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Item No. 6 on the agenda: International Interests in Mobile Equipment

**(b) 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 level</i>	<i>High</i>
<i>Related documents</i>	<i>UNIDROIT 2019 – C.D. (98) 17</i> ; <i>UNIDROIT 2019 – A.G. (78) 12</i>

I. INTRODUCTION

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 for 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 2020-2022 Work Programme, the implementation of both Protocols was given a 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 additional details on UNIDROIT's activities regarding their promotion and implementation since the second meeting of the 100th session of the Governing Council in September 2021.

II. 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 4 May 2022, the Luxembourg Rail Protocol was signed by eight States (France, Germany, Italy, Mozambique, South Africa, Spain, Switzerland and the United Kingdom), ratified by three States (Luxembourg, Gabon and Sweden), and approved by one Regional Economic Integration Organisation (the European Union). See Annexe I for further details.

5. UNIDROIT has been designated as the Depository 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 4 May 2022, it has four Signatory States (Burkina Faso, Germany, Saudi Arabia and Zimbabwe). See Annexe II for further details.

III. ACTIVITIES

6. UNIDROIT's responsibilities as Depository 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 Depository.

A. Luxembourg Rail Protocol

1. Institutional follow up work after the 10th Session of the Preparatory Commission

7. The 10th Session of the Preparatory Commission regarding the establishment of the International Registry for railway rolling stock according to the Luxembourg Rail Protocol was jointly convened by UNIDROIT and OTIF via e-mail confirmation procedure by Note Verbale addressed to Member States on 2 July 2021 (N.V. DC10/771). Preparatory Commission Members were requested to confer a mandate to a Negotiating Team in order to conduct negotiations in relation to a proposed change of ownership or control of the Registrar-designate Regulis S.A., in accordance with Art. 17 of the Contract for the Establishment and the Operation of the International Registry for Railway Rolling Stock.

8. Pursuant to the conferral of the mandate by the Preparatory Commission, the UNIDROIT Secretariat has participated in several remote plenary meetings of the Negotiating Team, which is composed of representatives from UNIDROIT, OTIF and the Rail Working Group (RWG), the Co-Chairs of the Preparatory Commission, as well as the interested companies. Further, the Secretariat has participated in several in-person and remote Workshops organised to advance the work of the Negotiating Team, with a view to agreeing on the necessary adjustments to the existing contracts. It is envisaged that a Preparatory Commission session will be convened later this year to approve the change of ownership or control as well as the proposed adjustments to the contracts. In relation to subsequent steps towards the setting up of the Registry and the Supervisory Authority, it is envisaged that the 12th Preparatory Commission session could then be convened back-to-back with the first Supervisory Authority session in late 2022-early 2023.

2. Signature of the Luxembourg Rail Protocol by Spain and South Africa and ratification process

9. The Protocol's entry into force requires 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. The resurgence of the COVID-19 pandemic has understandably impacted governmental agendas and priorities in all countries, making it more difficult to engage governments and achieve ratifications. Nevertheless, two important steps forward have been taken since the 100th session of the Governing Council.

10. On 10 November 2021, the Kingdom of Spain, which is already a Party to the Cape Town Convention and the Aircraft Protocol, signed the Luxembourg Rail Protocol, at a ceremony held at the UNIDROIT Headquarters with participation of His Excellency, Mr Alfonso María Dastis Quecedo, Ambassador Extraordinary and Plenipotentiary of the Kingdom of Spain in Italy. The Secretariat was informed that Spain has completed all ministerial and administrative phases of the procedure for ratification of the Protocol, that is awaiting parliamentary confirmation and is expected within 2022.

11. On 22 March 2022, His Excellency Mr Fikile Mbalula, Minister of Transport of South Africa, signed the Luxembourg Rail Protocol for South Africa, which is already a Party to the Cape Town Convention and the Aircraft Protocol. The Secretariat has been informed that the ratification process is underway.

3. Ratification Task Force actions and other promotional activities

12. The UNIDROIT Secretariat has continued to undertake various activities to promote the implementation and entry into force of the Luxembourg Rail Protocol, also in cooperation with OTIF, the RWG and the Ratification Task Force of the Preparatory Commission, as well as other organisations (see below, paras. 14 et seq.). The Secretariat has also continued to monitor developments in several jurisdictions, actively liaise with potential contracting States, as well as assist the RWG in, or directly drafting support documentation for, interested governments (including India, Italy, and Mongolia among others).

13. On 10 January 2022, the Rail Protocol was presented by Deputy Secretary-General Anna Veneziano as part of the UNIDROIT Secretariat's presentation on the Cape Town Convention and its Protocols at a Legal Information and Management Series event, organised by the Legal Department of the Asian Infrastructure Development Bank (AIIB).

4. Cooperation with other organisations

UNECE Group of Experts (GE_PIRRS)

14. At its eighty-second session, held on 25-28 February 2020, the UN ECE Inland Transport Committee 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, upon recommendation of its Working Party on Rail Transport (SC.2). 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 join the Group of Experts with OTIF and the RWG.

15. The fourth meeting of the Group of Experts was held on 13-14 September 2021; it was attended remotely for UNIDROIT by Deputy Secretary General Anna Veneziano and saw the participation of the RWG, OTIF as well as European and international industry associations and UNECE Member States. It continued the fruitful discussion on the development of Model Rules for the implementation of the URVIS number. For more information: <https://unece.org/info/Transport/Rail-Transport/events/357264>. The fifth meeting, which will discuss an advanced draft of the Model Rules, is planned for 4-6 May 2022. In all likelihood an additional meeting will be needed to complete the approval of the instrument.

EU Commission

16. On 14 December 2021, the European Commission launched its "Action plan to boost long distance and cross-border passenger rail", which contains its clear commitment to the Luxembourg Rail Protocol stating the following: "In its conclusions of 3 June 2021, the Council recognised "that

major investment by the sector in international long-distance rolling stock is required” and “also that investment is urgently needed from the private sector” reminding “Member States of the existence of international agreements and treaties which facilitate private investment, such as the Luxembourg Rail Protocol to the Cape Town Convention [on International Interests in Mobile Equipment].” The Commission stated that “the European Union (in respect of its competences) and several Member States have already ratified the Protocol. Upon its entry into force, the Protocol will make it easier and cheaper for the private sector to finance railway rolling stock. The Commission will promote its swift implementation across the [European] Union.”

B. Space Protocol

17. 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 has been established 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. This Sub-Group continues to serve as the body responsible for the follow-up and implementation of the Space Protocol.

18. Since the last update to the Governing Council, the Space Protocol has been featured at several events where UNIDROIT has been invited to participate. In particular, in October 2021, the Space Protocol was presented by Legal Consultant Hamza Hameed as part of two technical presentations at the International Astronautical Congress 2021 (IAC 2021) organised by the International Astronautical Federation (IAF) and the Muhammad Bin Rashid Space Centre of the UAE in Dubai. This included a presentation on ‘Secondary Market for Space Assets – The Economic Case for On-Orbit Servicing as a Mechanism to Extend Satellite Life Cycles and Mitigate Space Debris’, as part of the IAF Symposium on Space Security in the session on ‘Political, Legal, Institutional and Economic Aspects of Space Debris Mitigation and Removal – STM Security’; and a presentation on ‘Security Interests In Extra-Terrestrial Infrastructure’, as part of the IISL Colloquium on the Law of Outer Space in the session on ‘The relations between Trade Law, Finance and Space Law’.

19. Additionally, on 30 July 2021, in collaboration with the Space Court Foundation, UNIDROIT organised a panel discussion on ‘Reimagining the Space Protocol: Examining the Cape Town Convention amid Emerging Space Activities’. This panel discussion explored asset-based financing as a tool NewSpace companies can use to further fuel the expansion of human space activities.

20. Furthermore, in the 2022 Manfred Lachs Space Law Moot Court Competition, which normally focusses on public international space law treaties, the Space Protocol was the main subject of the case. This resulted in an increased amount of interest in the Space Protocol from universities from different parts of the world. As such, the UNIDROIT Secretariat gave presentations relating to the Space Protocol to students from Kings College London, the Gennadiy Zhukov International Space Law Centre, The Peoples’ Friendship University of Russia (RUDN University), Sofia University St. Kliment Ohridski, University of Luxembourg, Leiden University, the Centre for Aviation and Space Laws at NUJS, India, as well as a team representing various universities from Chile. Additionally, the Secretariat also taught a lecture on the Space Protocol as part of the LLM Programme on Air and Space Law at Leiden University on 12 May 2022.

21. Among other engagements, on 7 October 2021, the Space Protocol was presented by the Secretariat as part of an online event in organised by the Futures Forum during World Space Week; it was featured in an online lecture on the Cape Town Convention at the Faculty of Law, Universitas Padjadjaran on 12 November 2021; it was the centre-point of an in-person presentation at the International Conference on Aerospace Science and Engineering (ICASE2021) organised by the Institute of Space Technology (IST) and National Center for GIS and Space Applications in Islamabad,

Pakistan in December 2021; it was included as part of a presentation to the Legal Section of the Asian Infrastructure Investment Bank at an online event on 10 January 2022; presented to all of the judges of the Dubai International Financial Center Courts at an online event on 24 February 2022; and shared as part of an online European Space Agency Space Law Talks event on 26 April 2022.

22. In increasing UNIDROIT's engagement and collaboration with the United Nations Office for Outer Space Affairs (UNOOSA) on matters related to the Space Protocol, a formal MoU was signed between the two organisations in September 2021, which was followed by the General Assembly of the Committee on the Peaceful Uses of Outer Space (COPUOS), and subsequently the UN General Assembly, formally accepting UNIDROIT as a Permanent Observer to COPUOS. In April 2022, the Secretariat virtually attended the 61st Session of the COPUOS Legal Subcommittee and presented an update on the Space Protocol to all the delegates. Additionally, the Secretariat also delivered a virtual presentation on the Space Protocol at the UN/Chile Conference on Space Law and Policy on 11 May 2022.

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

IV. ACTION TO BE TAKEN

24. *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 SPÉCIFIQUES AU MATÉRIEL ROULANT FERROVIAIRE
À LA CONVENTION RELATIVE AUX GARANTIES INTERNATIONALES
PORTANT SUR DES MATÉRIELS D'ÉQUIPEMENT MOBILES**

as of 4 May 2022 / *au 4 mai 2022*

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

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

**Contracting States /
États contractants** /

Depositary / Dépositaire: UNIDROIT

STATE / ÉTAT	SIGNATURE	RATIFICATION / ACCESS. / ADHÉS.	ENTRY INTO FORCE / ENTRÉE EN VIGUEUR	DECL. or RESERV. / DÉCL. OU RÉSERVES
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	-	-	-
South Africa / <i>Afrique du Sud</i>	22-03-22			
Spain / <i>Espagne</i>	10-11-21			
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 SPÉCIFIQUES AUX BIENS SPATIAUX À LA CONVENTION RELATIVE AUX GARANTIES INTERNATIONALES PORTANT SUR DES MATÉRIELS D'ÉQUIPEMENT MOBILES**as of 4 May 2022 / *au 4 mai 2022***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>ÉTAT</i>	SIGNATURE	RATIFICATION (RT) ACCEPTANCE / <i>ACCEPTATION</i> (AC) APPROVAL / <i>APPROBATION</i> (AP) ACCESSION / <i>ADHÉSION</i> (AS)	DECLARATIONS	ENTRY INTO FORCE / <i>ENTRÉE EN VIGUEUR</i>
Burkina Faso	09.03.2012	-	-	-
Germany / <i>Allemagne</i> (with declaration at signature / <i>avec</i> <i>déclaration à la signature</i>)	21.11.2012	-	-	-
Saudi Arabia / <i>Arabie</i> <i>saoudite</i>	09.03.2012	-	-	-
Zimbabwe	09.03.2012	-	-	-