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**Item No. 8(a) on the Agenda: International interests in mobile equipment –
Luxembourg Protocol to the Cape Town Convention on Matters specific
to Railway Rolling Stock**

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Finalisation of draft Protocol (seminar in Africa) and diplomatic Conference. Future work.</i>
<i>Action to be taken</i>	<i>See §§ 11 and 15.</i>
<i>Related documents</i>	<i>Summary report on Lomé seminar; C.D. (86) (a)-(d)</i>

DISCUSSION LEADING PARAMETERS AS PROPOSED BY THE SECRETARIAT

Priority			
	high	medium	low

I. Strategic Plan

Yes, because of (1) UNIDROIT's unique position to carry out work on specific areas of secured transactions (cf. Strategic Objective No. 1) and, (2) its potential benefits for developing countries and economies in transition (cf. Strategic Objective No. 7)

II. Work Programme 2006-2008

Yes

Timeframe determined by Governing Council/General Assembly

Timeframe to be determined according to date of ratification or accession by one State

Staffing

Preparatory stage: one officer and 0.5 secretary

implications	During diplomatic Conference: four officers and two secretaries After diplomatic Conference: to be determined
Budget implications	Salaries of the members of staff (officers, secretary, Depository) involved
Recommendations/ Guidance sought/ Decisions to be taken/ Alternatives?	

BACKGROUND

1. To broaden the level of consensus achieved by the future Rail Protocol as a means of preparing for the diplomatic Conference for the adoption thereof, in view of the results of the seminars held in Warsaw in April 2004 (see UNIDROIT 2004 – C.D. (83)(9)(b)) and Mexico City in October 2004 (see UNIDROIT 2005 – C.D. (84)(7)(b), Appendix), a **third regional seminar**, entitled “The Cape Town Convention and its Rail Protocol: a new driving force for rail investments in Africa”, was organised **for African Governments**, development banks and rail operators in Lomé on 17 November 2006, under the joint auspices of the Government of Togo, UNIDROIT and AFRICARAIL and with funding from the Government of Luxembourg. See Summary report on this seminar, published in Unif. L. Rev. / Rev. dr. unif., 2006, pp. 825-837 and posted on the UNIDROIT website together with the final communiqué at <http://www.unidroit.org/english/conventions/mobile-equipment/preparatory-work-railprotocol/reportlome2006-e.pdf> and <http://www.unidroit.org/english/conventions/mobile-equipment/preparatorywork-railprotocol/finalstatement-e.pdf>.

I. The diplomatic Conference to adopt a Rail Protocol to the Convention on International Interests in Mobile Equipment (Luxembourg, 12-23 February 2007)

2. 42 States from Africa, North and South America, Asia, Europe and the Middle East participated in the diplomatic Conference to adopt a Rail Protocol to the Convention on International Interests in Mobile Equipment, which was held in Luxembourg from 12 to 23 February 2007. Under the chairmanship of Mr Jean Mischo (Luxembourg), the Conference adopted and opened to signature on 23 February 2007 the *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock*. This Protocol is henceforth open to signature by all States up until the date of its entry into force.

3. The Secretariat would like to pay tribute and express its deep gratitude to the Government of Luxembourg for the exemplary fashion in which it organised the Conference and for the major contribution that it made to the success of the Conference. It is worthy of note that the Conference decided to express its gratitude by passing a Resolution designating Luxembourg host State of the International Registry for railway rolling stock (see Resolution No. 3 of the Conference).

4. The Secretariat of the Intergovernmental Organisation for International Carriage by Rail (OTIF) is also to be thanked: the OTIF Secretariat was the UNIDROIT Secretariat’s partner in this enterprise and is to be commended for the exemplary co-operation that it gave the Secretariat and the flexibility that it demonstrated throughout the project, virtues that greatly facilitated the outcome of all the different working sessions.

5. Two members of the Governing Council played particularly noteworthy parts in the Conference. Mr Elaraby opened the Conference for UNIDROIT in his capacity of Vice-President of the Council and Mr Sánchez Cordero was elected Chairman of the Final Clauses Committee.

6. In accordance with the decision taken by the Conference, the texts of the Luxembourg Protocol on Matters specific to Railway Rolling Stock and the Resolutions passed by the Conference are subject to verification by the Conference Secretariat, under the authority of the President of the Conference, within 90 days of the signature of the Final Act (23 February 2007), as regards the linguistic amendments that may be necessary to ensure full compatibility of the different language versions. This procedure is underway and the definitive texts will only therefore be available after the aforementioned 90 days.

II. Status of implementation of the new international instrument

7. Up to now, the following four States have signed the Luxembourg Protocol: Gabon, Italy, Luxembourg and Switzerland (*ad referendum*). In accordance with Article XXIII(1), the Luxembourg Protocol will enter into force following the deposit of the fourth instrument of ratification, acceptance, approval or accession.

8. UNIDROIT would propose the setting up of an e-mail service providing a regular update of the implementation of the Rail Protocol. Other details, including information regarding how to subscribe to such a service, are available on the Institute's web site at the page entitled "Email Update Service: Cape Town Convention, Aircraft Protocol and Rail Protocol" (<http://www.unidroit.org/english/conventions/mobile-equipment/updateservice.htm>).

III. Future responsibilities of the UNIDROIT Secretariat flowing from the diplomatic Conference

A. Depositary functions

9. Article XXXIV of the Luxembourg Protocol designates UNIDROIT as Depositary and it will therefore exercise the same functions under the new instrument as it already does under the Convention and the Aircraft Protocol.

10. It will, in particular, be the Depositary's duty to receive all declarations lodged under the Protocol. The "Explanatory memorandum for the assistance of States and regional economic integration Organisations in the completing of their declarations under the Convention and the Aircraft Protocol" that was prepared to assist States intending to become Parties to those instruments will now need to be updated in order also to cover the declarations provided for under the Luxembourg Protocol. The task of doing this was entrusted to the Reporter – Professor Sir Roy Goode – and the Chairman of the Rail Working Group. The work is already underway.

11. Regarding declarations, it will be recalled that the UNIDROIT General Assembly, at its 56th session, held in Rome on 6 December 2002, passed a Resolution inviting "[a]ll Contracting States to the Convention and the Protocol to submit such declarations as they may decide to lodge thereunder in one or other of the working languages of the Institute" in order to facilitate the work of the Depositary, bearing in mind that Arabic, Chinese, Russian and Spanish were also official languages of the Cape Town diplomatic Conference. The same question will arise under the Luxembourg Protocol, of which there is a German official version (German being a working

language of OTIF) and the Secretariat would propose that a similar Resolution be adopted in this case too, the Governing Council being, therefore, invited to express its opinion in this regard.

12. Other documents appearing on the “Depositary Functions of UNIDROIT” Internet page (<http://www.unidroit.org/english/conventions/mobile-equipment/depositaryfunction/main.htm>) will also need to be updated in order to take account of the adoption of this new instrument.

B. *Preparation of the Official Commentary on the Luxembourg Protocol and the Acts and Proceedings of the diplomatic Conference*

13. Two other tasks will have to be addressed by the Secretariat: the question arises, first, as to the preparation and distribution of the Official Commentary on the Luxembourg Protocol provided for under Resolution No. 4 adopted by the diplomatic Conference and, secondly, as to the preparation of the Acts and Proceedings of the diplomatic Conference.

(a) Official Commentary

14. In Resolution No. 4, the Conference expressly requested the Reporter – Professor Sir Roy Goode – to prepare an Official Commentary on the Protocol, in close co-operation with UNIDROIT and OTIF and in co-ordination with the Chairmen of several organs of the Conference. There can be no doubt that no better person could have been chosen for this task, given his role in the preparation of the Cape Town Convention, the Aircraft Protocol and the Rail Protocol and since he is already the author of the Official Commentary on the first two of these. The UNIDROIT and OTIF Secretariats will be in charge of co-ordinating this work and it will subsequently be for UNIDROIT to prepare the French version of the Commentary.

(b) Acts and Proceedings of the diplomatic Conference

15. Only the decisions taken during sessions of the Conference were recorded and the question therefore arises as to the preparation of Acts and Proceedings. OTIF's recent practice has been not to draw up such Acts and Proceedings, because of budgetary constraints. It is true that UNIDROIT operates under the same constraints but its practice in such matters has hitherto been different – the Acts and Proceedings on the Cape Town Conference provide the most recent example of this. It is, accordingly, legitimate to ask the question whether it would not be a pity to change this practice now, given the importance attached to the preparatory work in a broad sense. The Secretariat would, therefore, be interested to know the Council's feelings in this regard.

C. *The publicity to be given to the new international instrument*

16. The Secretariat will, of course, over the coming months and years, need to devote part of its resources to participating in events organised to bring the new international regimen to the attention of as many people as possible. The Secretariat has already participated in conferences on the draft Protocol and is aware of several conferences envisaged by the rail sector in different parts of the world (Russian Federation, South Africa and Vietnam) with a view to bringing the new regimen into force as soon as possible.

D. *Participation in the work of the Preparatory Commission*

17. The international registration system for each class of asset covered by the Cape Town Convention constitutes the core of the new international regimen. As was the case for the Convention and the Aircraft Protocol, the diplomatic Conference decided, by the passing of Resolution No. 1, that a Preparatory Commission should be set up, in charge in particular of looking

after the establishment and entry into operation of the new system in time for the entry into force of the Luxembourg Protocol.

18. Contrary, however, to what was done for the Convention and the Aircraft Protocol, UNIDROIT, as also OTIF, are, under Resolution No. 1, members of this Commission and will be closely involved in all the stages (such as membership of the Preparatory Commission, exercising of the functions of that body and establishment of the Supervisory Authority) of this process; it is to be noted that the Conference laid down a particularly detailed procedure. The time-table for the work of the Commission will be settled as soon as possible, bearing in mind that the membership of the Preparatory Commission is to include "States that have ratified or acceded to the Convention".

E. Other Protocols to the Cape Town Convention

19. Through its passing of Resolution No. 5, the Conference demonstrated its interest in the work underway on the future *Protocol on Matters specific to Space Assets* (see C.D. (86)8(c)) and took note of the preliminary work done on a fourth *Protocol to the Cape Town Convention on Matters specific to agricultural, construction and mining Equipment* (see C.D. (86)8(d)). The Conference in fact invited "States to work towards the expeditious adoption of the future Space Assets Protocol; ... to initiate preliminary work in 2007 on a future Protocol to the Convention on mobile agricultural, construction and mining equipment; ... UNIDROIT to give all its member States and member States of the United Nations or relevant specialised Agencies which are not members of UNIDROIT an opportunity to participate in the negotiation and adoption of such future Protocols in a cost-effective manner; and ... the competent bodies of UNIDROIT to consider favourably the implementation of an expedited procedure for the adoption of such Protocols, and in particular to consider the Conferences required for their adoption being as short as possible consistently with the need for States to give such Protocols proper consideration".