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Item No. 5 (a) on the agenda: Implementation and status of the Cape Town Convention, the Aircraft Protocol and the Luxembourg Protocol

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Update on the implementation and status of the Cape Town Convention, the Aircraft Protocol and the Luxembourg (Rail) Protocol</i>
<i>Action to be taken</i>	<i>See § 9</i>
<i>Mandate</i>	<i>Work Programme 2006-2008</i>
<i>Priority level</i>	<i>High</i>
<i>Status</i>	<i>Ongoing activity</i>
<i>Related documents</i>	<i>Annual Report 2008 (C.D(88) 2)</i>

INTRODUCTION

1. The *Convention on International Interests in Mobile Equipment* (the Convention) and the Protocol thereto on Matters specific to Aircraft Equipment (the Aircraft Protocol) were opened to signature in Cape Town on 16 November 2001. The *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock* (the Luxembourg Protocol) was opened to signature in Luxembourg on 23 February 2007. UNIDROIT is designated the Depository to each of these instruments, and this memorandum provides an update on the implementation of the Institute's Depository functions under them.

STATUS

2. The Aircraft Protocol, and the Convention as applied to aircraft objects, entered into force on 1 March 2006 following the deposit of the eighth instrument of ratification/accession.

3. During the period between the preparation of the memorandum for the 87th session of the Governing Council and 31 January 2009, instruments of ratification/accession in relation to the Convention and the Aircraft Protocol have been lodged by the following States: Bangladesh, Cuba, India, Kazakhstan (Convention only), Luxembourg, Saudi Arabia, Singapore, the United Arab Emirates, the United Republic of Tanzania, and Zimbabwe (Convention only). There have been no ratifications/accessions in relation to the Luxembourg Protocol, which will enter into force following the fourth ratification/accession. The annexe to this memorandum lists the status of the Convention, the Aircraft Protocol and the Luxembourg Protocol as at 1 February 2009.

ACTIVITIES

General

4. UNIDROIT'S responsibilities as Depositary under the Convention, the Aircraft Protocol and the Luxembourg 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. The UNIDROIT Secretariat is continuing to liaise closely with a number of States that are at various stages of the ratification/accession process. The Secretariat also continues to provide information and assistance to Contracting States, prospective Contracting States and others with an interest in the Cape Town system. The Secretariat has also continued to pursue close and productive working relationships with the International Registry (Aircraft) and the Supervisory Authority.

Convention / Luxembourg Protocol

5. The Luxembourg Diplomatic Conference established a Preparatory Commission to make preparations for the entry into force of the Luxembourg Protocol. The second session of the Preparatory Commission, hosted by UNIDROIT, was held in Rome from 8 to 10 April 2008. At that session, which followed a competitive tender process, the Preparatory Commission decided to enter into negotiations with CHAMP Cargosystems SA (Champ) to operate the International Registry (Rail). A small negotiating team, comprising the Co-Chairmen of the Preparatory Commission and representatives of the Secretariat, OTIF and the Rail Working Group, negotiated on behalf of the Preparatory Commission (some specific issues relating to insurance coverage were resolved with the assistance of particular expertise provided by the German Government). A series of contract negotiations were conducted with representatives of Champ, and these included face-to-face negotiations in Brussels on 1-2 July 2008, and in London on 4-5 September, as well as numerous teleconference meetings and email exchange of documents. Following difficulties in reaching agreement on several key issues, on 15 October 2008 the Chairman of Champ advised the negotiating team that Champ would be withdrawing its proposal and suspending the negotiations. Since then work has proceeded to investigate the possibility of the negotiations with Champ being continued in a modified form, and it is also possible that the Preparatory Commission will decide to undertake a new process to identify an entity to operate the International Registry. Also in October 2008 the Co-Chairman, Mr Henrik Kjellin (Sweden), indicated that he would not be continuing in that role, and following consultations with Member States of the Preparatory Commission Ms Mervi Kaikkonen (Finland) was appointed Co-Chairman.

PUBLICATIONS

6. At its 87th session the Governing Council approved publication of the revised edition of the *Official Commentary to the Cape Town Convention and Aircraft Protocol*, and of the *Official Commentary to the Cape Town Convention and Luxembourg Protocol*, both authored by Professor Sir Roy Goode. Following extensive final editing and formatting, these volumes were published in June 2008. As at 31 January 2009, the revised edition of the Official Commentary to the Cape Town Convention and Aircraft Protocol had sold 271 copies, and the original version had sold 805 copies. As at 31 January 2009, the Official Commentary to the Cape Town Convention and Luxembourg Protocol had sold 57 copies.

7. The Depositary reports, which are provided for in Article 61(1) of the Convention and Article XXXVII(1) of the Aircraft Protocol, are required to take into account reports of the Supervisory Authority. The finalisation of the reports relating to 2006 and 2007 had been delayed pending receipt of the Supervisory Advisory reports. The Supervisory Advisory reports were received, and the Depositary reports relating to 2006 and 2007 were published, during 2008. The Supervisory Authority has also indicated that it is likely to be providing its reports to the Depositary on a biannual basis, and the Depositary has proposed to Contracting States that Depositary reports also be produced on a biannual basis.

PROMOTION AND PUBLICITY

8. Promotion and publicity efforts in relation to the Convention, the Aircraft Protocol and the Luxembourg Protocol are set out in the *Annual Report* for 2008.

ACTION TO BE TAKEN

9. *The UNIDROIT Secretariat would invite the Governing Council to note the progress in the implementation of the Depositary functions under the Convention.*

ANNEXE

CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
CONVENTION RELATIVE AUX GARANTIES INTERNATIONALES
PORTANT SUR DES MATERIELS D'EQUIPEMENT MOBILES

Adoption: Place: Cape Town / *Lieu*: Le Cap
 Date: 16.11.2001

Entry into force / Entrée en vigueur: Date: 01.03.2006 (*ex Art. 49(1)*)

Contracting States / Etats contractants: 30

Depositary / Dépositaire: UNIDROIT

STATE / ETAT	SIGNATURE	RATIFICATION (RT) ACCEPTANCE / ACCEPTATION (AC) APPROVAL / APPROBATION (AP) ACCESSION / ADHESION (AS)	DECLARATIONS	ENTRY INTO FORCE / ENTREE EN VIGUEUR
Afghanistan		25.07.2006 (AS)	Arts. 39(1)(a), 39(1)(b), 40, 52, 53, 54(2)	01.11.2006
Albania / Albanie		30.10.2007 (AS)	Arts. 39(1)(a), 39(1)(b), 54(2)	01.02.2008
Angola		30.04.2006 (AS)	Arts. 39(1)(a), 40, 54(2)	01.08.2006
Bangladesh		15.12.2008 (AS)	Arts 39(1)(a), 39(1)(b), 40, 52, 53, 54(2)	01.04.2009
Burundi	16.11.2001			
Canada	31.03.2004			
Cape Verde / Cap-Vert		26.09.2007 (AS)	Arts. 39(1)(a), 40, 53, 54(2)	01.01.2008
Chile / Chili	16.11.2001			
China / Chine	16.11.2001			
Colombia / Colombie		19.02.2007 (AS)	Arts. 39(1)(a), 54(2)	01.06.2007
Congo	16.11.2001			
Cuba	16.11.2001	28.01.2009 (RT)	Art. 54(2)	01.05.2009
Ethiopia / Ethiopie	16.11.2001	21.11.2003 (RT)	Arts. 39(1)(a), 40, 54(2)	01.04.2004
France	16.11.2001			
Germany / Allemagne (with declaration at signature / avec déclaration à la signature)	17.09.2002			
Ghana	16.11.2001			
India / Inde		31.03.2008 (AS)	Arts. 39(1)(a), 39(1)(b), 40, 52, 53, 54(2)	01.07.2008
Indonesia / Indonésie		16.03.2007 (AS)	Arts. 39(1)(a), 39(1)(b), 40, 53, 54(2)	01.07.2007

Ireland / <i>Irlande</i>		29.07.2005 (AS)	Arts. 39(1)(a), 39(1)(b), 54(2)	01.11.2005
Italy / <i>Italie</i>	06.12.2001			
Jamaica / <i>Jamaïque</i>	16.11.2001			
Jordan / <i>Jordanie</i>	16.11.2001			
Kazakhstan		21.01.2009 (AS)		01.05.2009†
Kenya	16.11.2001	13.10.2006 (RT)	Arts. 39(1)(a), * 39(1)(b), 40, 53, 54(2)	01.02.2007
Lesotho	16.11.2001			
Luxembourg		27.06.2008 (AS)	Arts. 53, 54(2)	01.10.2008
Malaysia / <i>Malaisie</i>		02.11.2005 (AS)	Arts. 39(1)(a), 39(1)(b), 40, 53, 54(2)	01.03.2006
Mexico / <i>Mexique</i>		31.07.2007 (AS)	Arts. 39(1)(a), 39(1)(b), 50, 53, 54(2), 60	01.11.2007
Mongolia / <i>Mongolie</i>		19.10.2006 (AS)	Arts. 39(1)(a), 39(1)(b), 53, 54(2)	01.02.2007
Nigeria	16.11.2001	16.12.2003 (RT)	Arts. 39(1)(a), * 40, * 53, * 54(2)*	01.04.2004
Oman		21.03.2005 (AS)	Arts. 39(1)(a), 39(1)(b), 40, 52, 53, 54(2)	01.07.2005
Pakistan		22.01.2004 (AS)	Arts. 39(1)(a), 39(1)(b), 39(4), 40, 52, 53, 54(2)	01.05.2004
Panama	11.09.2002	28.07.2003 (RT)	Arts. 39(1)(a), 39(1)(b), 39(4), 50, 53, 54(2)	01.04.2004
Saudi Arabia / <i>Arabie saoudite</i>	12.03.2003	27.06.2008	Art. 54(2)	01.10.2008
Senegal / <i>Sénégal</i>	02.04.2002	09.01.2006 (RT)	Arts. 39(1)(a), 39(1)(b), 40, 52, 53, 54(2)	01.05.2006
Singapore / <i>Singapour</i>		28.01.2009 (AS)	Arts. 39(1)(a), 39(1)(b), 39(4), 53, 54(2)	01.05.2009
South Africa / <i>Afrique du sud</i>	16.11.2001	18.01.2007 (RT)	Arts. 39(1)(a), 39(1)(b), 40, 54(2)	01.05.2007
Sudan / <i>Soudan</i>	16.11.2001			
Switzerland / <i>Suisse</i>	16.11.2001 <i>ad referendum</i>			
Syrian Arab Republic / <i>République arabe syrienne</i>		07.08.2007 (AS)		01.12.2007†
Tonga	16.11.2001			
Turkey / <i>Turquie</i>	16.11.2001			
Ukraine	09.03.2004			
United Arab Emirates / <i>Émirats arabes unis</i>		29.04.2008 (AS)	Arts. 39(1)(a), 39(1)(b), 40, 52, 53, 54(2)	01.08.2008

United Kingdom / <i>Royaume-Uni</i> (with declaration at signature / <i>avec</i> <i>déclaration à la</i> <i>signature</i>)	16.11.2001			
United Republic of Tanzania / <i>République-</i> <i>Unie de Tanzanie</i>	16.11.2001	30.01.2009 (RT)	Art. 54(2)	01.05.2009
United States of America / <i>Etats- Unis</i> <i>d'Amérique</i>	09.05.2003	28.10.2004 (RT)	Arts. 39(1)(a), 39(1)(b), 54(2)	01.02.2005
Zimbabwe		13.05.2008 (AS)		01.09.2008†

* Affected by withdrawal and/or subsequent declaration. / *Fait l'objet d'un retrait et/ou d'une déclaration subséquente*

† Subject to / *sous réserve du*: Convention Article 49(1)

**PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT**
**PROTOCOLE PORTANT SUR LES QUESTIONS SPECIFIQUES AUX MATERIELS D'EQUIPEMENT
AERONAUTIQUES A LA CONVENTION RELATIVE AUX GARANTIES INTERNATIONALES
PORTANT SUR DES MATERIELS D'EQUIPEMENT MOBILES**

Adoption: Place: Cape Town / *Lieu*: Le Cap
Date: 16-11-2001

Entry into force: Date: 01.03.2006 (ex Art. XXVIII(1))
Entrée en vigueur:

Contracting States / Etats contractants: 27

Depositary / Dépositaire: UNIDROIT

STATE / ETAT	SIGNATURE	RATIFICATION (RT) ACCEPTANCE / ACCEPTATION (AC) APPROVAL / APPROBATION (AP) ACCESSION / ADHESION (AS)	DECLARATIONS	ENTRY INTO FORCE / ENTREE EN VIGUEUR
Afghanistan		25.07.2006 (AS)	Arts. XXIX, XXX(1), (2), (3)	01.11.2006
Albania / Albanie		30.10.2007 (AS)	Arts. XIX, XXX(1)	01.02.2008
Angola		30.04.2006 (AS)	Art. XXX(1), (2), (3)	01.08.2006
Bangladesh		15.12.2008 (AS)	Arts XXIX, XXX(1), XXX(2), XXX(3)	01.04.2009
Burundi	16.11.2001			
Canada	31.03.2004			
Cape Verde / Cap-Vert		26.09.2007 (AS)	Art. XXX(1), (2), (3)	01.01.2008
Chile / Chili	16.11.2001			
China / Chine	16.11.2001			
Colombia / Colombie		19.02.2007 (AS)	Art. XXX(1), (2), (3)	01.06.2007
Congo	16.11.2001			
Cuba	16.11.2001	28.01.2009 (RT)		01.05.2009
Ethiopia / Ethiopie	16.11.2001	21.11.2003 (RT)	Art. XXX(1), (2), (3)	01.03.2006
France	16.11.2001			
Germany / Allemagne (with declaration at signature / avec déclaration à la signature)	17.09.2002			
Ghana	16.11.2001			
India		31.03.2008 (AS)	Arts. XXX(1), (2), (3)	01.07.2008
Indonesia / Indonésie		16.03.2007 (AS)	Art. XXX(1), (2), (3)	01.07.2007
Ireland / Irlande		23.08.2005 (AS)	Art. XXX(1), (2)	01.03.2006
Italy / Italie	06.12.2001			
Jamaica / Jamaïque	16.11.2001			

Jordan / <i>Jordanie</i>	16.11.2001			
Kenya	16.11.2001	13.10.2006 (RT)	Art. XXX(1), (2), (3)	01.02.2007
Lesotho	16.11.2001			
Luxembourg		27.06.2008 (AS)	Art. XXX(1), (2), (3)	01.10.2008
Malaysia / <i>Malaisie</i>		02.11.2005 (AS)	Art. XXX(1), (2), (3)*	01.03.2006
Mexico / <i>Mexique</i>		31.07.2007 (AS)	Arts. XIX, XXX(1), (3)	01.11.2007
Mongolia / <i>Mongolie</i>		19.10.2006 (AS)	Art. XXX(1), (2), (3)	01.02.2007
Nigeria	16.11.2001	16.12.2003 (RT)	Art. XXX(1),* (2),* (3)*	01.03.2006
Oman		21.03.2005 (AS)	Arts. XXIX, XXX(1), (2), (3)	01.03.2006
Pakistan		22.01.2004 (AS)	Arts. XXIX, XXX(1), (2), (3)	01.03.2006
Panama	11.09.2002	28.07.2003 (RT)	Art. XXX(1), (2), (3)	01.03.2006
Saudi Arabia / <i>Arabie saoudite</i>	12.03.2003	27.06.2008 (RT)		01.10.2008
Senegal / <i>Sénégal</i>	02.04.2002	09.01.2006 (RT)	Arts. XXIX, XXX(1), (2), (3)	01.05.2006
Singapore / <i>Singapour</i>		28.01.2009 (AS)	Arts. XXX(1), (3)	01.05.2009
South Africa / <i>Afrique du sud</i>	16.11.2001	18.01.2007 (RT)	Arts. XXX(1), (2), (3)	01.05.2007
Sudan / <i>Soudan</i>	16.11.2001			
Switzerland / <i>Suisse</i>	16.11.2001 <i>ad referendum</i>			
Tonga	16.11.2001			
Turkey / <i>Turquie</i>	16.11.2001			
Ukraine	03.03.2004			
United Arab Emirates / <i>Émirats arabes unis</i>		29.04.08 (AS)	Arts. XIX, XXIX, XXX(1), XXX(2), XXX(3)	01.08.2008
United Kingdom / <i>Royaume-Uni</i> (with declaration at signature / <i>avec déclaration à la signature</i>)	16.11.2001			
United Republic of Tanzania / <i>République-Unie de Tanzanie</i>	16.11.2001	30.01.2009 (RT)		01.05.2009
United States of America / <i>Etats-Unis d'Amérique</i>	09.05.2003	28.10.2004 (RT)	Arts. XIX, XXX(1)	01.03.2006

* Affected by withdrawal and/or subsequent declaration. / *Fait l'objet d'un retrait et/ou d'une déclaration subséquente*

**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**

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)			DECLARATIONS	ENTRY INTO FORCE / <i>ENTREE EN VIGUEUR</i>
		ACCEPTANCE / <i>ACCEPTATION</i> (AC)	APPROVAL / <i>APPROBATION</i> (AP)	ACCESSION / <i>ADHESION</i> (AS)		
Gabon	23.02.2007					
Italy / <i>Italie</i>	23.02.2007					
Luxembourg	23.02.2007					
Switzerland / <i>Suisse</i>	23.02.2007					