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

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

(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 2014-2016</i>
<i>Priority</i>	<i>High</i>
<i>Related documents</i>	<i>UNIDROIT 2014 – C.D. (93) 2</i>

1. The *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock* (the Rail 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. None of them is yet in force.

2. UNIDROIT is designated as the Depositary to both instruments. Under the Work Programme 2014-2016, the implementation of both Protocols was given the highest degree of priority (cf. UNIDROIT 2013 – A.G.(72) 9, para. 28 and Appendix III). The present memorandum provides an update on the Institute's Depositary functions under them and details on UNIDROIT's activities regarding their promotion and implementation.

STATUS

3. 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.

4. As of 24 April 2014, 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.

5. 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.

6. As of 24 April 2014, it has four Signatory States (Burkina Faso, Germany, Saudi Arabia and Zimbabwe - see Annex II).

ACTIVITIES

GENERAL

7. 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.

8. 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.

RAIL PREPARATORY COMMISSION

9. A Preparatory Commission was set up by Resolution No. 1 of the Luxembourg diplomatic Conference for the establishment of an International Registry under the Luxembourg Protocol. Since its last full session in 2011, the Preparatory Commission had appointed a negotiating team, co-chaired by Peter Bloch and Mervi Kaikkonen, to conduct negotiations with SITA SA for the conclusion of the contract with the Registrar. On 4 and 5 February 2013 the negotiating team met at UNIDROIT's Headquarters in Rome with Aviareto and SITA representatives and the Secretary-General, 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, but for a few open issues which needed further discussion within SITA's management. The negotiating team continued to pursue negotiations with SITA throughout 2013 and early 2014 and is expected to send the completed set of documents to the UNIDROIT Secretariat before the meeting of the Governing Council.

10. At the same time, issues relating to the establishment of a definitive Supervisory Authority body were discussed with the Intergovernmental Organisation for International Carriage by Rail (OTIF) through repeated contacts between UNIDROIT and OTIF and during a dedicated meeting held on 22 and 23 May 2013 at the OTIF Headquarters in Bern with the participation of the UNIDROIT Secretary-General. The Secretariat is committed to take the necessary steps for ensuring the

establishment of a Supervisory Authority that would take over the tasks of the Preparatory Commission acting until now as provisional Supervisory Authority. To this end, it will continue its cooperation with the Intergovernmental Organisation for International Carriage by Rail (OTIF). All these activities are a necessary condition to be able to actively promote the ratification of the Rail Protocol and implement the highest priority given by the Work Programme to its early entry into force.

SPACE PREPARATORY COMMISSION

11. 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.

12. The first session of the Preparatory Commission was held at the seat of UNIDROIT in Rome on 6 and 7 May 2013, under the Chairmanship of the delegate of Italy Sergio Marchisio, professor and former Chairman of the Commission of the Whole at the Berlin Conference. The following States agreed to serve as members of the Preparatory Commission: Brazil, the People's Republic of China, the Czech Republic, France, Germany, India, Italy, the Russian Federation, Saudi Arabia, South Africa and the United States of America. A number of other participants and representatives of the financial and commercial world attended the session as observers. In particular, the International Telecommunication Union (ITU) accepted to join the Commission and confirmed its interest in considering the matter of its becoming the Supervisory Authority subject to the conditions already set forth in Resolution 2 of the Final Act of the Diplomatic Conference in Berlin.

13. The Preparatory Commission appointed two Working Groups, one entrusted with the development of rules for the International Registry for Space Assets (Chairman Igor Porokhin) and the other with the drafting of a request for proposals for the selection of a Registrar (Chairman Bernhard Schmidt-Tedd). The Commission invited Sir Roy Goode to produce, with the assistance of Secretariat of UNIDROIT and on the basis of comments received by the members of the Preparatory Commission, a first draft of the Registry Regulations accompanied by an Explanatory Memorandum clearly indicating the open points where input from industry and other experts would be most needed. Both documents were circulated in time to receive comments from delegates and observers and to prepare updated drafts for discussion at the second session of the Preparatory Commission.

14. The second session of the Preparatory Commission was held in Rome on 27 and 28 February 2014 (once again under the Chairmanship of Sergio Marchisio) and considered the revised draft of the Registry Regulations and the accompanying explanatory report prepared by Sir Roy Goode. It was opened by a visit of the premises of Thales Alenia Space Italia organised with the purpose of gathering useful inputs from the industry. At the outcome of the session an agreement in principle was reached on the vast majority of the provisions of the draft Registry Regulations, whilst consideration of the remaining open questions would be the object of a further revised document by Sir Roy Goode to be circulated for comments by the end of May (in particular the post-launch criteria to identify satellites where no serial number is available as well as the identifiability of separate parts of a space asset such as transponders). Members of the Preparatory Commission were encouraged to exchange further thoughts and information during the inter-sessional period, with the view to present a completed draft for final approval by the next meeting of the Commission.

15. During the second session of the Preparatory Commission the representatives of ITU reaffirmed the interest of their organisation for accepting the role of Supervisory Authority for the future Registry for space assets. They informed the Preparatory Commission on the forthcoming ITU meetings during which the question would be discussed, that is the Council meeting (May-June) and the meeting of the Conference of Plenipotentiaries (October-November). To facilitate the preparation of a report for the Council meeting the UNIDROIT Secretariat prepared a memorandum clarifying the precise role of the Supervisory Authority as well as liability issues in response to the questions posed by the representatives of ITU.

16. The third session of the Preparatory Commission is expected to take place on 10 and 11 September at the Headquarters of UNIDROIT in Rome. It will consider the draft Regulations with the view to approve them in their entirety. It will also address the issue of the request for proposals for the selection of a Registrar.

CONFERENCES AND SEMINARS RELATING TO THE RAIL AND SPACE PROTOCOLS

17. On 10 and 11 September 2013 the Cape Town Convention Academic Project organised its second annual Conference in the Faculty of Law, Oxford University, to the attention of academics and practising lawyers. The conference touched upon a variety of issues pertaining to all Protocols to the Convention. For a fuller account see Annual Report 2013 (C.D.(93) 2, pp. 19-20).

18. On 31 March and 1 April 2014 the Secretary-General attended as observer for UNIDROIT the 53rd session of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space (UN/COPUOS) in Vienna and presented a statement on the Space Protocol and its possible economic benefits with particular regard to the promotion of private investments in space activities.

19. Other events relating to the implementation of the Rail and the Space Protocol are expected to take place in 2014. In particular, the International Academy of Comparative Law (IACL), that will hold its XIX Congress in Vienna on 20-27 July 2014, will devote a specific session on "Security interests burdening transport vehicles – The Cape Town Convention and its implementation in national law". The third annual Conference of the Cape Town Convention Academic Project, which will be held in Oxford on 9 and 10 September 2014, will cover issues pertaining to all Convention's Protocols. Moreover, a seminar will be organised on 22 September 2014 by the Rail Working Group for the benefit of the rail industry at the Federal Ministry of Justice of Germany in Berlin.

PUBLICATIONS

20. The revised Official Commentary to the Cape Town Convention and the Rail Protocol by Sir Roy Goode was published in January 2014, while the Official Commentary to the Cape Town Convention and the Space Protocol was published in May 2013. For further information see document C.D.(93) 11, para. 10.

21. 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.

ACTION TO BE TAKEN

22. *The UNIDROIT Secretariat would invite the Governing Council to take note of the progress in the implementation of the Rail and the Space Protocols.*

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 SPÉCIFIQUES AU MATÉRIEL ROULANT
FERROVIAIRE A LA CONVENTION RELATIVE AUX GARANTIES INTERNATIONALES
PORTANT SUR DES MATÉRIELS D'ÉQUIPEMENT 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> ¹	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			

¹ Regional Economic Integration Organisation / *Organisation régionale d'intégration économique*: Protocol(e) 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 MATÉRIELS D'ÉQUIPEMENT 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) ACCEPTANCE / <i>ACCEPTATION</i> (AC) APPROVAL / <i>APPROBATION</i> (AP) ACCESSION / <i>ADHESION</i> (AS)	DECLARATIONS	ENTRY INTO FORCE / <i>ENTREE EN VIGUEUR</i>
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			