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**OTIF**



ORGANISATION INTERGOUVERNEMENTALE POUR LES  
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ZWISCHENSTAATLICHE ORGANISATION FÜR DEN  
INTERNATIONALEN EISENBAHNVERKEHR

INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL  
CARRIAGE BY RAIL

**DIPLOMATIC CONFERENCE TO ADOPT A  
RAIL PROTOCOL TO THE CONVENTION  
ON INTERNATIONAL INTERESTS IN MOBILE  
EQUIPMENT**

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**COMMENTS AND PROPOSAL ON ARTICLE V OF THE DRAFT RAIL PROTOCOL  
(Presented by Canada and the United States of America)**

1. The use of general descriptions in security agreements is a well-established practice in the financing of railway rolling stock in many states. The ability to use these types of provisions can produce important transactional efficiencies that lower financing costs. For example, a debtor may give a lender a security interest in a fleet of 300 railway vehicles, including any replacement vehicles that are acquired by the debtor in the future. The drafting of Article V(1) does not accommodate this practice. The draft would require the creditor and the debtor to enter into a new and separate security agreement each time a new railway vehicle is acquired by the debtor. The need for multiple security agreements increases financing costs without producing a corresponding benefit to other interested parties.

2. Article V(1) of the Rail Protocol is only concerned with the identification requirements in the agreement creating the international interest. It is not concerned with the identification requirements for registration purposes. A widening of Article V(1) so as to validate the use of general descriptions would not have any effect on the identification requirements associated with registration. It would still be necessary for the creditor to register the identification numbers of new railway vehicles as they are acquired by the debtor. Its only consequence would be that it would not be necessary for the parties to the transaction to execute a series of security agreements in order to comply with Article 7 of the Convention.

3. Accordingly, we propose that Article V(1) of the Draft Protocol be replaced by the following provisions:

- (1) For the purposes of Article 7(c) of the Convention, a description of railway rolling stock is sufficient to identify the railway rolling stock if it contains:
  - (a) an itemized description of the railway rolling stock;
  - (b) a description of the railway rolling stock by type or kind;
  - (c) a statement that the agreement covers all present and future railway rolling stock; or
  - (d) a statement that the agreement covers all existing and future railway rolling stock except for specified items or kinds of railway rolling stock.
- (2) A description of railway rolling stock under (1) shall not be rendered invalid by the fact that the agreement does not specify the rolling stock individually.
- (3) An agreement with respect to future railway rolling stock shall be effective to create an international interest as soon as the chargor, conditional seller or lessor acquires the power to dispose of the railway rolling stock, without the need for any new act of transfer.

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