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**GOVERNING COUNCIL**  
**89<sup>th</sup> session**  
**Rome, 10 – 12 May 2010**

UNIDROIT 2010  
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**Item No. 5 on the agenda: International Interests in Mobile Equipment –**  
**(a) Implementation and status of the Cape Town Convention, Aircraft Protocol**  
**and Luxembourg Rail 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 § 16</i>
<i>Mandate</i>	<i>Work Programme 2006-2010</i>
<i>Priority level</i>	<i>High</i>
<i>Status</i>	<i>Ongoing activity</i>
<i>Related documents</i>	<i>Annual Report 2009 (C.D. (89) 2, p.17)</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. During the period between the preparation of the memorandum for the 88<sup>th</sup> session of the Governing Council and 31 January 2010, instruments of ratification/accession in relation to the Convention and the Aircraft Protocol have been lodged by: China, the European Union, Rwanda and Togo (Convention only).

3. The Luxembourg Protocol has not yet entered into force. During the period between the preparation of the memorandum for the 88<sup>th</sup> session of the Governing Council and 31 January 2010, the European Union signed the Luxembourg Protocol.

4. The annex to this memorandum lists the status of the Convention, the Aircraft Protocol and the Luxembourg Protocol as at 1 February 2010.

## ACTIVITIES

### *GENERAL*

5. 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 Secretariat has also continued to pursue close and productive working relationships with the International Registry (Aircraft) and the Supervisory Authority.

6. The Secretariat is continuing to liaise closely with States that are at various stages of the ratification/accession process, and provides information and assistance to Contracting States, prospective Contracting States and others with an interest in the Cape Town system. In particular, during 2009 the Secretariat hosted visiting delegations of officials from prospective Contracting States for technical consultations, as follows:

- 27-30 April 2009 – delegation of the Russian Federation (delegation comprised representatives of the Ministry of Economic Development, the Trade Representative Office, United Aircraft Corporation, and IFC Leasing);
- 21-22 September 2009 – delegation of the Republic of Latvia (delegation comprised representatives of the Ministry of Transport, "Latvijas Dzelzceļš" (Latvian Railway), and Air Baltic).

7. On 26 November 2009 the Secretariat convened a seminar for Member States of the European Union to discuss the implications of the accession by the European Union to the Cape Town Convention and Aircraft Protocol. The seminar was designed to promote awareness of the Convention and Aircraft Protocol following the accession of the European Union, and to discuss practical options regarding choices about declarations by European Union Member States. The seminar involved expert participation by Aviareto, the Aviation Working Group and Professor Sir Roy Goode. The agreed follow-up actions arising from the seminar include modifying the Declarations Memorandum to take account of the situation of Member States of the European Union, and enhancement of the information services available on the Cape Town Convention page of the UNIDROIT website. The seminar was made possible through a generous donation by the American Foundation for International Uniform Law.

8. The Secretariat commenced a process for the rectification of the texts of the Cape Town Convention and Aircraft Protocol, following the identification of minor grammatical and technical discrepancies between the English-language text and the French, Spanish and Arabic texts. The rectification process will involve notifying all Signatory and Contracting States in accordance with Article 79 of the Vienna Convention on the Law of Treaties.

#### *CONVENTION / LUXEMBOURG PROTOCOL*

9. The Luxembourg Diplomatic Conference established a Preparatory Commission to make preparations for the entry into force of the Luxembourg Protocol. The Secretariat reported to the 88<sup>th</sup> session of the Governing Council that the Preparatory Commission was, at that time, awaiting the outcome of efforts to reactivate the negotiations with the company that had been selected as the preferred bidder. However, on 14 May 2009 the Preparatory Commission was informed by that preferred bidder that those efforts had not reached a successful conclusion.

10. A third session of the Preparatory Commission, hosted by OTIF, was held in Berne on 1 and 2 October 2009. The Preparatory Commission agreed, in principle, to another tender process being conducted, but that efforts should first be made to test the market of potential bidders and to explain the project to potential bidders. To that end, it decided that an Information Session for potential bidders should be held, preferably in the first quarter of 2010, and that it should be jointly organised by the Co-Chairs, the Secretariats and the Rail Working Group. It further agreed that, if the Information Session led to sufficient interest, a new Request for Proposals document would be issued, or alternatively that the Preparatory Commission might request expressions of interest and give guidance on the further procedure as determined by the Co-Chairs in consultation with Preparatory Commission.

11. The Information Session will be held at the UNIDROIT headquarters in Rome on 25 February 2010. A draft Request for Proposals documents has been prepared for consideration by bidders in advance of the session.

12. The Preparatory Commission has also decided to establish a Working Group to address the issues involved in the establishment of the Supervisory Authority under the Luxembourg Protocol, including its constitution, its Rules of Procedure, and its legal personality and immunities. The Working Group will prepare proposals for consideration by the Preparatory Commission at its next session. Unlike the Supervisory Authority under the Aircraft Protocol which is an established international organisation (the International Civil Aviation Organization), the Supervisory Authority under the Luxembourg Protocol will be a body established by the Protocol and comprised of representatives of States.

#### **PUBLICATIONS**

13. The revised edition of the *Official Commentary to the Cape Town Convention and Aircraft Protocol* was published in June 2008, and as at 31 January 2010 had sold 402 copies. The *Official Commentary to the Cape Town Convention and Luxembourg Protocol* was also published in June 2008 and as at 31 January 2010 had sold 81 copies. Both publications were authored by Professor Sir Roy Goode, who has generously agreed to donate the proceeds from sales to the Uniform Law Foundation.

14. The Secretariat is in the process of preparing the Depositary report that is provided for in Article 61(1) of the Convention and Article XXXVII(1) of the Aircraft Protocol, and which will cover the period 1 January 2008 to 31 December 2009. The report will be finalised following the receipt

of comments from Contracting States, and the receipt of the Supervisory Authority report which must be taken into account in the Depositary report.

#### **PROMOTION AND PUBLICITY**

15. Promotion and publicity efforts in relation to the Convention, the Aircraft Protocol and the Luxembourg Protocol are set out in the Annual Report for 2009.

#### **ACTION TO BE TAKEN**

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

## ANNEX / 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:** 34

**Depositary / *Dépositaire:*** UNIDROIT

STATE / <i>ETAT</i>	SIGNATURE	RATIFICATION (RT) ACCEPTANCE / <i>ACCEPTATION</i> (AC) APPROVAL / <i>APPROBATION</i> (AP) ACCESSION / <i>ADHESION</i> (AS)	DECLARATIONS	ENTRY INTO FORCE / <i>ENTREE EN VIGUEUR</i>
Afghanistan		25.07.2006 (AS)	Arts. 39(1)(a), 39(1)(b), 40, 52, 53, 54(2)	01.11.2006
Albania / <i>Albanie</i>		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 / <i>Cap-Vert</i>		26.09.2007 (AS)	Arts. 39(1)(a), 40, 53, 54(2)	01.01.2008
Chile / <i>Chili</i>	16.11.2001			
China / <i>Chine</i>	16.11.2001	03.02.2009 (RT)	Arts. 39(1)(a), 39(1)(b), 40, 50, 53, 54(1), 54(2), 55	01.06.2009
Colombia / <i>Colombie</i>		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 / <i>Ethiopie</i>	16.11.2001	21.11.2003 (RT)	Arts. 39(1)(a), 40, 54(2)	01.03.2006
European Union / <i>Union européenne</i> ††		28.04.2009 (AS)	Arts. 48(2), 55	01.08.2009
France	16.11.2001			
Germany / <i>Allemagne</i> (with declaration at signature / <i>avec déclaration à la signature</i> )	17.09.2002			
Ghana	16.11.2001			
India / <i>Inde</i>		31.03.2008 (AS)	Arts. 39(1)(a), 39(1)(b), 40, 52, 53, 54(2)	01.07.2008

Indonesia / <i>Indonésie</i>		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)	01.03.2006
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)*	01.03.2006
Oman		21.03.2005 (AS)	Arts. 39(1)(a), 39(1)(b), 40, 52, 53, 54(2)	01.03.2006
Pakistan		22.01.2004 (AS)	Arts. 39(1)(a), 39(1)(b), 39(4), 40, 52, 53, 54(2)	01.03.2006
Panama	11.09.2002	28.07.2003 (RT)	Arts. 39(1)(a), 39(1)(b), 39(4), 50, 53, 54(2)	01.03.2006
Rwanda		28.01.2010 (AS)	Arts. 39(1)(a), 40, 52, 53, 54(2)	01.05.2010
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†
Togo		25.01.2010 (AS)		01.05.2010†
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 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)	Art. 54(2)	01.05.2009
United States of America / <i>Etats- Unis d'Amérique</i>	09.05.2003	28.10.2004 (RT)	Arts. 39(1)(a), 39(1)(b), 54(2)	01.03.2006
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 de*: Convention Article 49(1)

†† Regional Economic Integration Organisation / *Organisation régionale d'intégration économique*:  
Convention Article 48

**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:** 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. XXIX, XXX(1), (2), (3)	01.11.2006
Albania / <i>Albanie</i>		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 / <i>Cap-Vert</i>		26.09.2007 (AS)	Art. XXX(1), (2), (3)	01.01.2008
Chile / <i>Chili</i>	16.11.2001			
China / <i>Chine</i>	16.11.2001	03.02.2009 (RT)	Arts. XIX, XXIX, XXX(1), XXX(2), XXX(3)	01.06.2009
Colombia / <i>Colombie</i>		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 / <i>Ethiopie</i>	16.11.2001	21.11.2003 (RT)	Art. XXX(1), (2), (3)	01.03.2006
European Union / <i>Union européenne</i> ††		28.04.2009 (AS)	Arts. XXVII(2), XXX(5)	01.08.2009
France	16.11.2001			
Germany / <i>Allemagne</i> (with declaration at signature / <i>avec déclaration à la signature</i> )	17.09.2002			
Ghana	16.11.2001			
India		31.03.2008 (AS)	Arts. XXX(1), (2), (3)	01.07.2008
Indonesia / <i>Indonésie</i>		16.03.2007 (AS)	Art. XXX(1), (2), (3)	01.07.2007
Ireland / <i>Irlande</i>		23.08.2005 (AS)	Art. XXX(1), (2)	01.03.2006



Italy / <i>Italie</i>	06.12.2001			
Jamaica / <i>Jamaïque</i>	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
Rwanda		28.01.2010 (AS)	Arts. XXIX, XXX(1), (2), (3)	01.05.2010
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)	Art. XXX(1),* (2),* (3)*	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

**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) ACCEPTANCE / <i>ACCEPTATION</i> (AC) APPROVAL / <i>APPROBATION</i> (AP) ACCESSION / <i>ADHESION</i> (AS)	DECLARATIONS	ENTRY INTO FORCE / <i>ENTREE EN VIGUEUR</i>
European Union / <i>Union européenne</i> ††	10.12.2009			
Gabon	23.02.2007			
Italy / <i>Italie</i>	23.02.2007			
Luxembourg	23.02.2007			
Switzerland / <i>Suisse</i>	23.02.2007			