

FINAL ACT

**of the diplomatic Conference to Adopt a Rail Protocol to the Convention
on International Interests in Mobile Equipment held under the joint auspices of
the International Institute for the Unification of Private Law and the
Intergovernmental Organisation for International Carriage by Rail
in Luxembourg from 12 to 23 February 2007**



LUXEMBOURG

23 FEBRUARY 2007

FINAL ACT

of the diplomatic Conference to Adopt a Rail Protocol to the Convention on International Interests in Mobile Equipment held under the joint auspices of the International Institute for the Unification of Private Law and the Intergovernmental Organisation for International Carriage by Rail in Luxembourg from 12 to 23 February 2007

The Plenipotentiaries at the diplomatic Conference to Adopt a Rail Protocol to the Convention on International Interests in Mobile Equipment, held under the joint auspices of the International Institute for the Unification of Private Law and the Intergovernmental Organisation for International Carriage by Rail, met in Luxembourg, at the invitation of the Government of the Grand Duchy of Luxembourg, from 12 to 23 February 2007 for the purpose of considering the *draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock*, prepared by three Joint Sessions of a Committee of Governmental Experts of the International Institute for the Unification of Private Law and the Intergovernmental Organisation for International Carriage by Rail.

Representatives of the Governments of 42 States participated in the Conference.

The representatives of the Governments of the following 35 States presented credentials in due and proper form:

Algeria, the People's Democratic Republic of	Japan
Australia	Jordan, the Hashemite Kingdom of
Austria, the Republic of	Kenya, the Republic of
Belgium, the Kingdom of	Luxembourg, the Grand Duchy of
Brazil, the Federative Republic of	Moldova, the Republic of
Cameroon, the Republic of	Mexican States, the United
Canada	Netherlands, the Kingdom of the
Chile, the Republic of	Nigeria, the Federal Republic of
Czech Republic, the	Qatar, the State of
Finland, the Republic of	Russian Federation, the
French Republic, the	Slovak Republic, the
Gabonese Republic, the	Sweden, the Kingdom of
Germany, the Federal Republic of	Swiss Confederation, the
Hellenic Republic, the	United Kingdom of Great Britain
Hungary, the Republic of	and Northern Ireland, the
Indonesia, the Republic of	United Republic of Tanzania, the
Ireland	United States of America, the
Italian Republic, the	Viet Nam, the Socialist Republic of

The following seven States also participated in the Conference:

China, the People's Republic of	Spain, the Kingdom of
Denmark, the Kingdom of	Togolese Republic, the
India, the Republic of	Turkey, the Republic of
Poland, the Republic of	

The following eleven international Organisations and groups were represented by observers:

Aviation Working Group (AWG)
Council of the European Union
European Commission
European Investment Bank
Hague Conference on Private International Law
International Rail Transport Committee (CIT)
International Union of Combined Road-Rail Transport Companies (UIRR)
International Union of Railways (UIC)
Rail Working Group (RWG)
Southern African Development Community (SADC)
World Bank.

The Conference elected as President Mr Jean Mischo (Luxembourg) and further elected as Vice-Presidents:

Mr Abdul Razzaq Abulfeilat (Jordan)
Mr Antonio Paulo Cachapuz de Medeiros (Brazil)
Mr Yuri Khromov (Russian Federation)
Mr Laurent Noël (Switzerland)
Mr Fabien Owono Essono (Gabon).

The Secretariat of the Conference was as follows:

For the International Institute for the Unification of Private Law:

Secretary General – Mr Herbert Kronke, Secretary-General
Executive Secretary – Ms Marina Schneider, Senior Officer
Deputy Secretary – Mr Martin Stanford, Deputy Secretary-General
Deputy Secretary – Ms Frédérique Mestre, Senior Officer

For the Intergovernmental Organisation for International Carriage by Rail:

Secretary General – Mr Stefan Schimming, Secretary General
Executive Secretary – Mr Gustav Kafka, Deputy to the Secretary General
Deputy Secretary – Mr Gerfried Mutz, Honorary Counsellor
Deputy Secretary – Mrs Eva Hammerschmiedova, Senior Officer

Other officials of both Organisations also provided services to the Conference.

The Conference established a Commission of the Whole, which was chaired by Mr Dominique D'Allaire (Canada) and to which Sir Roy Goode (United Kingdom) acted as *Rapporteur*, and the following Committees:

Credentials Committee

Chairman: Mr Dan Ogochukwu Obelle / Mr Bello Shehu Ringim (Nigeria)

Members: Indonesia
Luxembourg
Nigeria
Qatar
Russian Federation.

Drafting Committee

Chairman: Mr Antti Leinonen (Finland)

Members: Austria
Canada
Finland
France
Germany
Japan
Kenya
Luxembourg
Russian Federation
United States of America.

Final Clauses Committee

Chairman: Mr Jorge Sánchez Cordero (Mexico)

Members: Greece
Luxembourg
Mexico
United States of America.

Registry Committee

Chairman: Mr Henrik Kjellin (Sweden)

Members: Canada
Finland
France
Gabon
Germany
Greece
Indonesia
Italy
Luxembourg
Nigeria
Russian Federation
Slovakia
Sweden
Switzerland
United Kingdom
United States of America
Vietnam.

Following its deliberations, the Conference adopted the text of the *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock*.

The said Protocol has been opened for signature in Luxembourg this day.

The texts of the said Protocol and the Resolutions adopted by the Conference are subject to verification by the Secretariat of the Conference under the authority of the President of the Conference within a period of ninety days from the date hereof as to the linguistic changes required to make the texts in the different languages consistent with one another.

The Conference furthermore adopted by consensus the following Resolutions:

RESOLUTION NO. 1

relating to the establishment of the Supervisory Authority and International Registry for railway rolling stock

THE CONFERENCE,

HAVING ADOPTED the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (the Protocol);

HAVING REGARD to Article XII of the Protocol;

HAVING REGARD to the Convention on International Interests in Mobile Equipment (the Convention), opened to signature in Cape Town on 16 November 2001;

CONSCIOUS of the need to undertake preparatory work regarding the establishment of the International Registry for railway rolling stock (the International Registry) in order to ensure that it be operational by the time when the Protocol enters into force;

CONSIDERING the advantages of formulating the policies and procedures as well as adapting the procedures employed in establishing the International Registry for aircraft objects in order to facilitate the expeditious establishment of the International Registry and contain the costs thereof to the extent possible;

CONSIDERING that the General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) at its seventh session, held on 23 and 24 November 2005 (AG 7/9 of 24 November 2005), agreed that, subject to certain conditions, OTIF assume the role of Secretariat of the Supervisory Authority of the International Registry and to defer further decisions on this matter until after the diplomatic Conference;

RESOLVES:

TO SET UP, pending the entry into force of the Protocol, a Preparatory Commission (the Commission) to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry, in consultation with the International Institute for the Unification of Private Law (UNIDROIT) and OTIF, and to be composed of

- (1) the following States, the representatives of which shall have the necessary qualifications and experience:
 - (a) States that have ratified or acceded to the Convention;
 - (b) ten States from among the States that participated in the Conference (*negotiating States*); and
 - (c) six States nominated by the co-sponsoring Organisations of the Conference, UNIDROIT and OTIF,such States to be determined by the President of the Conference,
- (2) the Chairmen of each of the Commissions and Committees established by the Conference, where the States of such Chairmen are not otherwise represented,
- (3) one representative each from the UNIDROIT and OTIF Secretariats, and
- (4) one representative of the Rail Working Group,

other negotiating States also being free to participate as observers in meetings of the Commission.

THAT all participants in the Commission's work shall participate without any financial implications for either the Commission or the co-sponsoring Organisations.

THAT the Commission shall have such legal personality as may be necessary;

TO DIRECT the Commission to carry out, in consultation with UNIDROIT and OTIF, the following functions:

- (1) to establish its rules of procedure and methods of work, including the appointment of its chairman, the setting up of expert committees and the determination of the place and dates of meetings to carry out its work;
- (2) to prepare regulations and procedures for the International Registry;
- (3) to ensure that the International Registry be set up in accordance with a fair selection process, so as to ensure both technical capacity and operational features which can maintain such a registry at a cost as low as feasible;
- (4) to enter into a contract with the Registrar that makes provision for the testing of the software, the initial fees, the user application process and timelines for the consideration of the inclusion of other than the initially selected language to be used for registrations and searches, as well as other relevant details;
- (5) to initiate consultations capable of ensuring effective co-operation with relevant existing national and regional registries;

TO DIRECT the Commission to make use, in the carrying out of its functions, to the maximum extent feasible and appropriate, of the prior experience acquired in the establishment and operation of the International Registry for aircraft objects, as well as the guidance of the Rail Registry Task Force and the Registry Committee of the Conference;

TO DIRECT the Commission to provide for the participation of private sector advisers, including members of the Rail Working Group and in particular representatives of manufacturers, railway operators and financiers;

TO DIRECT the Commission to prepare the establishment of the Supervisory Authority, whose members shall be composed of States as provided under Article XII of the Protocol, the establishment of the Supervisory Authority to be effected by Resolution of the Commission in consultation with UNIDROIT and OTIF;

TO DIRECT the Commission to draft the first regulations no later than three months prior to the entry into force of the Protocol, so that they may take effect upon its entry into force, and, prior to issuing such regulations, publish draft regulations in good time for review and comment and thereafter consult with representatives of manufacturers, operators and financiers thereon; and

TO REQUEST UNIDROIT and OTIF to provide the Commission with such administrative assistance and facilities as may be necessary and to the extent feasible.

RESOLUTION NO. 2

relating to technical assistance with regard to the implementation and use of the International Registry for railway rolling stock

THE CONFERENCE,

MINDFUL of the objectives of the *Convention on International Interests in Mobile Equipment* (the *Convention*) and the *Luxembourg Protocol to the Convention on Matters specific to Railway Rolling Stock* (the *Protocol*);

DESIROUS of facilitating the implementation of the Convention and the Protocol as well as the prompt implementation and use of the International Registry for railway rolling stock (the *International Registry*);

RESOLVES:

TO ENCOURAGE all States, international Organisations and private parties, such as the rail manufacturing and financial industries, to assist developing States in any appropriate way, including the provision of facilities and the know-how necessary to use the International Registry, so as to allow them to benefit from the Convention and the Protocol as early as possible, and, to this effect, to set up a fund to which contributions shall be made on a voluntary basis and which will function under the authority of the Supervisory Authority.

RESOLUTION NO. 3

**expressing the gratitude of the Conference
to the Government of Luxembourg for organising
the Conference and designating Luxembourg
as host State of the International Registry for railway rolling stock**

THE CONFERENCE,

HAVING ADOPTED the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (the Protocol);

MINDFUL of the leadership role played by the Government of the Grand Duchy of Luxembourg in finalising the Protocol and the dedication of its officials to the resolution of all the outstanding issues in relation to the Protocol during the Conference;

GRATEFUL to the Government of the Grand Duchy for having organised the Conference;

EXPRESSES its deep gratitude and sincere appreciation to the Government of the Grand Duchy and its officials; and

RECOGNISING the common desire for ensuring the rapid and effective setting up of the International Registry for railway rolling stock (the *International Registry*) for the benefit of all nations;

CONSCIOUS of the central geographic location of the Grand Duchy in Europe and in the European rail system;

MINDFUL that the Grand Duchy is an important participant in the European and international financial markets;

APPRECIATIVE of the assurance given by the Government of the Grand Duchy that it would actively support the setting up of the International Registry;

RESOLVES that the Grand Duchy of Luxembourg shall be the host State of the International Registry.

RESOLUTION NO. 4

relating to the Official Commentary on the Luxembourg Protocol

THE CONFERENCE,

HAVING ADOPTED the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (the Protocol);

MINDFUL of the existing Official Commentary to the Convention and the Protocol thereto on Matters specific to Aircraft Equipment and its importance;

RECOGNISING the increasing use of commentaries of this type in the context of modern, technical commercial law instruments;

CONSCIOUS of the need for an official commentary on the Protocol as an aid for those called upon to work with this instrument; and

MINDFUL that the Explanatory Report on the draft Rail Protocol submitted to the Conference (DCME-RP – Doc. 4) provides a sound starting point for the further development of this official commentary;

RESOLVES:

TO REQUEST the preparation of an official commentary on the Protocol by the *Rapporteur*, in close co-operation with OTIF and UNIDROIT and in co-ordination with the Chairman of the Commission of the Whole, the Chairman of the Final Clauses Committee, the Chairman of the Registry Committee and the Chairman and members of the Drafting Committee; and

TO REQUEST that the Official Commentary be circulated for comment in draft form among the States and observers that participated in the Conference prior to its publication being authorised.

RESOLUTION NO. 5

relating to Article 2(3)(c) and Article 51 of the Convention on International Interests in Mobile Equipment

THE CONFERENCE,

HAVING REGARD to the provisions of Article 2(3)(c) and Article 51 of the Convention on International Interests in Mobile Equipment (the *Convention*) contemplating the adoption of a Protocol thereto on Matters specific to Space Assets (the *future Space Assets Protocol*);

OBSERVING that preliminary consideration has begun with regard to a fourth Protocol to the Convention on Matters specific to Agricultural, Construction and Mining Equipment;

CONSIDERING that the future Space Assets Protocol will be applied together with the terms of the Convention and is expected to include analogous provisions to those contained in the Protocol to the Convention on Matters specific to Aircraft Equipment;

CONSIDERING that considerable progress has already been made in relation to the development of the future Space Assets Protocol and that such progress has been welcomed by the Conference;

CONSIDERING that the completion of the future Space Assets Protocol is to be expected to confer significant benefits on the international community as a whole, in particular developing States; and

CONSIDERING IT DESIRABLE to involve as wide a range of States as possible in the process for the adoption of the future Space Assets Protocol and to keep the costs of such adoption to a reasonable minimum;

RESOLVES:

TO INVITE negotiating States to work towards the expeditious adoption of the future Space Assets Protocol;

TO INVITE States to initiate preliminary work in 2007 on a future Protocol to the Convention on Matters specific to Agricultural, Construction and Mining Equipment;

TO INVITE the International Institute for the Unification of Private Law (UNIDROIT) to use its good offices to facilitate such objectives;

TO INVITE UNIDROIT to give all its member States and member States of the United Nations or relevant specialised Agencies which are not members of UNIDROIT an opportunity to participate in the negotiation and adoption of such future Protocols in a cost-effective manner; and

TO INVITE the competent bodies of UNIDROIT to consider favourably the implementation of an expedited procedure for the adoption of such Protocols, and in particular to consider the Conferences required for their adoption being as short as possible consistently with the need for States to give such Protocols proper consideration.

RESOLUTION NO. 6

concerning the regimen of the Registrar's liability under Article XV(5) of the Protocol

THE CONFERENCE,

MINDFUL of the economic rationale underlying the regimen of the Registrar's liability provided for under Article XV(5) of the *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (the Protocol)*;

CONCERNED nevertheless to ensure that the regimen to be provided for under the Protocol in this matter be such as to facilitate adoption of the Protocol by as many States as possible;

RESOLVES

TO INVITE the Supervisory Authority to consider the desirability of reviewing the liability limit provided for under the aforementioned provision at the earliest possible opportunity, subject to the finding of the necessary insurance cover.