for the previous 84th session of the Governing Council, four States have lodged instruments of ratification/accession: Oman, Ireland, Malaysia and Senegal. The UNIDROIT Secretariat has also been liaising closely with a number of other States that are at various stages towards the ratification/accession process. The Aircraft Protocol has, following its entry into force, been forwarded to the United Nations Treaty Office for registration.

4. The UNIDROIT Secretariat has established good working relations with the International Registry. UNIDROIT is responsible for providing the International Registry with copies of instruments of ratification/accession and declarations, which are made available to users of the International Registry in the form of electronic Contracting State Search Certificates. In particular, the UNIDROIT Secretariat provided assistance to the International Registry during the extensive testing phase of the Contracting State Search Certificate aspects of the registry. The International Registry was established by the Convention for the purpose of accepting, and making available via on-line searches, registrations of international interests and dealings in international interests, and will be the principle day-to-day contact point for those using the Cape Town system. The International Registry is operated by Aviareto, a Dublin-based company which operates as a joint venture between SITA SC and the Irish Government.

5. The Preparatory Commission established by resolution of the Cape Town Diplomatic Conference was tasked with ensuring, *inter alia*, "that the international registration system ... become ready to be operated ... *at the latest by the time of the entry into force of the Convention and the Protocol*" (italics added). On 17 June 2005 the ICAO Council decided that it would assume the functions of the Supervisory Authority as from the entry into force of the Aircraft Protocol. The mandate of the Preparatory Commission ended, upon the entry into force of the Protocol, with the Commission having fulfilled its mandate following the issuance of the Final Acceptance Certificate for the International Registry in February 2006.

6. Since the 84th session of the Governing Council, the Depository website has been substantially updated. In addition to a status list of all Signatory and Contracting States, the website now includes links to the texts of all Contracting State declarations, a function to enable declarations to be searched by either Article or Contracting State, the text of model instruments of ratification/accession, and the full text of the *Explanatory Memorandum for the Assistance of States and Regional Economic Integration Organisations in the Completing of Declarations under the Convention and the Aircraft Protocol*. This explanatory memorandum was also updated to include revised versions of several model forms. Further updates are planned to add additional information and facilitate navigation through the site.

7. A new component of the Depository work during the coming year will be the preparation, pursuant to Article 61(1) of the Convention and Article XXXIV of the Protocol, of the yearly reports concerning the practical operation of the Convention and Protocol. The precise timing for the finalisation of these reports, which must be prepared in consultation with the Supervisory Authority, has not yet been determined, although it is likely that the report will need to be finalised and published prior to the 86th session of the Governing Council.

8. In the future, the Institute's depository functions are likely to include functions under the Rail and Space Protocols, and the Secretariat has the intention to propose that UNIDROIT become the Depository of all future instruments adopted under its auspices. The UNIDROIT Secretariat Research Officer position has to date been funded out of the generosity of four member Governments for an initial 30 month period, with the Institute funding the position for a further six months. The financial organs of the Institute have previously indicated that they would not consider it appropriate for this core function to be funded in the future on an extra-budgetary basis, so that it will be necessary to make the necessary appropriations available under the Institute's budget as from the second half of 2007.

PUBLICATIONS

9. Since the preparation of the memorandum for the 84th session of the Governing Council, sales of Sir Roy Goode's *Official Commentary on the Convention and Aircraft Protocol* have totalled 283 (276 copies of the English version and 7 copies of the French version), bringing the total number of copies sold to 625 (599 in English and 26 in French). At the express request of Sir Roy Goode, all net revenue earned by sales of the Official Commentary is paid to the Uniform Law Foundation.

10. A major component of the depository work during the year has been the preparation of the Acts and Proceedings of the Cape Town Diplomatic Conference. This work has involved the preparation of the summary records of all sessions of both the Conference Plenary and the Committee of the Whole, together with the complete set of basic Conference working materials (including the texts submitted to the Conference for adoption, the working papers submitted to the different organs of the Conference, and the texts and instruments adopted by the Conference). As at 1 March 2006 the Acts and Proceedings were in the final stages of editing and preparation for printing and publication, and are expected to be published and distributed around the time of the 85th session of the Governing Council. In light of the enormous resources that would be required to translate the Acts and Proceedings into French – resources that are currently fully committed to other legislative projects -, and the likelihood of a relatively small demand for it (based on the sales figures of the Official Commentary), the Secretariat is seeking guidance on whether it would be appropriate to produce a French version at all.

PROMOTION AND PUBLICITY

11. The UNIDROIT Secretariat has continued to promote the Convention and the Aircraft Protocol wherever possible, and page 12 *et seq.* of the Annual Report for 2005 cites examples of these efforts. In addition, Mr John Atwood (UNIDROIT Secretariat) participated in a London conference on the Cape Town Convention which was held to mark the launch of the UK Uniform Law Foundation. The Aviation Working Group, led by UNIDROIT Correspondent Mr Jeffrey Wool, has also continued its efforts to promote implementation of the Convention and the Aircraft Protocol throughout the world.

ACTION TO BE TAKEN

12. *The UNIDROIT Secretariat would invite the Governing Council to take note of the progress in the Secretariat's implementation of the Institute's depositary functions under the Convention and the Aircraft Protocol. The UNIDROIT Secretariat would further invite the Council to confirm the Institute's commitment to provide funding for the position of the Research Officer attending to the Depositary functions beyond the period covered by extra-budgetary contributions.*