



**GOVERNING COUNCIL**  
**85<sup>th</sup> session**  
**Rome, 8-10 May 2006**

UNIDROIT 2006  
C.D. (85) 7(a)  
Original: English  
March 2006

**Item No. 7 on the agenda: International interests in mobile equipment –  
(a) draft Protocol to the Cape Town Convention on Matters specific  
to Railway Rolling Stock**

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>State of progress on the draft Protocol (Seminars and diplomatic Conference)</i>
<i>Action to be taken</i>	<i>(1) Confirm or change priority assessment; (2) support efforts to identify host State for diplomatic Conference (3) authorise UNIDROIT to become Depository of the Rail Protocol</i>
<i>Related documents</i>	<i>C.D. (84)7(b) Study LXXIIH – Doc. 17 OTIF/JGR/13 C.D. (84) 22</i>

**DISCUSSION LEADING PARAMETERS AS PROPOSED BY THE SECRETARIAT**

<b>Priority</b>			
	high	medium	low

**I. Strategic Plan**

Yes, because of (1) UNIDROIT's unique position to carry out work on specific areas of secured transactions (cf. Strategic Objective No. 1) and, (2) its potential benefits for developing countries and economies in transition (cf. Strategic Objective No. 7).

**II. Work Programme 2006-2008**

Yes.

**III. Current assessment**

- Recent feedback from Member States  
Varied, from **high** (Canada, Colombia, Germany, Russian Federation, South Africa, Sweden, United States of America) to **low** (United Kingdom).

- Recent feedback from industry and other private stakeholders  
**High** (manufacturers, financiers)

<b>On time</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	yes	slightly delayed	no
	Timeframe determined by CGE/Governing Council/General Assembly <input type="checkbox"/>		
	Timeframe to be determined at this session <input checked="" type="checkbox"/>		
<b>Problems to be overcome</b>	Identify Member State prepared to host diplomatic Conference for adoption.		
<b>Staffing implications</b>	Preparatory stage 1 Officer and 0.5 secretaries; at Conference, 4 Officers and 2 secretaries.		
<b>Budget implications</b>	If host State provides funding (around € 60,000 for 10 working days) none. If not, supplementary contributions or provision in 2007 needed.		
<b>Recommendations/ Guidance sought/ Decisions to be taken/ Alternatives?</b>	Continue search for venue. If necessary, seek provision in (supplementary) budget/extra-budgetary contributions. Put (temporarily) on hold only if assessment changes dramatically.		

## BACKGROUND

1. In light of the results of the two seminars, held in Warsaw in April 2004 (see UNIDROIT – C.D. (83)(9)(b)) and in Mexico City in October 2004 (see UNIDROIT – C.D. (84)(7)(b), Appendix), aimed at broadening the consensus on the text of the preliminary draft as established by three joint sessions – UNIDROIT/OTIF – of a Committee of governmental experts, and in expectation of a third such regional seminar, to be organised in Africa, the Governing Council at its 84<sup>th</sup> session (see UNIDROIT 2006 C.D. (84) 22) authorised the transmission of the text of the draft Protocol on Matters Specific to Railway Rolling Stock to a diplomatic Conference for adoption.

### Regional Seminar

2. The Secretariat is working on the organisation of a regional seminar for Africa and a working group has been constituted for this specific purpose in South Africa. There are three reasons why the seminar was not held, as had been envisaged, in 2005. Firstly, the Government of South Africa is conducting an overall review of its plans for the implementation of the Cape Town convention and the various equipment specific protocols. That review should be completed before the Secretariat officially requests the Government to host the seminar. Secondly, the co-ordinator of the Rail Working Group has advised that he would, for the time being, not be able to participate in the seminar due to lack of funds. Thirdly, it is generally thought that a firm date for the diplomatic Conference is required to secure a satisfactory number of African Governments to attend the seminar.

### **Diplomatic Conference**

3. Following preliminary and informal contacts with, initially, the Government of Switzerland and, thereafter, the Government of Hungary, the Secretary-General and the Director-General of OTIF on 1 August 2005 wrote official letters to the ministers of Foreign Affairs, Justice and Transport of the Republic of Hungary requesting that the Government of Hungary invite to a diplomatic Conference to be held in February 2006 in Budapest. The two Secretariats had been given assurances that an answer would be given within a few weeks, in particular if it were negative. Following repeated requests by the Hungarian Government to extend the deadline, on the eve of the General Assembly, held on 1 December 2005, the Government of Hungary advised that it was not in a position to host the diplomatic Conference.

4. As the Italian Ministry of Foreign Affairs had indicated that, subject to the availability of funding, it would see it as the Organisation's host State's responsibility to step in and that Italian industry had a substantial interest in the finalisation of the draft protocol, discussions to further explore that option commenced on 2 January 2006. By early February it had become clear that there was no realistic chance to have a decision prior to the general elections on 9 April 2006.

5. The Secretariat wishes to emphasize that its efforts were unsuccessful notwithstanding the strongest possible support received, in the case of all three approaches, from the members of the Council, the Ambassadors in Italy of the countries concerned and the desk officers in the Ministries of Foreign Affairs respectively. Since in all three cases budgetary restrictions were cited as decisive although estimates showed that the expenditure would not have exceeded 60,000 Euros, the Secretariat would submit that Governments' approach to our standard procedure of elaborating instruments merits some reflection.

6. On 3 March 2006, a meeting for the purpose of evaluating the current degree of interest in the project and of agreeing on a road map for the way ahead was held in Zurich (Switzerland). The meeting, hosted by *Bombardier Structured Finance* was attended by the two Secretariats (UNIDROIT and OTIF), six representatives of the Rail Working Group and a representative of the Government of the Russian Federation. Representatives of the Governments of Canada, Sweden and the United States of America participated in a conference call. A representative of the Government of Germany regretted to be unable to participate but briefed the Secretary-General of his Government's position and was debriefed after the meeting. The five Governments had inquired where preparations for the diplomatic Conference stood. All participants confirmed that the draft protocol continued to enjoy high priority from their respective point of view. The unanimous advice given was to pursue with the search for an adequate venue for the diplomatic Conference. Only a fixed target date would again raise the level of awareness on the part of all stakeholders and trigger the activities necessary to make the Conference a success.

7. Should the diplomatic Conference take place before the next session of the Governing Council, and in the light of the intention of UNIDROIT to become the Depositary of the future instruments adopted under its auspices, the Secretariat would invite the Governing Council to authorise it to accept those functions for the Rail Protocol.

### **ACTION TO BE TAKEN**

8. *The Governing Council is invited to support the Secretariat's efforts to organise a diplomatic Conference both by assisting in identifying a State prepared to host such a Conference and, if necessary, by assisting in identifying extra-budgetary sources for funding it. The Governing Council is also invited to authorise the Secretariat to be the Depositary of the Rail Protocol.*