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Item No. 5 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 Programme 2014-2016</i>
<i>Priority</i>	<i>High</i>
<i>Related documents</i>	<i>UNIDROIT 2015– C.D. (94) 2, UNIDROIT 2015– C.D. (94) 5(a) and UNIDROIT 2016– C.D. (95) 2</i>

1. The *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock* (the 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 2014-2016, the implementation of both Protocols was given the highest degree of priority (cf. UNIDROIT 2013 – A.G.(72) 9, para. 28 and Appendix III). The present memorandum provides an update on the Institute's Depositary functions under them and additional details on UNIDROIT's activities regarding their promotion and implementation.

STATUS

3. UNIDROIT has been designated as the Depository to the **Rail Protocol** (pursuant to its Article XXXIV(1)). The Rail Protocol will enter into force following the procedure provided for in Article XXIII.

4. As of 15 April 2016, the Luxembourg Protocol has six Signatory States and one Signatory Regional Economic Integration Organisation (Gabon, Germany, Italy, Luxembourg, Switzerland, United Kingdom and European Commission). On 31 January 2012 Luxembourg deposited its instrument of ratification. On 18 December 2014 the European Union's instrument of approval to the Rail Protocol was deposited with UNIDROIT. On 26 February 2016 the United Kingdom of Great Britain and Northern Ireland signed the Luxembourg Rail Protocol. For the details see Annexe I.

5. UNIDROIT has been designated as the Depository to the **Space Protocol** (pursuant to its Article XLVIII(1)). The Space Protocol will enter into force following the procedure provided for in Article XXXVIII. As of 15 April 2016, it has four Signatory States (Burkina Faso, Germany, Saudi Arabia and Zimbabwe - see Annexe II).

ACTIVITIES

GENERAL

6. UNIDROIT's responsibilities as **Depository** under the 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.

RAIL PREPARATORY COMMISSION

7. A **Preparatory Commission** was established on 23 February 2007 by Resolution 1 of the diplomatic Conference to adopt a Rail Protocol to the Convention on International Interests in Mobile Equipment, in order to prepare the International Registry under the Rail Protocol. After its last full session in 2011, the Preparatory Commission appointed a team, co-chaired by the United States of America and Finland, to conduct negotiations with SITA SA for the conclusion of the contract with the Registrar. Several key activities of the Preparatory Commission took place in 2014:

(a) Negotiations between the Preparatory Commission team and SITA SA for the conclusion of the contract with the prospective Registrar were successfully concluded on 31 July 2014;

(b) The Sixth Session of the Preparatory Commission, convened jointly by UNIDROIT and the Intergovernmental Organisation for International Carriage by Rail (OTIF) through an email confirmation procedure, approved the Registry Contract, the Master Services Agreement and their appendixes and annexes and Regulis SA, a SITA company, as Registrar;

(c) Regulis SA, represented by its executive manager Elisabeth Hirst, and the Secretary-General of UNIDROIT, on behalf of the Preparatory Commission, signed in Rome on 12 November 2014 the contract for the establishment and operation of the Rail International Registry;

(d) The Seventh Session of the Rail Preparatory Commission was held in Rome at the seat of UNIDROIT on 11 December 2014, approving the draft baseline Regulations for the International Registry for railway rolling stock and For more information on these activities and events see the Annual Report 2014, C.D. (95) 2, p. 13.

8. The Seventh Session of the Preparatory Commission was immediately followed by an informal meeting of the **Ratification Task Force**. The Ratification Task Force (initially composed of the Co-Chairs of the Preparatory Commission, representatives of the Rail Working Group, of Regulis SA as designated Registrar and of SITA, as well as of OTIF and UNIDROIT – the latter represented by Deputy Secretary General Anna Veneziano) met again in Brussels on 25 March 2015, after two preliminary meetings (a teleconference on 10 February 2015 and a meeting in Bern on 27 February 2015 to which UNIDROIT participated through teleconference). Luxembourg attended as well and agreed to become a member of the Task Force. A number of issues relating to ratification strategy, its economic underpinnings and the involvement of relevant stakeholders were discussed and a tentative timeline for further action was agreed upon. The Ratification Task Force set up and carried out during 2015 an intense agenda for its work. For more information see Annual Report 2015, C.D. (95) 2, p. 11-12.

9. Since the 94th Governing Council Session in 2015 the Ratification Task Force continued its activity with the aim of coordinating the strategy towards early implementation of the Rail Protocol and met several times through teleconference.¹ Within the framework of such activities on 9 December 2015 the Luxembourg Ambassador in Paris hosted a private promotional reception to which Senior Officer Marina Schneider participated on behalf of UNIDROIT. Preparatory Commission Co-Chair Mervi Kaikkonen and Rail Working Group Chairman Howard Rosen introduced the advantages of implementing the Rail Protocol. The Rail Working Group, on its part, organised a number of well attended industry events and seminars in various countries. For a list of those where UNIDROIT was represented see below, under *Institutional meetings, conferences and other activities relating to the Rail and Space Protocols*, paras. 14. et seq.

10. The UNIDROIT Secretariat, through its participation in the work of the Preparatory Commission and the Ratification Task Force, will continue to carry out all activities connected to the promotion of the Rail Protocol to ensure that the highest priority provided by the Work Programme is implemented.

SPACE PREPARATORY COMMISSION

11. 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. The following States agreed to serve as members of the Preparatory Commission: Brazil, the People's Republic of China, the Czech Republic, France, Germany, India, Italy, the Russian Federation, Saudi Arabia, South Africa and the United States of America. The International Telecommunication Union (ITU) as well as representatives of the financial and commercial world were invited as observers.

12. Three sessions of the Preparatory Commission were held between 2013 and 2014 at the seat of UNIDROIT in Rome, under the Chairmanship of the former Chairman of the Commission of the Whole at the Berlin Conference Sergio Marchisio and with the participation of Sir Roy Goode as consultant: on 6 and 7 May 2013, on 27 and 28 February 2014 and on 11 and 12 September 2014. For more detailed information see Annual Report 2014, C.D. (94) 2, p. 12-13. At the outcome of the third session, a consultation procedure regarding the draft Registry Rules, and in particular the remaining open issue of the identification criteria for (components of) space assets, was deemed to be necessary. It was conducted on the basis of a questionnaire prepared by Sir Roy Goode

¹ In particular on 24 June, 24 July, 14 September, 27 October and 20 November 2015, and on 8 January, 18 February and on 18 March 2016.

following consultations with the members and observers of the Preparatory Commission and sent to a number of relevant industry stakeholders (manufacturers, operators, financial institutions, international organisations and associations). For more details on this process and on the participants to the consultation see UNIDROIT 2015 – C.D. (94) 5 (a), p. 3.

13. The feedback received during said consultation formed the basis for a revised draft of the Registry Regulations that was circulated among Preparatory Commission members in Spring 2015 for further discussion.

14. At its fourth session, held in Rome on 10 and 11 December 2015, the Commission was able to finalise the baseline Registry Regulations and advance its work towards the drafting of a request for proposals to be submitted to prospective candidates to the role of Registrar. The issue of the setting up of a definitive Supervisory Authority was also furthered with the International Telecommunication Union (ITU). After the fourth session, Preparatory Commission members assisted by Sir Roy Goode and the Secretariat continued to work on the development of rules of procedure for the Commission of Experts of the future Supervisory Authority (CESAIR). The rules of procedure for the CESAIR were approved by Commission members on 22 February 2016. The next step in the Commission's activities for 2016 is the discussion and finalization of the documentation regarding the selection of the prospective Registrar.

INSTITUTIONAL MEETINGS, CONFERENCES AND OTHER ACTIVITIES RELATING TO THE RAIL AND SPACE PROTOCOLS HELD OR TO BE HELD IN 2015 AND 2016

15. Several promotional events relating (also) to the Rail and Space Protocols to which UNIDROIT was represented were held in the course of 2015. For details on those which took place before the 94th Governing Council Session in 2015 see Annual Report 2015 – C.D.(95) 2, p. 18-19.

16. On 28 May 2015 the Italian Ministry of Foreign Affairs and International Cooperation organised a seminar on the prospects of ratification by Italy of the Cape Town Convention and its Protocols, with participation of invited governmental representatives, industry stakeholders and other interested institutions and authorities. The seminar was opened by Minister Antonio Bernardini, Deputy Secretary General, and Minister Andrea Tiriticco, Head of the Legal Department, of the Italian Ministry of Foreign Affairs and International Cooperation. UNIDROIT Secretary-General José Angelo Estrella Faria and Deputy Secretary-General Anna Veneziano introduced, respectively, the Cape Town Convention and the Aircraft Protocol. With particular regard to the Space and Rail Protocols, Sergio Marchisio (Professor of International Law, former Chairman of the Commission of the Whole at the diplomatic Conference convened for the adoption of the Space Protocol in Berlin in 2012 and current Chairman of the Space Preparatory Commission) presented the Space Protocol, while Giulia Mauri, lawyer at Verhaegen Walravens in Brussels, delivered a paper on the Rail Protocol as a representative of the Railway Working Group.

17. On 15 October 2015 UNIDROIT President Alberto Mazzoni, UNIDROIT Secretary-General José Angelo Estrella Faria and UNIDROIT Deputy Secretary-General Anna Veneziano delivered speeches concerning the Cape Town Convention and the Air and Rail Protocols thereto, at an event co-hosted with the Italian law firm Rucellai & Raffaelli. The event, which took place at the host offices in Milan, was designed to inform lawyers, financing parties and industry members alike on the Convention and the potential advantages of an Italian ratification.

18. On 26 February 2016 the Rail Working Group organised a breakfast event for industry stakeholders on the Luxembourg Rail Protocol at the House of Lords in London, hosted by Lord Berkeley, the Chairman of the Rail Freight Group and a director of the European Rail Freight Association. Among others, the Deputy Secretary General of UNIDROIT Anna Veneziano, the

Secretary General of OTIF François Davenne and the Chairman of the Rail Working Group Howard Rosen delivered short speeches. The event was attended by over a hundred of invited participants from various industry branches and institutional bodies.

19. On 1 March 2016 an industry seminar organised by the Rail Working Group was held in London. The seminar was opened by HE Patrick Engelberg, Ambassador of Luxembourg. Speakers included Sir Roy Goode, UNIDROIT Deputy Secretary General Anna Veneziano, RWG Chairman Howard Rosen, RWG Secretary Martin Fleetwood, Head of the Rail Technical International and Safety in the UK Department for Transport Andrea Pearson, Registrar Designate Elizabeth Hirst as well as other experts from financing corporations and legal offices.

20. On 7th April 2016, the Rail Working Group run a half-day seminar hosted by the Union Internationale des Chemins de Fer (UIC). Speakers included the Secretary General of UNIDROIT José Angelo Estrella Faria, the Secretary General of OTIF François Davenne, the Co-Chairs of the Preparatory Commission Mervi Kaikkonen and Peter Bloch, the Registrar Designate Elisabeth Hirst, Rail Working Group representatives as well as other academics, advisors and practitioners.

21. The UNIDROIT Secretariat will continue to promote the Rail and Space Protocols in the course of 2016 through participation in, and organisation of, promotional events.

CAPE TOWN CONVENTION ACADEMIC PROJECT

22. The Cape Town Convention Academic Project (CTCAP) is a joint endeavour of the University of Oxford, Faculty of Law, and the University of Washington, School of Law and is conducted under the auspices of UNIDROIT for the repository of information and the Cape Town Convention Journal. The CTAP 4th Annual Conference was held in Oxford on 8 and 9 September 2015. For details on the programme of the conference see Annual Report 2015, C.D.(95) 2, p. 19.

23. The 5th CTCAP Annual Conference will be held in Oxford on 13 and 14 September 2016. Among others, experts in the field of the Rail and the Space Protocol are expected to attend.

ACTION TO BE TAKEN

24. *The UNIDROIT Secretariat would invite the Governing Council to take note of the progress in 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 15 April 2016 / *au 15 avril 2016*

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>
Gabon	23-02-07	-	-	-
Germany / <i>Allemagne</i>	21-11-12	-	-	-
Italy / <i>Italie</i>	23-02-07	-	-	-
Luxembourg	23-02-07	31-01-12	-	-
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 15 April 2016 / *au 15 avril 2016*

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)	DECLARATIONS	ENTRY INTO FORCE / <i>ENTREE EN VIGUEUR</i>
		ACCEPTANCE / <i>ACCEPTATION</i> (AC) 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			