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**GOVERNING COUNCIL**  
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**Item No. 8 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, 2020-2022, 2023-2025</i>
<i>Priority level</i>	<i>High</i>
<i>Related documents</i>	<a href="#"><i>UNIDROIT 2019 – C.D. (98) 17</i></a> ; <a href="#"><i>UNIDROIT 2020 – C.D. (99) B.13</i></a> ; <a href="#"><i>UNIDROIT 2021 – C.D. (100) B.10</i></a> ; <a href="#"><i>UNIDROIT 2022 – C.D. (101) 13</i></a>

**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 is yet in force.

2. UNIDROIT is designated as the Depositary to both instruments. Under the 2023-2025 Work Programme, the implementation of both Protocols continues to be given a high degree of priority ([UNIDROIT 2022 – C.D. \(101\) 21](#), para. 277; [UNIDROIT 2022 – A.G. \(81\) 9](#), para. 67). This document provides an update on the Institute's Depositary functions and additional details on UNIDROIT's activities regarding their promotion and implementation since the 101<sup>st</sup> session of the Governing Council in June 2022.

**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 31 March 2023, the Luxembourg Rail Protocol had been signed by eight States (France, Germany, Italy, Mozambique, South Africa, Spain, Switzerland, and the United Kingdom), ratified by four States (Luxembourg, Gabon, Spain, 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. Ratification by the Kingdom of Spain (fourth State party)**

7. On 20 January 2023, Spain, already a Party to the Cape Town Convention and its Aircraft Protocol, deposited its instrument of ratification of the Luxembourg Rail Protocol, with declarations under Articles XIII, XIV (2)-(3), XXIV, XXV and XXVI. Spain had signed the Treaty on 10 November 2021.

8. His Excellency, Ambassador Mr Miguel Ángel Fernández-Palacios Martínez, and Mr Moisés Morera Martín, First Secretary of the Embassy of Spain in Italy, participated in a ceremony to celebrate the deposit, together with President Maria Chiara Malaguti and Secretary-General Ignacio Tirado of UNIDROIT.

9. With the ratification by Spain, the Luxembourg Rail Protocol reached its fourth State party and is ready to enter into force as soon as the other condition set out in Article XXIII (1) of the Protocol has been satisfied (i.e., deposit by the Secretariat (OTIF) with the Depository (UNIDROIT) of a certificate confirming that the International Registry is fully operational).

##### **2. Institutional follow up work after the tenth session of the Preparatory Commission**

###### ***Background***

10. During the course of 2020, the Co-Chairs of the Preparatory Commission for the Establishment of a Registry under the Luxembourg (Rail) Protocol ("Preparatory Commission"), were informed that the parent company of the Registrar-designate Regulis SA, SITA, and the publicly-traded Canadian company Information Services Corporation (ISC) had initiated preliminary contacts relating to the possibility of ISC taking over SITA's shareholdings in Regulis and assuming the rights and obligations of SITA and SITA Ireland in relation to the contracts for the operation of the International Registry. The conditions and procedure for a substantial change of ownership or control in Regulis were expressly envisaged under Clause 17 of the 2014 Contract for the Establishment and the Operation of the International Registry for Railway Rolling Stock ("Supervisory Contract"). As a result, informal exploratory discussions with SITA and ISC took place in order to understand what would be required to ensure compliance with the provisions of the Supervisory Contract. These preliminary discussions also involved one of the Co-Chairs of the Preparatory Commission and representatives of UNIDROIT, OTIF and the Rail Working Group, in order to ascertain, to the extent possible at that initial stage, that such change of ownership or control would not be detrimental to

the future functioning of the Registry. The discussions were conducted under a non-disclosure agreement at the request of ISC.

11. On the basis of the encouraging outcome of such discussions, and with the consent of SITA and ISC, the Co-Chairs of the Preparatory Commission requested UNIDROIT and OTIF to convene the tenth Preparatory Commission session, which was held between 7 and 26 July 2021 using a written confirmation procedure. The Preparatory Commission approved the conferral of a mandate to conduct negotiations with ISC and SITA in relation to the proposed change of ownership/control to a Negotiating Team composed of the Co-Chairs of the Preparatory Commission Antti Leinonen (Finland) and Peter Bloch (United States), Secretary-General Ignacio Tirado and Deputy Secretary-General Anna Veneziano of UNIDROIT, Secretary General Wolfgang Küpper and Head of Administration and Finance Department Lunesterline Andriamahatahitry of OTIF, and Chairman Howard Rosen and Secretary Martin Fleetwood of the Rail Working Group.

#### ***Activity of the Negotiating Team***

12. Acting in the best interest of the Preparatory Commission to facilitate the entry into force of the Luxembourg Rail Protocol, for which a solid and functioning Registrar is an absolute prerequisite, the Negotiating Team was mandated to ascertain the suitability of ISC to set up, operate and market the International Registry, as well as to consider suitable consequent amendments to the existing Agreements, which would continue to regulate the relationship between the parties (the 2014 Supervisory Contract, together with its annexed Attachments; the Master Services Agreement between SITA and SITA Ireland with its annexed Schedules; the Software Security Agreement; and the Deed of Business Continuity—together “the 2014 Agreements”).

13. Throughout 2022, the Secretariat facilitated and participated in an intense schedule of meetings of the Negotiating Team with ISC and ISC-subsiary Enterprise Registry Solutions Limited (ERS), which consisted of monthly virtual plenary meetings, as well as additional specific virtual and in-person legal and technical workshops, with participation of some of the members of the Negotiating Team. The negotiations, which were conducted in a spirit of full cooperation and mutual trust between the parties, culminated with the agreement on the required adjustments to the 2014 Agreements and with the issuance of the Final Report of the Negotiating Team, presented for approval to the Preparatory Commission. The new Agreements (the Amended and Restated Supervisory Contract with its annexed Attachments, the Amended and Restated Master Services Agreement between ISC and ERS with its annexed Schedules, and the amended Software Security Agreement and the Deed of Business Continuity) were provisionally initialled by the Negotiating Team on behalf of the Preparatory Commission, and ISC and ERS, as applicable, on 4 November 2022.

#### ***Preparatory Commission: 11<sup>th</sup> session (29-30 November 2022)***

14. On 29 and 30 November 2022, OTIF and UNIDROIT jointly convened the eleventh session of the Preparatory Commission, which was held both in person at the seat of UNIDROIT in Rome and via videoconference, and was co-chaired by Peter Bloch (United States) and Antti Leinonen (Finland). The session was attended by 20 State delegations. The opening of the session featured statements from the Secretaries General of UNIDROIT and OTIF, as well as from H.E. Michèle Pranchère-Tomassini, Ambassador of Luxembourg to Italy, and H.E. Nosipho Nausca-Jean Jezile, Ambassador of South Africa to Italy.

15. Notably, after reviewing the Final Report of the Negotiating Team, the Preparatory Commission approved the change of control in the Registrar-designate Regulis SA from SITA BV to ISC’s wholly-owned subsidiary, ISC Atlantic Services Inc., and the assignment of the Master Service Agreement, Software Security Agreement, and Deed of Business Continuity from SITA Ireland to ERS. The Preparatory Commission also approved the proposed amendments to the 2014 Agreements regarding the operation of the Registry. In relation to this latter issue, the negotiations had been conducted with the purpose of keeping revisions of the original agreements to a minimum and to

preserve the purpose and structure of the agreements as well as the key contractual terms, while recognising, however, that some changes were required in light of the long time passed and the evolution of the sector. In particular, substantive changes were deemed necessary for the following reasons: a) the different structure of the company and the different relationship between the Registrar and the software provider; b) the need to consider the evolution of the Registrar's duties over the past seven years, taking, *inter alia*, the revised draft Regulations into account; and c) the evolution of technology over the past seven years, particularly the impact on the software and security systems and the transition to cloud-based technology to develop and operate the International Registry.

16. Finally, the Preparatory Commission heard progress reports on the development of the Registry Regulations and the Model Rules for the permanent identification of railway rolling stock (see below, paras. 22-26).

17. The complete Report of the session is available [here](#).

### **Conclusion of the agreements with the new Registrar**

18. Following the decision taken at the 11<sup>th</sup> Preparatory Commission session, ISC and SITA implemented the change of control for Regulis SA and the assignment of the Master Service Agreement, Software Security Agreement and Deed of Business Continuity on 20 December 2022. The amended and restated agreements for the operation of the International Registry were signed by the UNIDROIT Secretary-General, as representative of the Preparatory Commission, by ISC and by ERS, as applicable, on 23 December 2022. A [Press Release](#) featuring the change of Registrar was jointly published on 18 January 2023.

### **3. Special Ratification Task Force meeting (23-24 January 2023)**

19. The Ratification Task Force (RTF), composed of the Co-Chairs of the Preparatory Commission (representing Finland and the United States, respectively), UNIDROIT, OTIF, the Rail Working Group, and the Registrar-designate Regulis SA, had been set up at the sixth session of Preparatory Commission to develop an implementation and ratification strategy for the Luxembourg Rail Protocol. The RTF, subsequently joined by Luxembourg and Sweden, had planned an intense agenda for its work through formal and informal meetings, mostly via teleconference, with the purpose of reaching the number of adhesions required for the entry into force of the Protocol and the operability of the Registry. In view of the approval of the change of control in Regulis SA and the achievement of the fourth ratification between the end of 2022 and the beginning of 2023, UNIDROIT and OTIF convened a special RTF meeting on 23-24 January 2023 at the seat of UNIDROIT (and remotely) to plan the institutional, technical, and policy steps related to the implementation of the Protocol and its imminent entry into force. The meeting represented, in addition, an opportunity to introduce the new Registrar, which participated through the Vice-President of ISC and the person responsible for the development of the Registry.

20. The following main points were discussed: (i) Planning of the institutional steps and documents to be prepared towards the entry into force of the Protocol (institutional timeline including approvals by OTIF organs and convening of the last Preparatory Commission session back-to-back with the first Supervisory Authority session, draft agreement between OTIF and the Supervisory Authority, timeline for the update of the draft Statutes and Procedures of the Supervisory Authority, and setting up of the Supervisory Authority); (ii) Timeline for the update of the draft Regulations; (iii) Planning of the process for the development of the Registry and interaction with the institutional framework; (iv) Further implementation steps in contracting States; and (v) Ratification priorities and strategies to promote ratification by other States.

21. The RTF also agreed to request that the Preparatory Commission, at its next session, confirm its continued operation after the entry into force of the Protocol and the setting up of the Supervisory Authority. It was further agreed to extend invitations to take part in the RTF, in due course, to the other States Parties, including Gabon, South Africa, Spain, and the EU, and to other organisations interested in the implementation of the Protocol. The next RTF meeting is scheduled to take place before summer 2023.

#### **4. Cooperation with other organisations:**

##### ***Model Rules for the permanent identification of railway rolling stock under the Luxembourg Rail Protocol approved by the UNECE Inland Transport Committee***

22. The Unique Rail Vehicle Identification System (URVIS) number plays a fundamental role in the functioning of the Luxembourg Rail Protocol, as it provides for the unique identification necessary for the registration of the international interest in rail rolling stock equipment. The Luxembourg Rail Protocol, however, does not determine the way the URVIS number can be permanently fixed on the rolling stock. In order to provide recommendations to solve this practical challenge in conformity with current industry practice, the UN Economic Commission for Europe Inland Transport Committee (the UN platform for inland transport, with participation of States and industry representatives), at its 82<sup>nd</sup> session held on 25-28 February 2020, approved the establishment of a Group of Experts ("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). UNIDROIT was invited to join the Group of Experts, which was attended by State delegations and industry associations, together with OTIF and the Rail Working Group.

23. The Group of Experts held five meetings between 2020 and May 2022, discussing Model Rules for the permanent identification of railway rolling stock, which would be open for adoption by declaration of a party to an agreement creating an international interest in railway rolling stock equipment under the Cape Town Convention and Luxembourg Rail Protocol.

24. UNIDROIT representatives, attending remotely, took an active part in the meetings, particularly in order to ensure that the Model Rules (i) were developed in accordance with the Protocol, (ii) allowed participation in any revision committees of all State parties to the Protocol, and (iii) became binding upon the Registrar only upon approval by the Supervisory Authority.

25. From 1 to 3 June 2022, the UNIDROIT Secretariat participated, together with the Rail Working Group and OTIF, in an informal drafting group meeting set up at the fifth session of Group of Experts, with the aim of implementing the decisions taken at that session and finalising the draft Model Rules and the Terms of Reference for the Revision Committee. UNIDROIT also participated in the sixth session of the Group of Experts (29-30 August 2022), which approved the final draft of the Model Rules with minor changes and agreed to submit them to the Working Party on Rail Transport (SC.2) for adoption, which indeed ensued in November 2022.

26. The Model Rules were finally approved by the Inland Transport Committee of the United Nations at its 85<sup>th</sup> session in February 2023 and published as ECE/TRANS/2023/37.

##### ***EU Commission***

27. With the European Union being Party to the Luxembourg Rail Protocol, the EU Commission accepted the invitation by the Co-Chairs of the Ratification Task Force to become a member of the RTF and will participate in its meetings through representatives of DG MOVE.

## **5. Conferences, lectures, and other promotional activities**

28. The UNIDROIT Secretariat has continued to undertake various activities to promote the implementation and entry into force of the Luxembourg Rail Protocol, including activities in cooperation with OTIF, the Rail Working Group, and the RTF, as well as other organisations. The Secretariat has also continued to monitor developments in several jurisdictions, meet with governmental representatives, and either directly draft (or assist the RWG in drafting) support documentation for interested governments (including with respect to China, India, Italy, Kenya, Mauritius, Mongolia, the Philippines, and Tanzania, among others).

29. Promotional activities with participation of the Secretariat included lectures at the UNIDROIT International Summer School, where the Protocol was discussed as a tool for sustainable economic development for Africa; presentations at the 60<sup>th</sup> Annual Session of the Asian-African Legal Consultative Organisation (AALCO); the International Academy of Comparative Law IACL-UNIDROIT Workshop on finance instruments, within the framework of the IACL XXI Congress in Asunción, Paraguay; and the Asia-Pacific Private International Law Summit on Facilitating Access to Credit in the context of the “Hong Kong 2022 Legal Week”. In addition, the Rail Working Group continued to further the promotion of the Protocol, including by the organisation of, and participation in, an event hosted by the Luxembourg Ambassador in Berlin in October 2022, as well as industry meetings with a particular focus on Africa.

## **6. Next steps: process for the setting up of the International Registry and the Supervisory Authority**

30. In relation to the setting up of the institutional framework for the entry into force of the Protocol, the current implementation plan envisages that the last Preparatory Commission session and first Supervisory Authority session be convened back-to-back in the fourth quarter of 2023, marking the entry into force of the treaty. In order to achieve this objective, the UNIDROIT Secretariat, in cooperation with OTIF, the Co-Chairs of the Preparatory Commission, and the RWG, is actively monitoring the work towards the setting up of the International Registry through regular meetings and exchange of information with the Registrar, so as to ensure a timely deposit of the certificate attesting that the Registry is fully operational, in accordance with the agreed institutional timeline. Moreover, the RTF agreed on a timeline for the completion of the required institutional documentation and steps, including an update of the draft Statutes and Procedures of the Supervisory Authority (last approved at the eighth Preparatory Commission session), an update of the draft Registry Regulations (last approved at the ninth Preparatory Commission session), and the designation of the member States of the Supervisory Authority by OTIF and UNIDROIT.

## **B. Space Protocol**

31. 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 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.

32. Since the last update to the Governing Council, the Space Protocol has been featured at several events where UNIDROIT was invited to participate. In particular, in September 2022, the Space Protocol was presented by Legal Consultant Hamza Hameed as part of two technical presentations at the International Astronautical Congress (IAC) 2022 organised by the International Astronautical Federation (IAF) in Paris, France. The first was a presentation on “Secondary markets in space – the

important role in-space transfers of space assets can play in promoting the long-term sustainability of outer space”, which was presented in a colloquium on Space Sustainability organised by the International Institute of Space Law (IISL), and the second was a presentation with Susana Fornies on “Asset-based Financing in the Space Industry - Lessons from Aviation Finance and Market Readiness”, which was presented at the International Astronautical Federation Business Innovation Symposium in a session examining finance and investment from the practitioner’s perspective.

33. Among other engagements, on 24 August 2022, the Space Protocol was presented by the Secretariat in an online lecture at the National University of Singapore. Additionally, the Space Protocol was taught as part of a course on Space Law & Policy at the Institute of Space Technology in Pakistan on 22 June 2022. A presentation on the Space Protocol was also delivered as part of the UNIDROIT Summer School in June 2022.

34. Furthermore, since the last update to the Governing Council, the Secretariat has continued to develop strategic partnerships to further the understanding of asset-based financing in the space sector. In this regard, on 14 June 2022, UNIDROIT signed an MoU with the Space Court Foundation. The aim of the MoU is to strengthen cooperation between UNIDROIT and the Space Court Foundation in furthering the institutions’ respective goals for peaceful dispute resolution under private international law, with an emphasis on furthering research in areas of space law and with particular focus on the financing of space activities. Additionally, on 15 February 2023, UNIDROIT signed an MoU with the Space Economy Evolution (SEE) Lab of the SDA Bocconi School of Management, with a goal towards promoting more research and greater understanding of the space economy, with a focus on private sector financing. In this regard, the Secretariat participated in the SEE Lab General Assembly meeting, which took place at the SDA Bocconi campus in Milan on 16 March 2023.

35. In increasing UNIDROIT’s engagement and collaboration with the United Nations Office for Outer Space Affairs (UNOOSA) on matters related to the Space Protocol, the Secretariat delivered a virtual presentation on the Space Protocol at the UN/Chile Conference on Space Law and Policy on 11 May 2022. Additionally, the Secretariat delivered a statement updating the Committee on the Peaceful Uses of Outer Space (COPUOUS) at its 65<sup>th</sup> Plenary Session, which took place between 1 and 10 June 2022. The Secretariat also delivered a Statement at the 62<sup>nd</sup> session of the COPUOS Legal Subcommittee (20-31 March 2023). UNIDROIT intends to increase its cooperation with the United Nations on the Space Protocol moving forward.

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

#### **IV. ACTION TO BE TAKEN**

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

## 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 April 2023 / au 4 avril 2023

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

**Entry into force:** No / *Non*  
**Entrée en vigueur:** Conditions: 4 ratifications and deposit of certificate (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	20-01-23	-	XIII, XIV(2)-(3), XXIV, XXV and XXVI XXVII(1)
Sweden / <i>Suède</i>	27-06-17	02-07-18	-	
Switzerland / <i>Suisse</i>	23-02-07	-	-	-
United Kingdom / <i>Royaume-Uni</i>	26-02-16	-	-	-
European Union / <sup>1</sup> <i>Union européenne</i>	10-12-09	18-12-14	-	D

<sup>1</sup> 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 April 2023 / *au 4 avril 2023***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

<b>STATE / <i>ÉTAT</i></b>	<b>SIGNATURE</b>	<b>RATIFICATION (RT) ACCEPTANCE / <i>ACCEPTATION (AC)</i> APPROVAL / <i>APPROBATION</i> (AP) ACCESSION / <i>ADHÉSION</i> (AS)</b>	<b>DECLARATIONS</b>	<b>ENTRY INTO FORCE / <i>ENTRÉE EN VIGUEUR</i></b>
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	–	–	–