



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

OTIF



**ORGANISATION INTERGOUVERNEMENTALE POUR LES
TRANSPORTS INTERNATIONAUX FERROVIAIRES**

**ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
INTERNATIONALEN EISENBAHNVERKEHR**

**INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL
CARRIAGE BY RAIL**

**PREPARATORY COMMISSION FOR THE
ESTABLISHMENT OF THE INTERNATIONAL REGISTRY
FOR RAILWAY ROLLING STOCK PURSUANT TO THE
LUXEMBOURG (RAIL) PROTOCOL**

UNIDROIT 2018
Prep. Comm. Rail/8/Doc. 7
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**SUMMARY REPORT
OF THE EIGHTH SESSION
(Rome, 6-7 December 2018)**

1. The Eighth Session of the Preparatory Commission regarding the establishment of the International Registry for railway rolling stock according to the Luxembourg (Rail) Protocol (hereinafter referred to as the Protocol) took place at the headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome on 6-7 December 2018. A full list of participants of this meeting can be found in Annex 2 of this report.

Item No. 1 Opening of the session and welcome by the Secretaries General of UNIDROIT and OTIF and by the Chair of the UNIDROIT General Assembly

2. *The Chair of the of the 2018-2019 UNIDROIT General Assembly, H.E. Mr. Paul Duhr, Ambassador of Luxembourg in Italy, opened the session and welcomed all the participants. He noted the importance of the Protocol to the rail industry and noted the amount of time it had taken to progress this instrument forward. He encouraged the members of the Preparatory Commission to work with a sense of urgency to allow the Protocol to meet its full potential.*

3. *The Secretary-General of UNIDROIT, Professor Ignacio Tirado, invited the Co-chairs of the Preparatory Commission, Mr Peter Bloch, a representative of the United States of America, and Ms Mervi Kaikkonen, a representative of Finland (participating via teleconference) to resume their roles as Co-chairs of the Rail Preparatory Commission. Before giving the floor to the Co-chairs, the Secretary-General expressed his gratitude to all participants, and especially acknowledged the work done so far, as well as the presence of representatives of: the co-sponsoring organisation, the Intergovernmental Organisation for International Carriage by Rail (OTIF); the Rail Working Group; Regulis SA, the entity in charge of the International Registry for the Protocol. The Secretary-General then provided a brief overview of the Protocol for the purpose of facilitating delegations or representatives present for the first time in the meetings of the Rail Preparatory Commission.*

4. *Mr Bas Leermakers, Secretary-General a.i. of OTIF, provided a brief presentation of the organisation and noted the role OTIF would play as the Secretariat of the Supervisory Authority for the Protocol.*

Item No. 2 Adoption of the agenda and organisation of the session

5. *The Co-chairs of the Preparatory Commission elaborated upon the organisation of the 8th Session of the Preparatory Commission and noted that delegations would be given the opportunity to seek clarification on various matters and to make statements as part of Agenda Item 5.*

6. *The Co-Chairs introduced the agenda (Prep. Comm. Rail/8/Doc.1, see Annex I to this report) which was adopted without amendments.*

Item No. 3 Report of Co-Chairs on the developments since the last session and activities of the Ratification Task Force (Prep. Comm. Rail/8/Doc. 2)

7. *The Co-chairs of the Preparatory Commission introduced the Agenda Item and noted that document Prep. Comm. Rail/8/Doc. 2 detailed a summary of the activities conducted since the last session and the activities that had been undertaken by the Ratification Task Force. The Co-chairs noted that the Ratification Task Force had been coordinating the strategy for the early implementation of the Protocol since 2014, when the contract between Regulis SA and the Secretary-General of UNIDROIT, acting on behalf of the Preparatory Commission, for the establishment and operation of the International Registry had been signed. The Ratification Task Force consisted of*

the Co-chairs of the Preparatory Commission, the Government of Luxembourg, Representatives of the Rail Working Group, Regulis SA, SITA NV, OTIF and UNIDROIT. The Co-chairs drew particular attention to certain symposiums and seminars that had been organised to promote the Protocol in various countries, including those in Europe, Asia and Africa. The Co-chairs then gave the floor to the Chair of the Rail Working Group, Mr. Howard Rosen, to further elaborate upon some of the work which had been completed.

8. *The representative of the Rail Working Group* thanked all participants for their attendance and reported on the status of the Protocol, as well as the work done by the RWG since the last session of the Preparatory Commission. He noted that three States and the European Union had ratified the Protocol, whereas an additional six States had signed the Protocol and were working towards ratification. Furthermore, detailed discussions had taken place with a large number of governments, each at different stages in the process towards becoming party to the Protocol. He also noted the workshops and seminars that had been conducted in over 16 States over the past three years, particularly with important presentations in African States at meetings of the African Union held in Addis Ababa in December 2017, the UN Economic Commission for Africa (UNECA) also in Addis Ababa in May 2018, and a number of presentations in Asia at forums such as the Asian Infrastructure Investment Bank 2018 Annual Meeting in Mumbai in June 2018, the EBRD/AIIB Connectivity in Central Asia Workshop in Beijing in November 2018, and several meetings of the OECD. UNECA had also identified the Protocol as a key component of their strategy for a continental African free trade area. Furthermore, it was anticipated that the Protocol would be featured in the agenda of and presented at the next annual meeting of UNECA to be held in Morocco in March 2019, and might also be the subject of a resolution dedicated to further its adoption in African States. The Rail Working Group had also been heavily involved in industry conferences in various regions of the world, and had published a series of papers and presentations on the Protocol. These included studies by Roland Berger on private ownership of railway rolling stock with an emphasis on Europe, as well as three micro-economic benefit studies conducted by Oxera Consulting looking at the positive economic impact of the Protocol on different areas of the world. Detailed submissions had also been made to Export Credit Agencies (which played an important role in the financing of railway rolling stock) at OECD Civil Society Organization meetings. Moreover, discussions had also been held to negotiate an official OECD financing discount which would be applicable in States which had made the qualifying declarations under the Protocol, as was the case under the Aircraft Protocol.

9. The representative of the Rail Working Group noted there had been two separate approaches adopted to enhance the ratification process; a country by country vertical approach which initially focussed on countries which had already ratified the Aircraft Protocol, or had financial services centres which provided large amounts of funding to the rail industry; and a multi-state organisation horizontal approach which focussed on large intergovernmental organisations such as UNECA, the African Union, and other large development banks such the World Bank, AIIB, EBRD etc, as well as regional organisations such as the EU. He concluded by noting that ratifications were expected from a number of countries (France, Kenya, Mozambique and Senegal), with signatures expected from Ukraine, Mauritius, Malta, South Africa, Finland, Ethiopia, Uganda, China, and St Vincent and the Grenadines in the next 12 months.

10. *The Co-chairs* thanked the representative from the Rail Working Group and noted that the website of the Rail Working Group was an excellent resource for those seeking more information about the Protocol.

Item No. 4 Report of OTIF on the 129th session of its Administrative Committee (31 May – 1 June 2018) and on the 13th session of its General Assembly (25 - 26 September 2018)

11. *The Co-chair of the Preparatory Commission* invited the representative from OTIF to present a report on the 129th session of its Administrative Committee (31 May – 1 June 2018) and on the 13th session of its General Assembly (25 - 26 September 2018).

12. *The representative from OTIF, Secretary-General a.i.*, noted that the Draft Rules of Procedure for the Supervisory Authority and the Statute had been approved at the 129th session of its Administrative Committee (31 May – 1 June 2018). This approval had also passed through the 13th session of its General Assembly (25 - 26 September 2018), which instructed the Administrative Committee to identify the three Member States which would become part of the Secretariat of the Supervisory Authority. This was expected to take place in 2019. Additionally, work was presently underway to formalise an agreement between OTIF and the Supervisory Authority, and towards the future certification of the International Registry as a fully operational entity.

13. *The Co-chairs of the Preparatory Commission* reminded the Preparatory Commission that the documents approved at the aforementioned OTIF meetings would also need the approval of the Preparatory Commission. This would be discussed under Agenda Item 6.

Item No. 5 Questions and statements by participating States

14. *The Co-chairs of the Preparatory Commission* introduced the agenda item and opened the floor for questions and statements from States relating to the Protocol.

15. *The representative of Sweden* reiterated the statement released by Ms Heléne Fritzon, Minister for Migration and Asylum Policy and Deputy Minister for Justice, when Sweden ratified the Protocol, on the importance of the Protocol and the role it could play towards allowing the flow of investment at cheaper rates into the rail industry. She additionally noted the ease with which States could implement the Protocol if they had already ratified the Aircraft Protocol, as had been the case for Sweden.

16. *The representative of South Africa* noted the importance of the rail industry in the South African economy, and the important role its development would play for the future of economic growth within South Africa and the African continent in general. He added that the Protocol could play a key role in the fulfilment of the African Union's Agenda 2063 towards 'an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in international arena'. He praised all the work done by the Rail Preparatory Commission and its Members in promoting the development of the Protocol and of documents for the governance of the Supervisory Authority. He concluded by adding that South Africa had concluded a process for the signature of the Protocol which was now at the final stage within the South African government. He also noted the need for the establishment of working groups under the Preparatory Commission to allow it to better execute its mandate.

17. *The representative of Germany* noted the usefulness of the Protocol for the German and world economy and praised the efforts made by UNIDROIT, OTIF and the Rail Preparatory Commission. He welcomed information relating ratifications by States of the Protocol in order to have an estimate of when the Protocol would enter into force.

18. *The representative of Burkina Faso* thanked the Preparatory Commission for its efforts in promoting the Protocol and noted the importance of the rail industry to increase economic growth in Africa. He noted that Burkina Faso needed tools to reduce the cost of financing for railway rolling stock in order to increase its transport capacity, and the Protocol provided the perfect means to do so. Moreover, Burkina Faso looked forward to the cross-border financing opportunities that the Protocol would open up once it entered into force with a fully operational International Registry. He concluded by noting that Burkina Faso was making efforts to sign and ratify the Protocol, which were expected to bear fruit in the near future.

19. *The representative of Indonesia* noted the value of the Protocol as complementary to the already ongoing efforts within Indonesia to modernise its railway network. Additionally, she also expressed gratitude to UNIDROIT for providing technical support to its delegation to facilitate Indonesian efforts towards signing and ratifying the Protocol.

20. *The representative of Nigeria* noted the socioeconomic position of Africa and the benefits the Protocol could bring to its improvement. He noted the important role which rail transportation played in the Nigerian economy and notified the Preparatory Commission of its strong commitment to accede to the Protocol in a timely manner.

21. *The Co-chairs of the Preparatory Commission* thanked all the delegations for their input and proceeded to the next agenda item.

Item No. 6 Approval of documents related to the establishment of the Supervisory Authority:

- a. Statutes of Supervisory Authority (Prep. Comm. Rail/8/Doc. 4)
- b. Rules of Procedure of the Supervisory Authority (Prep. Comm. Rail/8/Doc. 5)

22. *The Co-chairs of the Preparatory Commission* introduced the agenda item and noted that the Preparatory Commission had to approve the Statutes and the Rules of Procedure of the Supervisory Authority, as found in documents Prep. Comm. Rail/8/Doc. 4 and Prep. Comm. Rail/8/Doc. 5 respectively.

23. *The representative of Switzerland* noted the use of the term 'international organisation' in the introductory text of Prep. Comm. Rail/8/Doc. 4 and recommended this to be removed in order for it to be consistent with Article XII of the Protocol. *The Co-chairs of the Preparatory Commission* noted that the introductory text of the document was not actually part of the Statutes and was just inserted for explanatory purposes. Nevertheless, the change was approved by the Preparatory Commission.

24. *The representative of Switzerland* also added that there might be value in clarifying the provisions of Article XII (1) (b) and (c) in Article 2 (2) of the Statute in order to clearly indicate the composition of the Supervisory Authority. Furthermore, he suggested that, since according to Article 4(1) of the Statutes the Supervisory Authority would be domiciled in Berne, Switzerland, there would be value in specifically adding that the Supervisory Authority would be hosted by OTIF, which was situated in Berne.

25. *The representative of Germany* raised a query relating to Article 2 of the Statutes, seeking clarity on this provision after the entry into force of the Protocol. He also relayed a general approval of the documents on behalf of the German government, but noted that budgetary regulation had not been covered in the documents provided and should also be considered.

26. *The representative of South Africa* noted that there were misalignments between the two documents presented, which could be improved, particularly in the area of definitions. Moreover, Articles 2 (2) of the Statutes and Art. 4 (3) of the Rules of Procedure seemed to be misaligned with the definition of State Parties and created confusion relating to the composition of the Supervisory Authority.

27. *The representative of the Rail Working Group* was asked to address the points raised by the representatives of Switzerland, Germany and South Africa. He noted that on the issue of time limits of the Members of the Supervisory Authority, this was dealt with by Article XII of the Protocol. This specified the composition of the Supervisory Authority and was set to ensure that during the early stages of the entry into force of the Protocol (upon reaching 4 States), there would at least be 10 States part of the Supervisory Authority (with 3 proposed by UNIDROIT and 3 by OTIF) at all times. Their terms would also be determined by the designating authority. Nevertheless, these designated States would eventually fade away as more States ratified the Protocol and these designated States, as under Article XII (3), would see their terms finish no later than two years after the entry into force of the Protocol in its tenth State.

28. On the issue of Article 4 of the Statutes relating to the domicile of the Supervisory Authority, the representative of the Rail Working Group noted that the square brackets in this article were only a formality, and would be removed. As such, the Supervisory Authority lived through its Secretariat, which was hosted by OTIF. The Supervisory Authority itself had no separate domicile other than that of OTIF. This was intended to be implicit through the Statutes, as it was drafted cognisant of Article XII (6) of the Protocol. Nevertheless, it could be made explicit if recommended by the Preparatory Commission.

29. *The representative of Switzerland* noted the need to explicitly state this provision.

30. *The representative of the Rail Working Group* noted that with regards to the budget of the Supervisory Authority, the Supervisory Authority had no operating existence except through the agency of OTIF as the Secretariat; as such, the Supervisory Authority had no budget of its own, and the only costs were those incurred by the Secretariat; these costs had already been set out in Clause 12.5 of the Agreement between the Preparatory Commission and Regulis SA such that they would be compensated accordingly (15,000 Euros per year). As such, budgetary considerations did not need to be included in the Statutes.

31. *The Co-chairs of the Preparatory Commission* noted that the changes relating to consistency of definitions would be made accordingly.

32. *The Secretary-General a.i. of OTIF* noted that all changes made by the Preparatory Commission would additionally also need to be validated by the Administrative Committee of OTIF. They would also need to be reconfirmed by the Supervisory Authority at its first meeting.

33. *The representative of Jordan* sought clarification on the status of the two documents being deliberated. *The Secretary-General a.i. of OTIF*, followed by the *Secretary-General of UNIDROIT* noted that the changes recommended by the Preparatory Commission in its present session would be forwarded to OTIF, which would then approve them. Upon their approval, the documents would be adopted.

34. Further to the mandate given to *the UNIDROIT Secretariat* to present a revised version of the documents under deliberation, in order to maximise consistency between the Protocol and the documents, the following changes were made to the Statutes of the Supervisory Authority:

- Article 2 (2)
Its membership is determined in accordance with Article XII (1) (b) and (c) of the Protocol.
- Article 4 (1)
The Supervisory Authority shall be domiciled in Berne, Switzerland. It is hosted by OTIF.

35. The following changes to the Rules of Procedure of the Supervisory Authority were presented:

- Article 1
State Party – a State which has ratified or acceded both to the Convention and the Protocol.
- Article 4 (3)
A Regional Economic Integration Organization which is a party to the Protocol shall have the right to be represented at a meeting of the Supervisory Authority.

36. *The Co-Chair of the Preparatory Commission* clarified that Regional Economic Integration Organisations being a party to the Protocol would have the right to be represented and participate in the meetings of the Supervisory Authority, though it would not have the right to vote, as consistent with Article XII of the Protocol and aligned with the interventions made by one delegation.

37. The Co-chair of the Preparatory Commission also elaborated upon the notion of qualified majority under the Rules of Procedure, and noted that a two-fold system had been introduced to ensure that States which have been designated to the Supervisory Authority did not have more power within the Supervisory Authority than those that were actual parties to the Protocol.

38. *The Preparatory Commission approved the amended Statutes and the amended Rules of Procedure.*

Item No. 7 Discussion and approval of future steps leading to the entry into force of the Protocol (Prep. Comm. Rail/8/Doc. 6)

39. *The Co-chair of the Preparatory Commission* introduced the agenda item and noted that the Preparatory Commission's approval was required on this item relating to the future steps leading to the entry into force of the Protocol as noted in document Prep. Comm. Rail/8/Doc. 6. Among the steps needed to be taken was building the International Registry which would be undertaken by Regulis SA. As such, decisions would be required from the Preparatory Commission for matters such as the setting of fees for users of the Registry as well as approval of the Registry's regulations and procedures. The Co-chairs noted that the Preparatory Commission, at its seventh session, had already approved the creation of a sub-committee to generally address matters requiring a quick turn around. However, the Preparatory Commission decided that it would be more useful to specify the exact functions of this sub-committee. These functions could be found in Prep. Comm. Rail/8/Doc. 6 and related to software functionality review meetings, review/approval/rejection of the user manual, drafting of interim regulations, review/approval/rejection of the Regulis proposed annual budget, subcontracts.

40. *The representative of Switzerland* noted that the aforementioned tasks were all such that Regulis SA would require a speedy and efficient approval process, and that a sub-committee was best suited for this process. Switzerland had always been supportive of this idea and continued to support it. He also expressed approval for the revised limited mandate for the sub-committee and noted his appreciation for this.

41. *The Preparatory Commission* approved the creation of the sub-committee and the future steps leading to the entry into force of the Protocol as noted in document Prep. Comm. Rail/8/Doc. 6.

Item No. 8 Information regarding the draft updated Regulations for the International Registry for railway rolling stock (Prep. Comm. Rail/7/Doc. 2; Prep. Comm. Rail/7/Doc. 3; Prep. Comm. Rail/8/Doc. 3)

42. *The representative of the Rail Working Group* noted that work was presently being done towards completing the draft Regulations for the International Registry for Railway Rolling Stock. Extensive references had been taken on-board from the latest versions of the Regulations of the International Registry for the Aircraft Protocol, with relevant amendments to suit the rail industry. The main objective of these Regulations was to make the system as easily operable for parties as possible. The draft presently available as document Prep. Comm. Rail/8/Doc. 3 was a working version that had yet to incorporate procedures, as well as fee schedules, which would all be finalised in the future. He additionally noted some of the salient features of these Regulations and the developments that still needed to be made in this regard, which would all be completed at the point where the Registry would be fully functional and the Protocol entered into force.

43. *The Co-chair of the Preparatory Commission* noted that the draft Regulations, once finalised, would be presented before the Preparatory Commission for approval.

Item No. 9 Ratification strategy and planning of future work

44. *The Co-chair of the Preparatory Commission* noted that this Agenda Item had been covered as part of Agenda Item 3. Nevertheless, the Co-chairs reiterated that the focus would be on States close to signing and ratifying the Protocol. There would also be a strong focus on the economic impact as well as the beneficial environmental impact of the adoption of the Protocol. Three main streams of future work were identified as:

- a. Ratifications;
- b. Finalisation of the International Registry;
- c. Finalisation of the various documents for the functioning of the Supervisory Authority.

On the day of entry into force of the Protocol, the Supervisory Authority would convene its first session and elect its Chairperson, approve relevant committees, establish a commission of experts, adopt all documents already approved by the Preparatory Commission, as well as adopt the Regulations, Procedures, Fee Schedules and provisions for insurance requirements for the International Registry.

Item No. 10 Any other business

45. *The representative of Burkina Faso* noted the importance of involving regional organisations from all areas, including West Africa, with the involvement of the Economic Community of West African States, which could all benefit substantially from the Protocol.

46. *The UNIDROIT Secretariat, as well the representative from the Rail Working Group* thanked Burkina Faso for noting the importance of involving all regions in this project and seconded the suggestion, noting the nature of the Protocol as a global project.

47. No other business was raised.

Item No. 11 Closing of the session

The Co-chair of the Preparatory Commission closed the session.

ANNEX 1**ANNOTATED DRAFT AGENDA**

1. Opening of the session and welcome by the Secretaries General of UNIDROIT and OTIF and by the Chair of the UNIDROIT General Assembly
2. Adoption of the agenda and organisation of the session
3. Report of Co-Chairs on the developments since the last session and activities of the Ratification Task Force (Prep. Comm. Rail/8/Doc. 2)
4. Report of OTIF on the 129th session of its Administrative Committee (31 May – 1 June 2018) and on the 13th session of its General Assembly (25 - 26 September 2018)
5. Questions and statements by participating States
6. Approval of documents related to the establishment of the Supervisory Authority:
 - a. Statutes of Supervisory Authority (Prep. Comm. Rail/8/Doc. 4)
 - b. Rules of Procedure of the Supervisory Authority (Prep. Comm. Rail/8/Doc. 5)
7. Discussion and approval of future steps leading to the entry into force of the Protocol (Prep. Comm. Rail/8/Doc. 6)
8. Information regarding the draft updated Regulations for the International Registry for railway rolling stock (Prep. Comm. Rail/7/Doc. 2; Prep. Comm. Rail/7/Doc. 3; Prep. Comm. Rail/8/Doc. 3)
9. Ratification strategy and planning of future work
10. Any other business
11. Closing of the session.

ANNEX 2**LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS****ALGERIA / ALGERIE**

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INTERGOVERNMENTAL ORGANISATIONS

INTERGOVERNMENTAL ORGANISATION FOR
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