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Item No. 11 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, 2017-2019, and 2020-2022</i>
<i>Priority</i>	<i>High</i>
<i>Related documents</i>	<i>UNIDROIT 2019 – C.D. (98) 2 ; UNIDROIT 2019– C.D. (98) 3 and <i>UNIDROIT 2020 – C.D. (99) B.2</i></i>

1. The *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock* (the Luxembourg 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 2020-2022,, the implementation of both Protocols was given high degree of priority ([UNIDROIT 2019 – C.D. \(98\) 17](#), para. 317; [UNIDROIT 2019 – A.G. \(78\) 12](#), para. 51). This memorandum provides an update on the Institute's Depositary functions and provides additional details on UNIDROIT's activities regarding their promotion and implementation since the 98th session of the Governing Council in May 2019.

I. STATUS

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

4. As of 15 July 2020, the Luxembourg Rail Protocol was signed by six States (France, Germany, Italy, Mozambique, Switzerland and the United Kingdom) and ratified by three States (Luxembourg, Gabon and Sweden) and one contracting Regional Economic Integration Organisation (the European Union). For the details see Annexe I.

5. UNIDROIT has been designated as the Depositary of the Space Protocol (pursuant to its Article XLVIII (1)), which will enter into force following the procedure provided for in Article XXXVIII. As of 15 July 2020, it has four Signatory States (Burkina Faso, Germany, Saudi Arabia and Zimbabwe). For the details, see Annexe II.

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.

LUXEMBOURG RAIL PROTOCOL

Ratification Task Force actions and promotional activities; cooperation with other organisations

7. Since the last session of the Governing Council in May 2019, the UNIDROIT Secretariat has undertaken numerous activities to promote the implementation and entry into force of the Luxembourg Rail Protocol also in cooperation with the Rail Working Group and the Ratification Task Force, as well as other organisations (see below). The Protocol only needs one additional ratification/accession alongside the issuance by the Supervisory Authority of a certificate confirming that the International Registry is fully operational to enter into force (taking into account that such certificate is needed for the Registry to start its operation). The Secretariat was informed that work towards ratification is progressing in several jurisdictions. In particular, Spain has set up an interministerial commission, and legislative work towards the implementation of the Protocol has already started. The United Kingdom, on its part, had indicated its intention to resume the process towards ratification with the launching of a public consultation in the course of 2020. A number of African States are actively considering ratification of the Protocol, also as a result of the promotional activities undertaken by the Secretariat in cooperation with other institutions (see below, paras 8 et seq.), as well as the endorsement provided by the United Nations Economic Commission for Africa (UNECA) and other intergovernmental bodies (see below, paras 8 and 16): South Africa's process of ratification is underway, with the involvement of the competent ministerial authorities and in consultation with relevant stakeholders; Nigeria's and Kenya's Attorney General offices have indicated their countries' interest in proceeding with ratification; the Mauritius Law Reform Commission had opened a consultation with relevant stakeholders (with active participation of the Rail Working Group and the UNIDROIT Secretariat) and has submitted a report to the Attorney-General with a legislative proposal for the implementation of (among others) the Luxembourg Rail Protocol.

While the current COVID-19 pandemic has understandably shifted priorities for many governments, the Secretariat has continued to liaise with those and several other interested governments to provide information and support towards ratification.

8. For the details on the conferences, seminars and meetings regarding the Luxembourg Rail Protocol and which took place in the period January-April 2019, see the 2019 Annual Report (C.D. (99) B.2). In relation to this fruitful period, the Secretariat would like to highlight the Ministerial Resolution adopted on 26 March 2019 by the UNECA plenary meeting in Marrakesh, Morocco, chaired by the Minister of Economy and Finance of the Kingdom of Morocco, mandating the Commission to raise the awareness of, and advocate the adoption of, the Luxembourg Rail Protocol across Africa (see the [Report](#), p. 18-19).

9. On 14 May 2019, the Protocol was presented in the context of an exclusive Rail Working Group briefing in Spanish at the Madrid offices of Watson Farley & Williams, with participation of key stakeholders. Presentations were delivered by Secretary-General Professor Ignacio Tirado and Professor Teresa Rodríguez de las Heras Ballel. The workshop was instrumental in raising awareness of the benefits of the Protocol in Spain.

10. On 8 July 2019, the UNIDROIT Secretariat participated in a conference organised in Beijing entitled “UNIDROIT and China: The Cape Town Convention, Investing in Agriculture and UPICC”, hosted by Governing Council member Professor Jingxia Shi at the University of International Business and Economics (UIBE). The event brought together Chinese Government representatives (including the Ministry of Commerce (MOFCOM), the National Bureau of Railway Administration and the China Banking and Insurance Regulatory Commission), legal experts in secured transactions, academics and private sector stakeholders involved in the rail, mining, agriculture and construction industries.

11. On 16 July 2019, the Deputy Secretary-General Professor Anna Veneziano participated in a meeting in Berne, hosted by the Secretary General of the Intergovernmental Organisation for International Carriage by Rail (OTIF) Wolfgang Küpper, with participation of the Chair of the Rail Working Group Howard Rosen and the Co-Chair of the Preparatory Commission Peter Bloch, as well as Lunesterline Andriamahatahitry and Bas Leermakers for OTIF, where the cooperation between the two organisations and the way forward for the implementation of the Rail Protocol were discussed.

12. On 14 October 2019, the Secretariat was invited to present the Cape Town Convention system to EU member states to the EU Working Party on Civil Law Matters at the EU Council in Brussels under the Finnish Presidency. On that occasion, the Secretary-General Ignacio Tirado delivered a general presentation including the Luxembourg Rail Protocol. Moreover, the Secretary-General, the Deputy Secretary-General, Howard Rosen and Peter Bloch met with Maurizio Castelletti (Head of Unit, Directorate-General for Mobility and Transport, EC) and Laurent Prat (Policy Officer) of the European Commission (DG MOVE).

13. On 22 October 2019, UNIDROIT organised an international conference to present, inter alia, the Cape Town Convention and its MAC and Luxembourg Rail Protocols, which was hosted by Strathmore University Law School in Nairobi. The event drew the participation of diplomatic and government representatives, legal experts and industry stakeholders to discuss the beneficial impact of the Protocols on developing countries and emerging markets. The first session of the conference, chaired by Allan Mukuki, research fellow at Strathmore University, focused particularly on the Rail Protocol, with participation of Deputy Secretary-General Anna Veneziano, Chairman of the RWG

Howard Rosen and Galetlolwe Semenya (Passenger Rail Agency of South Africa). The final session, moderated by Beatrice Osicho (Office of the Attorney General), discussed the advantages of the Cape Town Convention system for Africa with presentations from Leah Mumbi Kiwara (World Bank Group), Soteri Gatera (UNECA), as well as the Secretary-General of UNIDROIT.

14. On 29 October 2019, Secretary-General Ignacio Tirado was invited to speak at a high-level symposium organised by OTIF in Vilnius, to mark the 20th anniversary of the Vilnius Protocol. He spoke on a roundtable to address how fragmentation of international railway law can be avoided and the quality of international regulations and their effective implementation can be ensured, alongside OTIF Secretary-General, Mr Wolfgang Küpper, EC-DG MOVE Head of Single European Rail Area unit, Mr Maurizio Castelletti, moderated by the Ambassador of the Republic of Lithuania H.E. Dr. Vytautas Naudužas.

15. On 12 November 2019, during the MAC Diplomatic Conference in Pretoria, UNIDROIT and the Rail Working Group co-organised a side event to present and discuss the “Legal Operation and Economic Benefits of the Luxembourg Rail Protocol to the Cape Town Convention”, hosted at the Department of International Relations and Cooperation of South Africa (DIRCO). The event was opened by Chief State Law Adviser of DIRCO, Adv. Sandea de Wet, the Secretary-General Ignacio Tirado and Lunesterline Andriamahatahitry (Head of Administration and Finance Department of OTIF), followed by presentations on the legal operation and the economic and social benefits of the Rail Protocol from the Deputy Secretary-General Anna Veneziano and Howard Rosen. The event was concluded by a panel on the potential advantages of the implementation of the Rail Protocol for Africa, with the participation of Chief of Energy, Infrastructure and Services Team of UNECA Robert Lisinge, CEO for Railroad Association and RWG Director for Africa Mesela Nhlapo and John Wilson, Senior Financial Sector Specialist at the IFC.

16. The Luxembourg Rail Protocol found further recognition in a conclusive communiqué which was issued by the Ministers and delegates to the Fifth Week of the Programme for Infrastructure Development in Africa (5th PIDA Week, Cairo 25-29 November 2019) and the organizing and partners institutions, including the African Union Commission (AUC), African Union Development Agency-NEPAD (AUDA-NEPAD), the Government of the Arab Republic of Egypt, the other African Union Members States, the Regional Economic Communities, the African Development Bank (AfDB), the UNECA, the German Cooperation, the European Union (EU), the Development Bank of Southern Africa (DBSA), the Japan International Cooperation Agency (JICA), Private Sector representatives, as well as distinguished invitees including the Rail Working Group, urging African States to ratify the Luxembourg Rail Protocol (See the report of the [closing session](#), point 18).

17. From 30 November to 2 December 2019, Deputy Secretary-General Anna Veneziano participated in ministerial and governmental meetings in Cairo, concerning in particular the Luxembourg Rail Protocol, together with Howard Rosen (RWG), Robert Lisinge (Head of Energy, Infrastructure and Services UNECA) and Khaled Hussein (Director of sub-regional section North Africa, UNECA).

18. On 6 February 2020, Secretary-General Ignacio Tirado delivered a presentation concerning the Luxembourg Rail Protocol to the Land Transport Working Party of the Council of the European Union in Brussels under the Croatian Presidency, at the invitation of the EU Commission DG MOVE.

19. A workshop addressing the implementation of Secured Transactions Reform, with discussion inter alia of the Luxembourg Rail Protocol, was organised in Lagos (Nigeria) by Aston University and in cooperation with the Rail Working Group, on 10 March 2020. Secretary-General Professor Tirado and Mr Howard Rosen (Chairman of the Rail Working Group), unable to travel to Lagos due to the Covid-19 outbreak, participated remotely, together with Mr Soteri Gatera (UNECA). The Secretariat is continuing to actively cooperate with OTIF in the preparatory work for the setting up of the Supervisory Authority for the operation of the International Registry through remote meetings of the Ratification Task Force. The Secretariat will also follow up on the cooperation with other global and regional organisations in order to maximise efforts towards dissemination of information and implementation.

Official Commentary (3rd Edition)

20. The preparation of a third edition of the Official Commentary on the Convention on International Interests in Mobile Equipment and the Luxembourg Protocol on Matters Specific to Railway Rolling Stock, by Professor Sir Roy Goode, is underway, and expected to be published in late 2021.

Other activities

21. At its eighty-second session, held on 25-28 February 2020, the United Nations Economic Commission for Europe (UNECE) Inland Transport Committee, upon recommendation of its Working Party on Rail Transport (SC.2) approved the establishment of a Group of Experts on the Unique Rail Vehicle Identification System created by the Luxembourg Rail Protocol (URVIS), called the "Group of Experts on Permanent Identification of Railway Rolling Stock" (GE_PIRRS) and its terms of reference. Beside its role for the unique identification of railway rolling stock under the Luxembourg Rail Protocol, the URVIS is seen as beneficial because it would facilitate tracking of the status and location of equipment in real time, enabling predictive maintenance programmes and supporting more efficient accident analysis for liability and insurance. As the Luxembourg Rail Protocol does not determine the way the URVIS number can be permanently fixed on the rolling stock, the Group of Experts was tasked with providing recommendations to solve this challenge, in conformity with current industry practice and anticipating technological and other advances in the future. UNIDROIT was invited to participate in the Working Group, the first session of which is scheduled to take place during the first week of September.

SPACE PROTOCOL

22. 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. In 2017, the Commission's members agreed to constitute a Sub-Group to reassess industry participation for the promotion and development of the Space Protocol. Since the last Governing Council session in May 2019, that Sub-Group met via teleconference once to discuss several issues connected with the promotion and implementation of the Space Protocol.

23. The Space Protocol was featured at several events in which UNIDROIT was invited to participate. In particular: on 16 April 2019 Deputy Secretary-General Anna Veneziano and Legal Consultant Hamza Hameed delivered a joint lecture to the students of the Advanced Master's LLM in Air and Space Law Programme at Leiden University; Hamza Hameed presented at a regional conference co-hosted by the US Department of State, the Thai Geo-Informatics and Space Technology Development Agency (GISTDA), and the Space Generation Advisory Council (SGAC) in

Bangkok (23-25 August 2019), as well as at the United Nations/Turkey/APSCO Conference on Space Law and Policy held in Istanbul (23-26 September 2019).

24. On 30 April 2020, Hamza Hameed delivered a lecture via videoconferencing relating to the Space Protocol to the students of the Advanced Master's LLM in Air and Space Law Programme at Leiden University.

25. The Secretariat will continue to monitor the developments in relation to the Space sector and to promote the Space Protocol pursuant to its mandate.

26. Among planned events, Hamza Hameed will deliver a virtual presentation at the 'International Symposium on Maintaining the Rule of Law in Outer Space in an Age of Rapid Innovation' to be held alongside the 2020 China Space Conference in Fuzhou, China on 20-21 September 2020. Additionally, Anna Veneziano and Hamza Hameed will be contributing a chapter on the Space Protocol in the 2nd Edition of Contracting for Space, a book co-authored by Dr. Lesley Jane Smith and Dr. Ingo Baumann published by Taylor and Francis. Anna Veneziano and Hamza Hameed, together with Oliver Heinrich and Erik Pellander from BHO Legal, will also present a paper on the Space Protocol at the CyberSpace Edition of the International Astronautical Congress to be held on 12-14 October 2020.

ACTION TO BE TAKEN

27. *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 24 August 2020 / *au 24 août 2020*

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	04-04-17	-	-
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	-	-	-
Sweden / <i>Suède</i>	27-06-17	02-07-18	-	XXVII(1)
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 24 August 2020 / *au 24 août 2020*

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)	DECLARATIONS	ENTRY INTO FORCE / <i>ENTREE EN VIGUEUR</i>
		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	-	-	-