

PART 1

A BRIEF HISTORY OF THE CONVENTION AND LUXEMBOURG PROTOCOL¹

1.1. Following a proposal by Mr T.B. Smith QC, Canadian member of the UNIDROIT Governing Council, in 1988 and a study *International Regulation of Security Interests in Mobile Equipment* prepared by Professor Ronald C.C. Cuming of the University of Saskatchewan, the Governing Council of UNIDROIT set up a Restricted Exploratory Working Group in 1992 to ascertain the need for and feasibility of uniform rules governing security interests in cross-border transactions in mobile equipment, in particular, aircraft objects, railway rolling stock and space assets. The Group's Report led to the establishment of a Study Group, a sub-committee of which was entrusted with the task of preparing a first draft. The sub-committee in turn established a Drafting Group to prepare the first set of draft articles. There were several further meetings of the sub-committee and Drafting Group over the ensuing years, and in 1996 a Registration Working Group was established under the chairmanship of Professor Cuming to examine the essential features of modern electronic registration, liability for errors, and the like, and make recommendations.

1.2. The text of a preliminary draft Convention was presented to the Governing Council of UNIDROIT at its 77th session in February 1998, at which the Council approved the text as suitable for submission to a committee of governmental experts and also endorsed its own provisional decision the previous year to approve a proposal that work should proceed along the lines of a base convention applicable to all three categories of equipment and equipment-specific protocols which would supplement and modify the Convention to meet the needs of the particular industry sector concerned. Thereafter work proceeded concurrently on the draft Convention and Protocols for aircraft objects, railway rolling stock and space assets, and three separate working groups, the Aviation Working Group (AWG), the Rail Working Group (RWG) and the Space Working Group (SWG) were set up.

¹ Appendix XI contains a chronology of the development of the Convention and Luxembourg Protocol and Appendix XII a list of key documents published by UNIDROIT and OTIF in connection with the development of the Convention and the Luxembourg Protocol.

The draft of the Aircraft Protocol was concluded in time for examination with the Convention itself, and the two instruments were opened for signature simultaneously on 16 November 2001 at a diplomatic Conference held in Cape Town under the joint auspices of the International Institute for the Unification of Private Law (UNIDROIT) and the International Civil Aviation Organization (ICAO). The history of the Convention as regards aircraft objects is briefly described in the Official Commentary on the Convention and Aircraft Protocol.² The Luxembourg Protocol, the development of which is described below, is the product of close collaboration among UNIDROIT and OTIF as the sponsoring organisations and the RWG. It was adopted at a diplomatic Conference in Luxembourg in February 2007. The third of the trilogy, the Space Protocol, was adopted at a diplomatic Conference in Berlin in March 2012.³

1.3. Meanwhile, in December 1997 the President of UNIDROIT had invited Mr Howard Rosen, as expert consultant on international rail finance matters to the UNIDROIT Study Group engaged in the preparation of the Convention, to organise and chair a working group (which became the RWG) for the preparation of a Protocol on matters specific to railway rolling stock. The RWG, established as a not for profit association under Swiss law, comprised representatives of the manufacturers, financiers and users of railway rolling stock, and of interested international and national organisations, from a number of countries. In February 2000 Mr Rosen presented to the President a preliminary draft Protocol for railway rolling stock that had been finalised by the RWG at the conclusion of its seventh session the previous month. This text was submitted in March 2000 to a Steering and Revisions Committee the establishment of which had been authorised by the UNIDROIT Governing Council in April 1999. The Steering and Revisions Committee, consisting of representatives of the UNIDROIT Governing Council and the UNIDROIT and OTIF Secretariats, together with representatives of the International Union of Private Wagons, the International Union of Railways, the European Company for the Financing of Railroad Rolling Stock (Eurofima), the Association of American Railroads and the RWG, met in Rome in March 2000 under the

² Third edition, 2013, UNIDROIT.

³ For details see the Official Commentary on the Convention and Space Protocol, 2013, UNIDROIT.

chairmanship of Mr Roland Loewe, first Vice-President of UNIDROIT and a member of the Governing Council. The Steering and Revisions Committee made a number of changes to the draft.

1.4. The revised text was then examined in three successive joint sessions of a Committee of Governmental Experts sponsored jointly by UNIDROIT and OTIF. The first session was held in Berne in March 2001 under the chairmanship of Professor Karl Kreuzer and established a special Rail Registry Task Force to report back on various issues relating to the registration of interests in railway rolling stock. The co-chairmen were Mr F. Croccolo (later replaced by Mr Henrik Kjellin) and Mr Peter Bloch. The Drafting Committee of the joint Committee of governmental experts met in Rome in February 2002 and the Task Force had its first meeting in Rome in March 2002. The second session of the joint Committee was held in Rome in June 2002, when a revised text prepared by the Drafting Committee and the UNIDROIT Secretariat was examined, while the third session took place in Berne in May 2003, both these sessions being under the chairmanship of Ms Inès Weinberg De Roca, with Mr Antti Leinonen as Deputy Chairman. At the third session the text of the Rail Protocol was finalised and revised terms of reference for the Rail Registry Task Force were agreed. The Rail Registry Task Force, chaired jointly by Mr Kjellin and Mr Bloch, held its fourth meeting in Rome in February 2005 and on the basis of its proposals a Sub-Committee of the Drafting Committee recommended a number of amendments to the draft Rail Protocol which the Task Force agreed should be submitted to the Diplomatic Conference.

1.5. At its 84th session in 2005 the UNIDROIT Governing Council authorized submission of the text, in the form agreed by the third meeting of the Joint Committee of Governmental Experts, to a diplomatic Conference to be co-sponsored by UNIDROIT and OTIF, and a similar decision was taken by OTIF. As described in the Introduction, the diplomatic Conference to approve the text of the Rail Protocol, hosted by the Government of Luxembourg, was held in Luxembourg in February 2007 under the joint auspices of UNIDROIT and OTIF, when the Protocol was concluded under the title “Luxembourg Protocol”. Pursuant to Resolution No. 1 of the diplomatic Conference a Preparatory Commission was set up to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry, in consultation with UNIDROIT and OTIF.