

# UNIDROIT AND THE LUXEMBOURG RAIL PROTOCOL



OTIF Symposium

Vilnius, 29 October 2019

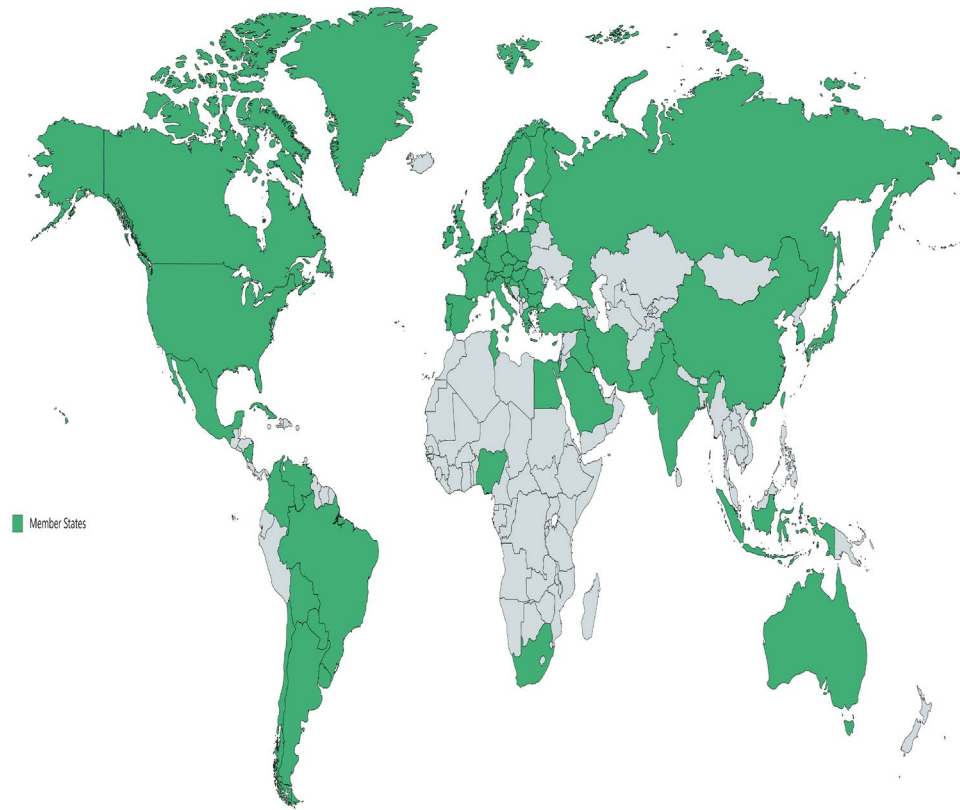
Prof. Ignacio Tirado  
Secretary General  
UNIDROIT



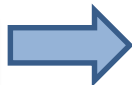
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## Basic Facts about UNIDROIT

- Independent Intergovernmental Organisation
- Set up in 1926 as an auxiliary organ of the League of Nations
- Currently 63 member States:
  - World's main economies
  - Relevant developing markets
  - A global institution
  - One of the "Three sisters"



INTERNATIONAL  
COMMERCIAL  
CONTRACTS



- UNIDROIT Principles of International Commercial Contracts (1994; 2004; 2010; 2016)
- UNIDROIT Guide on International Franchise Agreements (1998; 2007)
- *Current projects: Principles of Reinsurance Contracts – Cooperation with UNCITRAL and HCCH on a guidance document on international sales*

INTERNATIONAL  
FINANCIAL DEVICES



- UNIDROIT Conventions on International Financial Leasing and International Factoring (Ottawa, 1988)
- UNIDROIT Model Law on Leasing (2008)
- CAPE TOWN Convention on International Interests in Mobile Equipment (2001), Aircraft (2001), Rail (2007), Space (2012) Protocols (MAC Protocol) (exp. 2019)

CAPITAL MARKETS  
PRIVATE LAW  
REGULATION



- GENEVA Convention on Substantive Rules for Intermediated Securities (2009)
- UNIDROIT Principles on the Netting of Financial Instruments (2013)
- UNIDROIT Legal Guide on Intermediated Securities (2017)

INTERNATIONAL  
PROTECTION OF  
CULTURAL PROPERTY



- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995)
- UNESCO-UNIDROIT Model Legislative Provisions on State ownership of undiscovered cultural objects (2011)
- *Current project: Private Art Collections (2016-date)*

TRANSNATIONAL CIVIL  
PROCEDURE



- ALI/UNIDROIT Principles of Transnational Civil Procedure (2004)
- *Draft ELI/UNIDROIT Rules on European Civil Procedure (2014-date)*
- *Principles of effective enforcement (on WP)*

LAW AND DEVELOPMENT IN  
AGRICULTURE

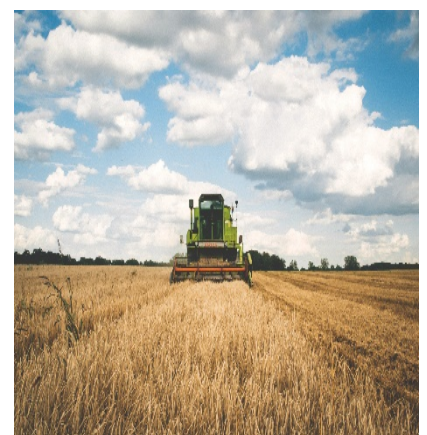


- UNIDROIT-FAO-IFAD Legal Guide on Contract Farming (2015)
- *Current project: Legal Guide on Agricultural Land Investment Contracts*



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# THE CAPE TOWN CONVENTION AND ITS PROTOCOLS



## Basics of the Cape Town Convention Treaty System

- Uncertainty in the financing of high-value assets **moving across international borders**:
  - **Mobility** requires **special rules** to ensure efficacy of security
  - The **problem** of the **diversity of secured transactions regimes**
  - Problems concerning **creditors' rights and enforcement**
- Uniform legal regime to **facilitate asset-based financing and leasing** of certain types of **uniquely identifiable, mobile, high value equipment**
- Developed within **UNIDROIT**, through a decade-long, highly inclusive, industry-driven process.

# Convention (2001)

**Aircraft Protocol  
(2001)**  
[airframes, aircraft  
engines,  
helicopters]

**Luxemburg  
Rail Prot.**  
[railway rolling  
stock]

**Space Protocol  
(2012)**  
[space assets]

**MAC Protocol  
(2019)**  
[Mining, agricultural,  
construction  
equipment]

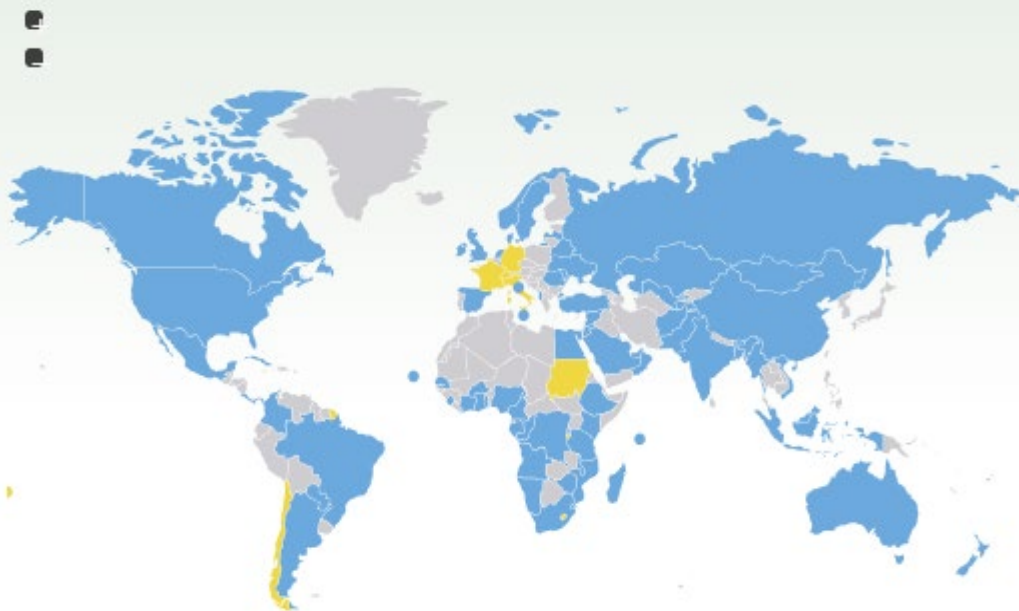
## TWO-TIER STRUCTURE: MAIN CONVENTION/PROTOCOLS

- Creation of an autonomous concept: **international interest** (security interest)
- Security registrable/searchable **24/7 in on-line public registry**
- Clear **system of priorities**
- A common system of **enforcement** of creditor rights on **default or insolvency**
- **Costless, coexistent** with national legislation
- Rail: A new system for **uniquely identifying** rolling stock

## The Cape Town Convention: status map

## CTC in numbers

STATUS MAP OF THE UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT (CAPE TOWN, 2001) - SIGNATURES, ENTRY INTO FORCE



Signature  Entry into force 

### Political acceptance:

- CTC: **79** contracting States + 1 REIO (EU)

### Volume of transactions:

- Over **1 Million registrations** in the Aircraft Protocol Registry since 2006
- Around **100,000 filings** each year
- Estimated value collateral **500 billion US\$**

### Quantifiable economic benefits deriving from lowering of the cost of credit:

- “**Cape Town Discount**” practiced by Export Credit Agencies (**OECD**)
- **Improved rating** in recourse to capital market debt financing
- Better conditions for commercial credit (including leasing operations)

# Wide-ranging stakeholder benefits

## GOVERNMENTAL BENEFITS

Reduced risk to governments providing export credit  
Enhanced privatization potential  
Improved export and employment interests  
Contribution to growth, increased revenues



Economic Growth

## FINANCIER, LESSOR & INVESTOR BENEFITS

Less risk  
Enhanced security  
Increased returns  
Higher valuations/regulatory benefits



Lowers Risk & Improves Returns

## USER BENEFITS

Enhanced access to funds and funding sources  
Reduced financing costs  
Increased operating efficiency  
Improved profitability



Increases Access to Capital

## MANUFACTURER AND SUPPLIER BENEFITS

More, cheaper credit available  
Expanded markets  
Improved sales  
Higher employment levels



Increases Access to Finance and  
Expands Asset's Market



## The Luxembourg Rail Protocol

- **Luxembourg** on 23-2-2007, where International Registry is located:
  - 3 Contracting States (Luxembourg 2012, Gabon 2017, Sweden 2018)
  - 6 signatories (France [2016], Germany, Italy, Mozambique [2016], Switzerland, United Kingdom [2016])
  - **A number of States in pipeline:** Kenya, South Africa, Mauritius, several EU member states, etc.
- **Scope:** Article II: “**Railway Rolling Stock**” means vehicles movable on a fixed railway track or directly on, above or below a guideway, together with traction systems, engines, etc...”
- Fills gaps:
  - (i) no domestic systems for security rights over rolling stock
  - (ii) no global system of asset identification: **Unique Vehicle Rail Identification System (URVIS)**, first global unique and permanent identification system for all Rolling Stock

## Unique Vehicle Identification

Important for **immatriculation** – admission to rail system

**Defence against fraud** on purchasers and creditors of rolling stock

Facilitates **technical monitoring of status and location** of asset and customised maintenance

Makes **lifetime asset management** much easier for operators, manufacturers and financiers

Will bring **benefits for insurers and regulators**

## The Luxembourg Rail Protocol

Growing **interest** in **Rail Protocol globally**, in line, for example, with the EU's 4<sup>th</sup> Railway Package (expansion & liberalisation):

- Rail Protocol is expected to attract more **private sector lenders and lessors** into the rail market, **resulting in cheaper finance for operators** and a wider choice in relation to types of financing.
- Allows States to concentrate **public resources on rail infrastructure**, relying on private/public-private capital to procure rolling stock
- Fosters **sustainable economic and social development** in enhancing urban & extra-urban transportation of people & cross-border transportation of freight by railways
- **Green Technology**. Graz declaration: “Clean, safe and affordable mobility in Europe”
- In line with current **international commercial networks** (Belt & Road, Rail Baltica)

Investment to finance

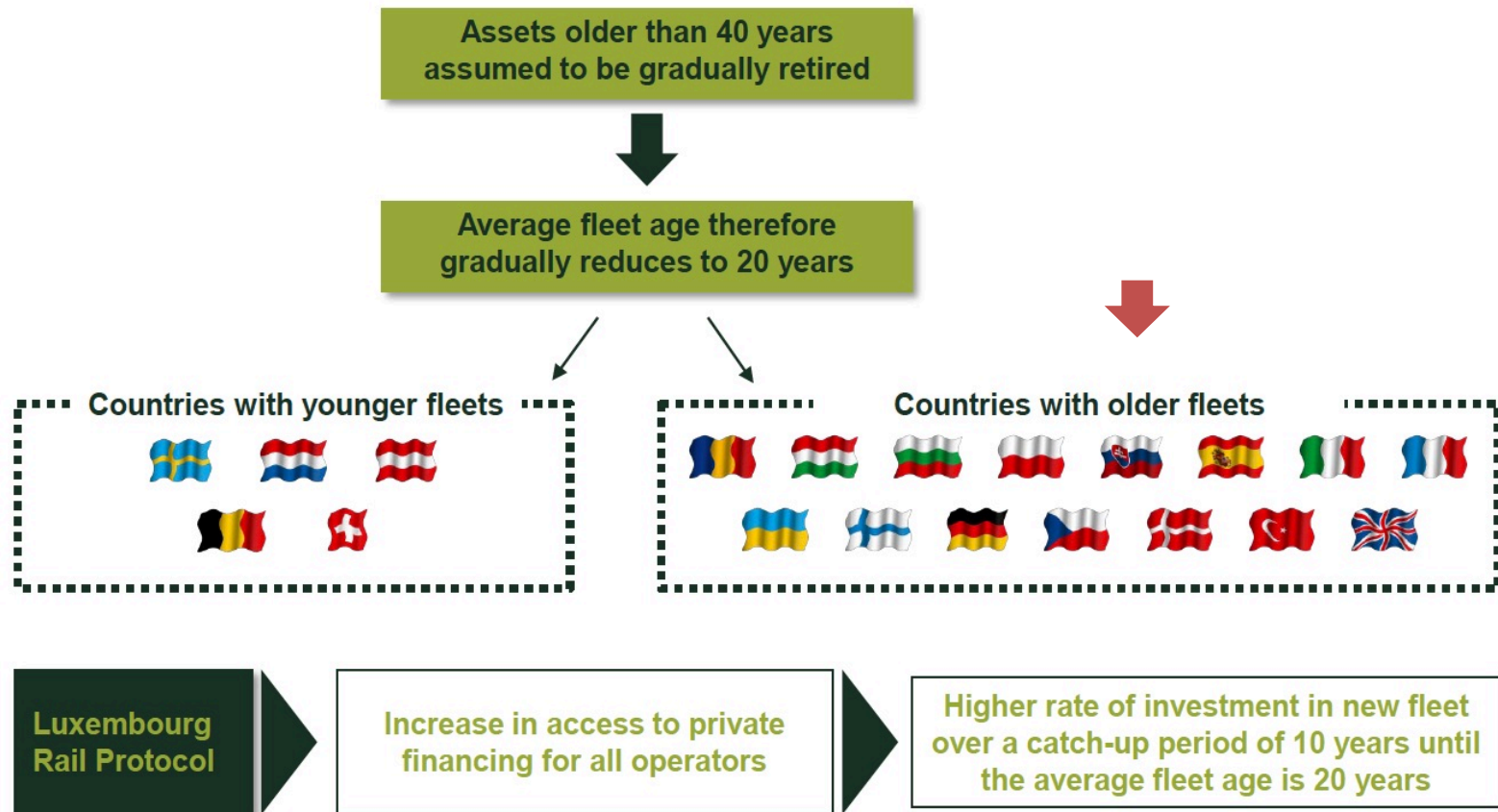
Pre-LRP cost of capital

Post-LRP cost of capital

Financial benefits

# Catch-up through reducing average age of fleet

## Rational and methodology



**FINANCIAL  
BENEFITS**

**20 countries**

**€19.4bn total  
benefits**

Refinancing  
16%



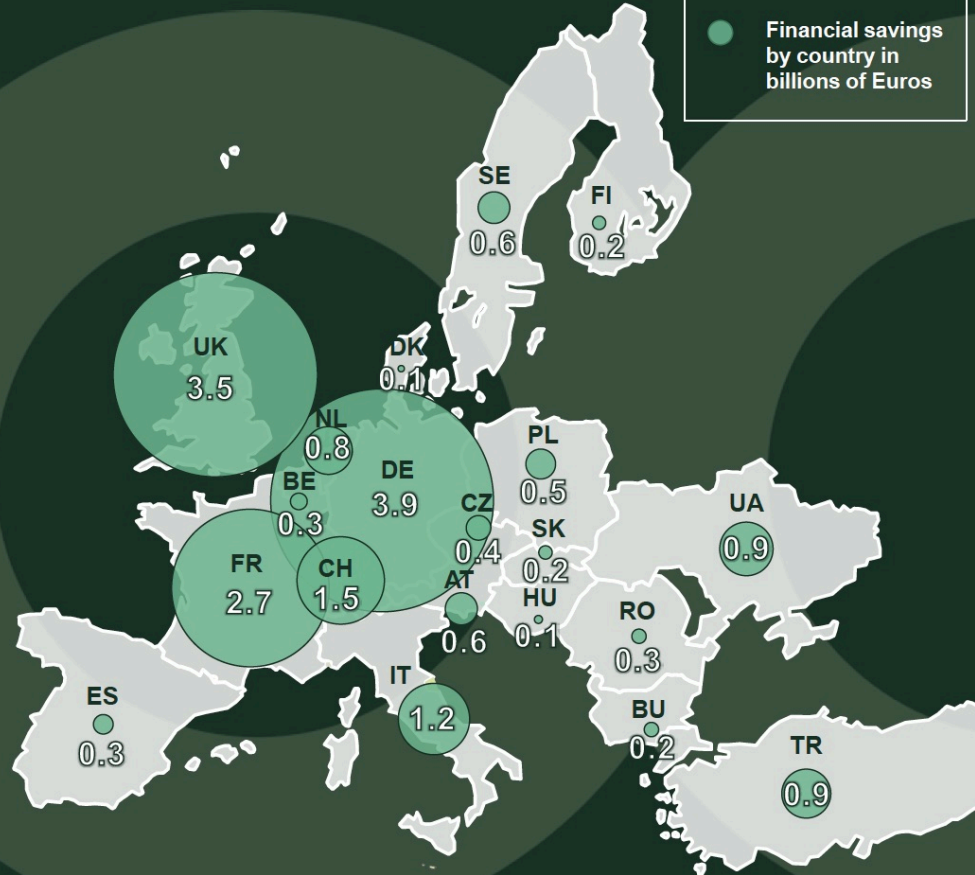
New deliveries  
84%

Freight  
12%



Passengers  
88%

● Financial savings  
by country in  
billions of Euros





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**Thank you**