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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 Programmes 2014-2016 and 2017-2019</i>
<i>Priority</i>	<i>High</i>
<i>Related documents</i>	<i>UNIDROIT 2016 – C.D. (96) 2, UNIDROIT 2016– C.D. (95) 4, and C.D. (95) 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. Neither of them is yet in force.

2. UNIDROIT is designated as the Depositary to both instruments. Under the Work Programme 2017-2019, the implementation of both Protocols was given the highest degree of priority (cf. UNIDROIT 2016 – A.G.(75) 8, para. 44). The present memorandum provides an update on the Institute's Depositary functions under them and additional details on UNIDROIT's activities regarding their promotion and implementation.

STATUS

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

4. As of 15 April 2017, the Luxembourg Rail Protocol has eight Signatory States and one Signatory Regional Economic Integration Organisation (France, Gabon, Germany, Italy, Luxembourg, Mozambique, Switzerland, United Kingdom and European Union). On 31 January 2012 Luxembourg deposited its instrument of ratification. On 18 December 2014, the European Union's instrument of approval to the Rail Protocol was deposited with UNIDROIT. On 26 February 2016, the United Kingdom of Great Britain and Northern Ireland signed the Luxembourg Rail Protocol. Mozambique signed on 15 November 2016, followed by, France on 3 March 2017. For the details see Annexe I.

5. UNIDROIT has been designated as the Depositary to the **Space Protocol** (pursuant to its Article XLVIII(1)). The Space Protocol will enter into force following the procedure provided for in Article XXXVIII. As of 15 April 2017, it has four Signatory States (Burkina Faso, Germany, Saudi Arabia and Zimbabwe - see Annexe II).

ACTIVITIES

GENERAL

6. UNIDROIT's responsibilities as **Depositary** under the Luxembourg Rail 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.

RECENT ACTIVITIES OF THE DEPOSITARY IN RELATION TO THE LUXEMBOURG RAIL PROTOCOL

7. Her Excellency, Honourable Ms. Nyeleti Brooke Mondlane, Deputy Minister of Foreign Affairs and Cooperation of the Republic of **Mozambique**, signed the Luxembourg Rail Protocol at a ceremony held at the UNIDROIT HQ, on 15 November 2016. The event was attended also by H.E. Ms Maria Manuela Lucas, Ambassador of the Republic of Mozambique in Italy.

8. On 3 March 2017, **France**, already a signatory of the Cape Town Convention and the Aircraft Protocol, signed the Luxembourg Rail Protocol. At the signing ceremony that took place at the seat of UNIDROIT in Rome, France was represented by H.E. Madame Catherine Colonna, Ambassador of France to Italy.

RAIL PREPARATORY COMMISSION

9. A **Preparatory Commission** was established on 23 February 2007 by Resolution 1 of the diplomatic Conference to adopt a Rail Protocol to the Convention on International Interests in Mobile Equipment, in order to prepare the International Registry under the Rail Protocol. Negotiations between the Preparatory Commission negotiating team (co-chaired by the United States of America and Finland) and SITA SA for the conclusion of the contract with the prospective Registrar for the International Registry were successfully concluded on 31 July 2014. The Sixth Session of the Preparatory Commission, convened jointly by UNIDROIT and the Intergovernmental

Organisation for International Carriage by Rail (OTIF) approved the Registry Contract, the Master Services Agreement and their appendixes and annexes and Regulis SA, a SITA company, as Registrar, while Regulis SA, represented by its executive manager Elisabeth Hirst, and the Secretary-General of UNIDROIT, on behalf of the Preparatory Commission, signed in Rome on 12 November 2014 the contract for the establishment and operation of the Rail International Registry. The Seventh Session of the Rail Preparatory Commission was held in Rome at the seat of UNIDROIT on 11 December 2014, approving the draft baseline Regulations for the International Registry for railway rolling stock. For more information on these activities and events see the Annual Report 2014, C.D. (95) 2, p. 13.

10. The Seventh Session of the Preparatory Commission was immediately followed by an informal meeting of the **Ratification Task Force**. The Ratification Task Force, composed of the Co-Chairs of the Preparatory Commission, of Luxembourg, representatives of the Rail Working Group, of Regulis SA as designated Registrar and of SITA, as well as of OTIF and UNIDROIT started its work in 2015 and set up an intense agenda, mostly through regular teleconferences and planning of Rail Working Group seminars in various jurisdictions. For more information on the activities in 2015 and 2016 see Annual Reports 2015, C.D. (95) 2, p. 11-12 and 2016, C.D. (96) 2, as well as below, in the Section on *Institutional meetings, conferences and other activities*.

SPACE PREPARATORY COMMISSION AND EVENTS RELATING TO THE SPACE PROTOCOL

11. Pursuant to Resolution 1 of the diplomatic Conference for the adoption of a Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets adopted on 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. 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. The International Telecommunication Union (ITU) as well as representatives of the financial and commercial world were invited as observers.

12. Three sessions of the Preparatory Commission were held between 2013 and 2014 at the seat of UNIDROIT in Rome, under the Chairmanship of the former Chairman of the Commission of the Whole at the Berlin Conference Sergio Marchisio and with the participation of Sir Roy Goode as consultant: on 6 and 7 May 2013, on 27 and 28 February 2014 and on 11 and 12 September 2014. For more detailed information see Annual Report 2014, C.D. (94) 2, p. 12-13. At the outcome of the third session, a consultation procedure regarding the draft Registry Rules, and in particular the remaining open issue of the identification criteria for (components of) space assets, was deemed to be necessary. It was conducted on the basis of a questionnaire prepared by Sir Roy Goode following consultations with the members and observers of the Preparatory Commission and sent to a number of relevant industry stakeholders (manufacturers, operators, financial institutions, international organisations and associations). For more details on this process and on the participants to the consultation see UNIDROIT 2015 – C.D. (94) 5 (a), p. 3. The feedback received during said consultation formed the basis for a revised draft of the Registry Regulations that was circulated among Preparatory Commission members in Spring 2015 for further discussion. At its fourth session, held in Rome on 10 and 11 December 2015, the Commission, making use of the extensive consultation conducted in 2015 and of the drafts provided by Sir Roy Goode, was able to finalise the baseline Registry Regulations for the Space Registry. It also advanced its work towards the drafting of a request for proposals to be submitted to prospective candidates to the role of Registrar. After the fourth session, Preparatory Commission members assisted by Sir Roy Goode and the Secretariat continued to work on the development of rules of procedure for the Commission of Experts of the future Supervisory Authority (CESAIR). The rules of procedure for the CESAIR were approved by Commission members on 22 February 2016.

13. The Preparatory Commission held an informal teleconference meeting on 6 December 2016 to discuss open issues relating to the appointment of a Supervisory Authority, the designation of a Registrar and the future strategy towards the implementation of the Protocol.

14. With regard to the promotion of the Space Protocol, on 2 February 2017 the Secretary-General of UNIDROIT José Angelo Estrella Faria presented at the 54th session of the Scientific and Technical Subcommittee of the Committee on the Peaceful Uses of Outer Space. The presentation was entitled "Towards the Establishment of the International Registry of Secured Interests in Space Objects". The Secretary-General also delivered a Statement during the General Exchange of Views.

INSTITUTIONAL MEETINGS, CONFERENCES AND OTHER ACTIVITIES RELATING TO THE RAIL PROTOCOL HELD IN 2016 AND 2017

15. Several events relating (also) to the Rail Protocol to which UNIDROIT was represented were held in the course of 2016 and in the first part of 2017. In particular, the events organised in the framework of the Ratification Task Force of the Rail Preparatory Commission were instrumental in raising awareness and interest in the Rail Protocol, as witnessed by the recent signatures detailed above.

16. For the events taking place before the 95th Governing Council Session please refer to UNIDROIT 2016 –C.D. (95) 4, p. 15-21.

17. Between 15 and 16 August 2016 the UNIDROIT Secretary-General José Angelo Estrella Faria visited Mozambique and met with governmental officials and private sector representatives to discuss the utility of implementing UNIDROIT instruments in Mozambique. Of particular note with reference to the Rail Protocol was his meeting Mr Carlos Fortes Mesquita, Minister of Transport.

18. The UNIDROIT Deputy Secretary-General Anna Veneziano took part in a Workshop entitled "Innovations and Best Practices in Railway Development and Operations", organised by the US Department of Transport and Indian Railways in Delhi from 18 to 20 October 2016. A session of the Workshop was specifically devoted to the presentation of the Luxembourg Rail Protocol, with the joint participation of the Deputy Secretary General, Peter Bloch (Chair of the Ratification Task Force), Howard Rosen (Chair of the Rail Working Group), and Elizabeth Hirst (Managing Director, Regulis SA – Registrar Designate). The Workshop was attended by numerous delegates from the United States of America, India, and other Asian jurisdictions. a Workshop in New Delhi, to which Deputy Secretary-General Anna Veneziano participated on behalf of UNIDROIT. The Deputy Secretary-General also had the opportunity to meet with Ms Uma Sekhar (Joint Secretary, Legal & Treaties Division, Ministry of External Affairs) to discuss India's involvement in UNIDROIT's activities and the utility of further implementation of UNIDROIT instruments in India.

19. Additionally, a Symposium was held in Rome at the seat of UNIDROIT on 30 November 2016 to address the latest developments regarding the Luxembourg Rail Protocol and the benefits of becoming a party thereto. The symposium was open to appointed government officials of all Unidroit member States and States parties to the Cape Town Convention, and garnered the participation of over 50 delegates representing these States and Industry Stakeholders. The Secretary-General of UNIDROIT, José Angelo Estrella Faria, and the Secretary-General of OTIF, Francois Davenne, opened the event, which featured panels focussing on the Emerging Opportunities of the Luxembourg Rail Protocol, Updates from the Ratification Task Force, and a Roundtable on the benefits of the Protocol for the financing in the rail sector. The audience heard perspectives on these topics from panellists Howard Rosen (Chairman of the Rail Working Group), Elizabeth Hirst (Registrar Designate of the International Registry), Peter Bloch and Mervi Kaikkonen

(Co-Chairs of the Preparatory Commission and Ratification Task Force). The Panels were followed by a Roundtable on the benefits of the Protocol for the financing in the rail sector with Olivier Desfontaines, Head of Railway Finance at Crédit Agricole Corporate and Investment Bank and Roberta Odoardi, Director of Pricewaterhouse Coopers, chaired by Howard Rosen. The Symposium also benefitted from a statement provided by the Ambassador of Mozambique, H.E. Maria Manuela Lucas, reiterating the importance of Mozambique's recent signature and its intention to proceed to ratification.

20. Another important event relating to the Rail Protocol took place in March this year. On 28 March 2017, the Secretary-General was invited to participate in a Symposium on the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock. The Symposium, organised by the Treaty & Law Department of the Ministry of Commerce of the People's Republic of China (MOFCOM) and hosted by the University of International Business and Economics (UIBE), was addressed to industry stakeholders and government officials and aimed to provide an understanding of the benefits of the Rail Protocol, its overall impact, the functioning of the Registry, as well as an assessment based on the Aircraft Protocol. The Symposium was opened by Mr. YE Jun (Deputy Director General, Treaty & Law Dept, MOFCOM), and Professor SHI Jingxia (Dean UIBE Law School), Mr LIU Keyi (Deputy Director, Domestic Trade Law Divisions, Treaty & Law Dept, MOFCOM) and featured presentations by the Secretary-General on the Rail Protocol and by Ms Elizabeth Hirst (Managing Director, Regulis SA - Registrar Designate of the International Registry under the Rail Protocol) on the functioning of the International Rail Registry.

21. The UNIDROIT Secretariat will continue to promote the Rail and Space Protocols in the course of 2017 through participation in the activities of the Preparatory Commissions and through participation in, and organisation of, specific events.

CAPE TOWN CONVENTION ACADEMIC PROJECT

22. The Cape Town Convention Academic Project, a joint endeavour of the University of Oxford, Faculty of Law, and the University of Washington, School of Law (as well as under the auspices of UNIDROIT for the repository and the journal), held its 5th Annual Conference in Oxford on 8 and 9 September 2016, with the active participation of academics, practicing lawyers and governmental experts. Topics addressed in the presentations relating to the Rail and Space Protocols included a comparative analysis of aircraft, rail, and space international registries and their regulatory provisions and the relationship between EU transport regulation and the Rail Protocol. The main presentations were published in the 5th issue of the Cape Town Convention Journal, together with the updated UNIDROIT Depository Report. The 6th CTCAP Annual Conference will take place in Oxford in September 2017.

ACTION TO BE TAKEN

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

ANNEXE 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**

as of 15 April 2017 / *au 15 avril 2017*

Adoption: Place / *Lieu*: Luxembourg
Date: 23-02-2007

Entry into force: No / *Non*
Entrée en vigueur: Conditions: 4 ratifications (Art. XXIII(1))

**Contracting States /
Etats contractants** /

Depositary / Dépositaire: UNIDROIT

STATE / <i>ETAT</i>	SIGNATURE	RATIFICATION / ACCESS. / <i>ADHES.</i>	ENTRY INTO FORCE / <i>ENTREE EN VIGUEUR</i>	DECL. or RESERV. / <i>DECL. ou RESERVES</i>
France	03-03-17	-	-	-
Gabon	23-02-07	-	-	-
Germany / <i>Allemagne</i>	21-11-12	-	-	-
Italy / <i>Italie</i>	23-02-07	-	-	-
Luxembourg	23-02-07	31-01-12	-	-
Mozambique	15-11-16	-	-	-
Switzerland / <i>Suisse</i>	23-02-07	-	-	-
United Kingdom / <i>Royaume-Uni</i>	26-02-16	-	-	-
European Union / ¹ <i>Union européenne</i>	10-12-09	18-12-14	-	D

¹ Regional Economic Integration Organisation / *Organisation régionale d'intégration économique*: Protocol(e) Article XXII

ANNEXE 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**

as of 15 April 2017 / *au 15 avril 2017*

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 (<i>RT</i>) ACCEPTANCE / <i>ACCEPTATION</i> (<i>AC</i>) APPROVAL / <i>APPROBATION</i> (<i>AP</i>) ACCESSION / <i>ADHESION</i> (<i>AS</i>)	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			