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**Item No. 5 of the agenda:** International Interests in Mobile Equipment

**(a) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol**

(Memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Update on the implementation and status of the Rail and Space Protocols to the Cape Town Convention</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the progress</i>
<i>Mandate</i>	<i>Work Programme 2011-2013</i>
<i>Priority</i>	<i>High</i>
<i>Related documents</i>	<i>UNIDROIT 2013 – C.D. (92) 2, 9 and 13</i>

1. The *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock* (the Luxembourg Protocol) was opened to signature in Luxembourg on 23 February 2007 and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets* (the Space Protocol) was opened to signature in Berlin on 9 March 2012 specific to Railway Rolling Stock. None of them is yet in force.
2. The Secretariat is aware that special efforts should be made to implement the 2007 Luxembourg Protocol and to establish the Registry under the 2012 Space Protocol and the Secretariat proposes that, under the Work Programme 2014-2016, this be given the highest degree of priority (cf. UNIDROIT 2013 – C.D.(92) 13, para. 11).
3. UNIDROIT is designated the Depository to both instruments, and this memorandum provides an update on the implementation of the Institute's Depository functions under them.

## STATUS

4. UNIDROIT has been designated as the Depositary to the **Luxembourg Protocol** (pursuant to Article XXXIV(1)). The Luxembourg Protocol will enter into force following the procedure provide for in Article XXIII.

5. As of 20 April 2013, it has five Signatory States and one Signatory Regional Economic Integration Organisation (Gabon, Germany, Italy, Luxembourg, Switzerland, European Commission - see Annex I). On 31 January 2012, the first ratification of the Luxembourg Protocol was achieved when the Grand-Duchy of Luxembourg deposited its instrument of ratification to the Protocol.

6. Since the last session of the Governing Council, Germany has signed the Luxembourg Protocol (with declaration) on 21 November 2012.

7. UNIDROIT has been designated as the Depositary to the **Space Protocol** (pursuant to Article XLVIII(1)). The Space Protocol will enter into force following the procedure provide for in Article XXXVIII.

8. As of 20 April 2013, it has four Signatory States (Burkina Faso, Germany, Saudi Arabia and Zimbabwe - see Annex II). Since the last session of the Governing Council, Germany has signed the Space Protocol (with declaration) on 21 November 2012.

## ACTIVITIES

### GENERAL

9. UNIDROIT's responsibilities as **Depositary** under the Luxembourg Protocol and the Space Protocol are specified in each instrument, and include the operation of a system for the receipt and notification of all instruments of ratification, declarations and other documents lodged with the Depositary.

10. The Secretariat is continuing to work with and to provide information and assistance to States with an interest in the Cape Town system within the limits of its possibilities. In fact, the Senior Officer whose main assignment was the Depositary functions regarding all instruments of the Cape Town system has left the Secretariat in October 2012 and those functions were assigned to another Senior Officer.

11. The **Cape Town Convention Academic Project** organised its First Annual Conference in the Faculty of Law, Oxford University, on 5th and 6th September 2012 to the attention of academics and to practising lawyers. This Conference included papers given by leading experts on particular aspects of the Cape Town Convention, such as its effect on the law and practice on electronic commerce, its effect on the Blue Sky case and on interim relief and insolvency. There was also discussion of the use of the Cape Town Convention in the teaching of international and transnational law, as well as discussion of economic assessment of the Cape Town Convention and international commercial law generally. Mr Stanford (former Deputy Secretary-General of UNIDROIT) made a presentation entitled "The Contents of the Space Protocol and the Differences between it and the Aircraft and Rail Protocols" and A. Veneziano (not yet in her capacity as Deputy Secretary-General) presented a contribution on comments on the paper presented by Gilles Cuniberti on Comparison of relief pending final determination and traditional interim relief.

*RAIL PREPARATORY COMMISSION*

12. A Preparatory Commission was established by Resolution No. 1 of the diplomatic Conference to adopt a Rail Protocol to the Convention on International Interests in Mobile Equipment (Luxembourg, 12-23 February 2007) in order to prepare the International Registry under the Luxembourg Protocol.

13. Since its last full session in 2011, the Preparatory Commission has appointed a negotiating team to conduct negotiations with SITA SA for the conclusion of the contract with the Registrar. The negotiating team met at UNIDROIT's Headquarters in Rome with Aviareto and SITA representatives on 4 and 5 February 2013 and J.A. Estrella Faria, A. Veneziano and J. Wilson for the UNIDROIT Secretariat. The meeting finalised the draft contract for the operation of the International Registry for international interests in mobile equipment (RegCo) with its annexes and attachments, as well as the Master Service Agreement and its schedules and the Software Security Agreement. Furthermore, ratification strategies for the Rail Protocol were discussed. Feedback from SITA is expected by the end of April.

14. The Secretariat will concentrate its efforts on supporting the definitive completion of the negotiations as early as possible and on implementing the International Registry through the preparation of its Regulation and Procedures by the Preparatory Commission. The establishment of a International Registry is a necessary condition to be able actively to promote the ratification of the Rail Protocol, which is a task that the Secretariat considers as a priority for the triennium 2014-2016.

*SPACE PREPARATORY COMMISSION*

15. Pursuant to Resolution 1 of the diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (Berlin, 27 February - 9 March 2012), a Preparatory Commission was set up to act as Provisional Supervisory Authority for the establishment of the International Registry for Space Assets under the guidance of the UNIDROIT General Assembly.

16. At its 91<sup>st</sup> session (2012), the Governing Council took note of the positive outcome of the diplomatic Conference and authorised the Secretariat to take the steps necessary to promote the early entry into force of the Protocol, in particular among the emerging and developing States that stand most to benefit from it. The Council also invited the Secretariat to commence consultations with the President of the Conference as regards the composition of the Preparatory Commission, notably bearing in mind the desirability of ensuring geographical representation, in order to foster the early entry into force of the Space Protocol. Finally, the Governing Council took note of Resolution 2 of the diplomatic Conference, which invited the governing bodies of the International Telecommunication Union (ITU) to consider the matter of its becoming Supervisory Authority upon or after the entry into force of the Protocol and requested the Secretariat to liaise with the ITU Secretariat, as appropriate, and to provide the latter with any assistance or information it might require to assist the governing bodies of ITU in their deliberations.

17. The first session of the Preparatory Commission will be held at UNIDROIT's Headquarters in Rome on 6 and 7 May 2013 (immediately before the session of the Governing Council). As of 20 April 2013, the following States have confirmed their participation in the works of the Preparatory Commission: Brazil, China (People's Republic of), Czech Republic, France, Germany, India, Italy, Russian Federation, Saudi Arabia, South Africa and the United States of America. The Preparatory Commission will consider matters relating to the appointment of a Supervisory Authority and will decide on the preliminary steps to be taken to start developing draft regulations for the

International Registry for space assets and a request for proposals for the selection of a Registrar. In particular, it will hear an oral report by the representatives of the ITU on the consideration being given by the ITU governing bodies to the matter of becoming Supervisory Authority preparatory to submitting the issue for decision to its Assembly of the Plenipotentiaries in 2014. UNIDROIT'S Secretariat will report orally on the outcome of the first session of the Space Preparatory Commission to the Governing Council.

## **PUBLICATIONS**

18. The revised Official Commentary to the Convention and **Rail Protocol** is expected to be ready in the autumn, after the International Registry Regulations have been adopted for Rail.

19. As regards the Official Commentary to the Convention and the **Space Protocol**, it was sent to the printer at the beginning of April 2013 and is expected to be ready towards the beginning of May 2013, hopefully on time for the session of the Governing Council.

20. Professor Sir Roy Goode is the author of both publications and has generously agreed to donate the proceeds from sales to the Uniform Law Foundation.

## **PROMOTION AND PUBLICITY**

21. Promotion and publicity efforts in relation to the Luxembourg Protocol and the Space Protocol are set out in the Annual Report for 2012. Of particular note is the First Annual Conference of the Cape Town Academic Project in Oxford on 5-6 September 2012 (see below, paragraph 11).

22. During the triennium 2014-2016, the Secretariat intends to advance the promotion of the Rail and Space Protocols and will explore the possibility of organising seminars with the purpose of enhancing awareness of the instruments and of their potential benefits.

## **ACTION TO BE TAKEN**

23. *The UNIDROIT Secretariat would invite the Governing Council to take note of the progress in the implementation of the Depositary functions under the Convention and to confirm to highest degree of priority to be conferred to the implementation of the Luxembourg and the Space Protocols for their early entry into force.*

## ANNEX I

**LUXEMBOURG PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE  
EQUIPMENT ON MATTERS SPECIFIC TO RAILWAY ROLLING STOCK**

**PROTOCOLE DE LUXEMBOURG PORTANT SUR LES QUESTIONS SPECIFIQUES AU MATERIEL ROULANT  
FERROVIAIRE A LA CONVENTION RELATIVE AUX GARANTIES INTERNATIONALES  
PORTANT SUR DES MATERIELS D'EQUIPEMENT MOBILES**

**Adoption:** Place / *Lieu*: Luxembourg  
Date: 23.02.2007

**Entry into force / *Entrée en vigueur*:** Not in force / Pas encore en vigueur (ex Art. XXIII)

**Depositary / *Dépositaire*:** UNIDROIT

STATE / <i>ETAT</i>	SIGNATURE	RATIFICATION (RT) ACCEPTANCE / <i>ACCEPTATION</i> (AC) APPROVAL / <i>APPROBATION</i> (AP) ACCESSION / <i>ADHESION</i> (AS)	DECLARATIONS	ENTRY INTO FORCE / <i>ENTREE EN VIGUEUR</i>
European Union / <i>Union européenne</i> ††	10.12.2009			
Gabon	23.02.2007			
Germany / <i>Allemagne</i> (with declaration at signature / <i>avec déclaration à la signature</i> )	21.11.2012			
Italy / <i>Italie</i>	23.02.2007			
Luxembourg	23.02.2007	31.01.2012 (RT)		
Switzerland / <i>Suisse</i>	23.02.2007			

†† Regional Economic Integration Organisation / *Organisation régionale d'intégration économique*: Protocol / *Protocole* Article XXII

## ANNEX II

**PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON  
MATTERS SPECIFIC TO SPACE ASSETS**

**PROTOCOLE PORTANT SUR LES QUESTIONS SPECIFIQUES AUX BIENS SPATIAUX A LA  
CONVENTION RELATIVE AUX GARANTIES INTERNATIONALES  
PORTANT SUR DES MATERIELS D'EQUIPEMENT MOBILES**

**Adoption:** Place: Berlin / *Lieu*: Berlin  
Date: 09.03.2012

**Entry into force / *Entrée en vigueur*:** Not in force / Pas encore en vigueur (ex Article XXXVIII)

**Depositary / *Dépositaire*:** UNIDROIT

STATE / <i>ETAT</i>	SIGNATURE	RATIFICATION (RT)	DECLARATIONS	ENTRY INTO FORCE / <i>ENTREE EN VIGUEUR</i>
		ACCEPTANCE / <i>ACCEPTATION</i> (AC) APPROVAL / <i>APPROBATION</i> (AP) ACCESSION / <i>ADHESION</i> (AS)		
Burkina Faso	09.03.2012			
Germany / <i>Allemagne</i> (with declaration at signature / <i>avec déclaration à la signature</i> )	21.11.2012			
Saudi Arabia / <i>Arabie saoudite</i>	09.03.2012			
Zimbabwe	09.03.2012			