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**Item No. 4 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 Programmes 2014-2016 and 2017-2019</i>
<i>Priority</i>	<i>High</i>
<i>Related documents</i>	<i>UNIDROIT 2018 – C.D. (97) 2, UNIDROIT 2018– C.D. (97) 4, and UNIDROIT 2019 – C.D. (98) 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 2017-2019, the implementation of both Protocols was given the highest degree of priority (cf. UNIDROIT 2016 – A.G. (75) 8, para. 44). This memorandum provides an update on the Institute's Depositary functions under them and additional details on UNIDROIT's activities regarding their promotion and implementation.

## I. STATUS

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

4. As of 28 March 2019, the Luxembourg Rail Protocol was signed by six States (France, Germany, Italy, Mozambique, Switzerland and the United Kingdom) and ratified by three States (Luxembourg, Gabon and Sweden) and one contracting Regional Economic Integration Organisation (the European Union). For the details see Annexe I.

5. UNIDROIT has been designated as the Depositary of 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 28 March 2019, it has four Signatory States (Burkina Faso, Germany, Saudi Arabia and Zimbabwe). For the details, Annexe II).

## II. ACTIVITIES

### GENERAL

6. UNIDROIT's responsibilities as **Depositary** 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 Depositary.

### LUXEMBOURG RAIL PROTOCOL

#### *(a) Recent activities of the Depositary*

7. After the 97<sup>th</sup> session of the Governing Council (2-4 May 2018), on 2 July 2018, the Kingdom of Sweden, which is already a Party to the Cape Town Convention and the Aircraft Protocol, deposited its instrument of ratification of the Luxembourg Rail Protocol, with a declaration under Article XXVII(1). The Luxembourg Rail Protocol will enter into force when the conditions set out in Article XXIII(1) of the Rail Protocol have been satisfied.

8. Minister Counsellor of the Embassy of the Royal Kingdom of Sweden in Italy, Mr Fredrik Alfer, and Deputy Director of the Ministry of Justice of Sweden, Ms Louise Petrelius, participated in a ceremony to celebrate the deposit of the ratification instrument of the Luxembourg Protocol at the seat of UNIDROIT. The delegation was received by the President of UNIDROIT, Professor Alberto Mazzoni, Secretary-General a.i. of UNIDROIT, Professor Anna Veneziano and Ms Marina Schneider, Senior Legal Officer and Treaty Depositary. The ceremony took place before First Secretary and Vice Consul of the Embassy of Luxembourg Mr André Flammang, as well as members of the Rail Working Group and Ratification Task Force.

9. The following statement of Helène Fritzon, Minister for Migration and Deputy Minister for Justice, was read aloud on this occasion: "The foreseeability that the Luxembourg Rail Protocol provides for creditors is expected to increase the access to private capital and give railway undertakings more favourable economic conditions. Cheaper and wider financing options make it easier for train operators to invest and the rail sector is strengthened, which is good for the environment and for consumers." President Mazzoni, in his statement, underlined that "UNIDROIT is very satisfied with this important step towards the implementation of the Rail Protocol, which further

enhances the recognition of the tangible economic advantages it will produce world-wide for the industry as well as for States in terms of sustainable development”.

*(b) Activities of the Ratification Task Force and other events*

10. The Ratification Task Force, established by the Rail Preparatory Commission and composed of the Co-Chairs of the Preparatory Commission, of Luxembourg, of representatives of the Rail Working Group, of the designated Registrar as well as of of the Intergovernmental Organisation for International Carriage by Rail (OTIF) and UNIDROIT, met several times (mostly through teleconference).

11. On 25 September 2018, UNIDROIT was invited to attend the General Assembly of OTIF, the future Secretariat of the Supervisory Authority, which coincided with the celebration of OTIF's 125<sup>th</sup> anniversary. After an introduction by OTIF Secretary-General Mr François Davenne, UNIDROIT Deputy Secretary-General Anna Veneziano presented the Rail Luxembourg Protocol, together with Ms Elizabeth Hirst (then Managing Director of Regulis SA, the Registrar) and Mr Peter Bloch (Co-Chair of the Preparatory Commission), each of whom also gave presentations respectively on the functioning of the Registry and the role of the Supervisory Authority. The General Assembly approved the documents relating to the Supervisory Authority and gave the OTIF Secretariat the mandate to continue with all actions required for the Registry to begin its operation and the Supervisory Authority to be set up.

12. On Wednesday 17 October 2018, UNIDROIT partnered with the Rail Working Group to deliver a Luxembourg Rail Protocol stakeholder briefing in Madrid, hosted by the law firm Bird & Bird. Building upon earlier implementation activities in Spain, the event brought together legal experts, manufacturers and private sector stakeholders to discuss the Rail Protocol's possible future implementation in Spain. The event was opened by UNIDROIT Secretary-General Ignacio Tirado with expert presentations from UNIDROIT Deputy Secretary-General Anna Veneziano, Howard Rosen (Chairman of the Rail Working Group), Elizabeth Hirst (then Managing Director of Regulis SA) and Teresa de las Heras Ballell Rodriguez (Professor of Commercial Law at Universidad Carlos III de Madrid).

13. On 6-7 December 2018, UNIDROIT and OTIF held the 8<sup>th</sup> session of the Rail Preparatory Commission for the establishment of an International Registry under the Luxembourg Rail Protocol in Rome, immediately after the UNIDROIT General Assembly. The session was attended by 32 State delegations. It was opened by the Chairman of the UNIDROIT General Assembly, Ambassador Paul Dühr of the Embassy of Luxembourg in Rome, UNIDROIT Secretary-General Professor Ignacio Tirado, and Chief of Technical Interoperability of OTIF Mr Bas Leermakers. The Commission, Co-chaired by Mr Peter Bloch and Ms Mervi Kaikkonen (who participated remotely), discussed and approved the Statutes and the Rules of Procedure of the Supervisory Authority, as well as future steps leading to the entry into force of the Protocol. A number of participating delegations made very positive statements relating to the benefits connected with the future operation of the Protocols as well as to the status of the ratification process in their legal system. On the second day, panellists briefed interested delegations on the Protocol and its implementation. For the Report of the session see <https://www.unidroit.org/english/documents/2018/depositary/ctc-rail/prepcom-08sess/rail-prepcom-8sess-07-e.pdf>.

14. On 1 February 2019, the UNIDROIT Secretariat participated in a consultation workshop considering France's possible ratification of the Cape Town Convention. Hosted by the Université Paris II (Panthéon-Assas), the workshop brought together international experts, government representatives, private sector lawyers and academia to discuss the benefits and challenges associated with implementing the Cape Town Convention and its Protocols. Presentations were delivered by Professor Pierre Crocq (Centre Paris II Assas) regarding issues associated with how the Cape Town Convention would operate in relation to French secured transaction laws and Professor

Jean-François Riffard (Université Clermont-Ferrand) regarding which declarations under the Convention and Protocols might be most appropriate for France.

15. On 13 March 2019, Deputy Secretary-General Professor Anna Veneziano participated remotely in a special workshop entitled “The Future for Railway Finance: How the Luxembourg Rail Protocol Will Transform the Rail Sector in Indonesia and beyond”. The Workshop was organised by the Rail Working Group in cooperation with the Ministry of Law and Human Rights in Jakarta, and included representatives from the Rail Working Group, the Ministries of Law and Human Rights, Foreign Affairs and Transport of Indonesia, National Railways, Regulators, local law firms, financiers and manufacturers.

16. On 23 March 2019, UNIDROIT was invited to participate in a High-Level Seminar entitled “Railway rolling stock financing: a new solution for Africa” in Marrakech, Morocco, organised by the UN Economic Commission for Africa (UNECA). The seminar was included as a Side Event at the 52<sup>nd</sup> conference of UNECA, which UNIDROIT was invited to attend as Observer. Deputy Secretary-General Anna Veneziano shared the introductory addresses at the seminar, on a panel moderated by the Chief of UNECA Energy, Infrastructure and Services Team Robert Lisinge, together with UNECA Director of Regional Integration and Trade Division Stephen Karingi, followed by presentations by Rail Working Group Chairman Howard Rosen, Senior Economic Affairs Officer Energy, Infrastructure and Services Section of UNECA Soteri Gatera and the CEO of the RailRoad Association Mesela Nhlapo. The objective of the event, attended by high level governmental officials and private sector representatives, was to discuss Rail financing in Africa and how the Luxembourg Rail Protocol can play a key role in attracting private capital to create a sustainable model for existing and new rail projects in the context the 2030 Agenda for sustainable development as well as for the African Union’s Agenda 2063.

17. The Deputy Secretary-General also represented UNIDROIT at the Expert Commission on Friday 22 discussing, inter alia, the Rail Protocol, and at the Ministerial Conference on Monday 25. The outcome of the Ministerial Conference included a Resolution concerning the Luxembourg Rail Protocol and mandating the UNECA to “continue its awareness raising and advocacy across the continent” of the Protocol “with a view to elucidating its merits and potential contribution to the financing of rolling stock in rail projects”, and to “inform interested parties from the public sector and the private sector across the continent on, and educated them in, the way that private credit and leasing can assist with providing the financial resources necessary to revitalize and expand the African rail network and the benefits of becoming party to the Luxembourg Rail Protocol” (E/ECA/CM/51/2/rev 1).

18. The Secretariat will continue to promote the entry into force of the Luxembourg Rail Protocol, taking part in the initiatives of the Preparatory Commission and the Rail Working Group as well as in autonomous initiatives by the Secretariat. Events are planned in the coming months in various countries where the process of implementation of the Protocol has already started. The Secretariat will also follow up on the cooperation with other global and regional organisations in order to maximise efforts towards dissemination of information and early implementation. Finally, it will continue to cooperate with OTIF in the preparatory work for the setting up of the definitive Supervisory Authority for the operation of the International Registry.

#### *SPACE PROTOCOL*

##### *(a) Space Preparatory Commission*

19. 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, with participation of the International Telecommunication Union (ITU) and representatives of the financial and commercial world.

20. 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, and that Sub-Group met several times via teleconference throughout 2018. Part of the activity of the subgroup was to prepare Q&A documents in relation to the Protocol, which are now available on the UNIDROIT web page.

21. The issue of appointing a Supervisory Authority was discussed within the International Telecommunication Union (ITU) pursuant to ITU's engagement in the work of the Preparatory Commission. The ITU, at its Plenipotentiary Conference held in Dubai from 29 October to 16 November 2018, resolved not to accept the role of Supervisory Authority under the Space Protocol at this stage, but left open the possibility for UNIDROIT to submit a further invitation to reconsider the issue at a future Plenipotentiary Conference, and instructed the ITU Secretary General to continue to participate in the work of the Preparatory Commission and its working groups and to report to the ITU Council accordingly.

*(b) Events relating to the Space Protocol*

22. In 2018, the Space Protocol was featured at several events in which UNIDROIT was invited to participate. For a complete list see 2018 Annual Report, C.D. (98) 2, 15-16.

23. The Space Protocol was presented at a number of events in 2019, including in the Panel on Policies and Frameworks to Spur Innovation at the Global Space Congress in Abu Dhabi (19 March 2019), as well as at the UN/Jordan Workshop Global Partnership in Space Exploration and Innovation in Amman, Jordan (26 March 2019), where Mr Hamza Hameed, UNIDROIT Legal Consultant, represented the Institute.

*CAPE TOWN CONVENTION ACADEMIC PROJECT*

24. The Cape Town Convention Academic Project, a joint endeavour of the University of Oxford and the University of Washington School of Law (Professor Jeffrey Wool), as well as under the auspices of UNIDROIT for the repository and the journal, held its 7<sup>th</sup> Annual Conference in Oxford on 12 and 13 September 2018. The Conference covered and discussed a number of crucial issues relating to the interpretation and implementation of all three existing protocols of the Cape Town Convention, as well as the developments of the draft MAC Protocol. In particular, a comparative legal analysis of the MAC Protocol and the other Protocols was provided by Legal Officer William Brydie-Watson, together with Aviareto Managing Director Rob Cowan, and Deputy Secretary-General Professor Anna Veneziano delivered a paper on the Contours of 'Commercial reasonableness' under the Cape Town Convention, commented on by Professor Edwin Peel (University of Oxford). The papers presented at the conference will be published in the Cape Town Convention Journal.

25. The next CTCAP Conference is scheduled for September 2019 in Oxford.

**ACTION TO BE TAKEN**

26. *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 SPECIFIQUES AU MATERIEL ROULANT  
FERROVIAIRE A LA CONVENTION RELATIVE AUX GARANTIES INTERNATIONALES  
PORTANT SUR DES MATERIELS D'EQUIPEMENT MOBILES**

as of 28 March 2019 / *au 28 mars 2019*

**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>
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	–	–	–
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 / <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 SPECIFIQUES AUX BIENS SPATIAUX A LA CONVENTION  
RELATIVE AUX GARANTIES INTERNATIONALES  
PORTANT SUR DES MATERIELS D'EQUIPEMENT MOBILES**

as of 28 March 2019 / *au 28 mars 2019*

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