



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONALE 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

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

Luxembourg, 12 to 23 February 2007

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PROPOSAL TO AMEND ARTICLE XIII (1) OF THE DRAFT RAIL PROTOCOL

(presented by the Government of Sweden and the Rail Working Group (RWG))

Pursuant to the Final Act of the Diplomatic Conference at Cape Town of 16 November 2001, Resolution 2 was adopted inviting the International Civil Aviation Organization (ICAO) to accept the functions of Supervisory Authority upon the entry into force of the Convention and the protocol to the Cape Town Convention on matters specific to aircraft equipment (the Aviation Protocol).

In contrast to the circumstances applicable to the operation of the Aviation Protocol there is no obvious international organisation covering virtually all sovereign states such as ICAO which can easily operate in a similar way in the rail industry. OTIF, one of the sponsors of the Rail Protocol covers over 40 countries but in successive meetings of the Joint UNIDROIT/OTIF Committee of governmental experts, it was determined that the Supervisory Authority should be a separate independent body constituted by appointing representatives of each State Party (Article XIII (1) of the draft Rail Protocol). OTIF is appointed to act as “the secretariat of the Supervisory Authority and shall assist the Supervisory Authority in the performance of its functions” (Article XIII (2)).

Article 17 (2) of the Convention sets out detailed powers of the Supervisory Authority but no power to set out its own internal rules of procedure relating to its internal governance, including but not limited to the election of its officers. ICAO has already its internal governance rules as a pre-existing international organisation and so similar provision was not considered necessary at the time the Aviation Protocol was adopted.

We have received some comments that there is a potential lacuna in the Rail Protocol since, although it is generally assumed that the Supervisory Authority under the Rail Protocol will adopt rules governing its internal governance, it has no specific authority to do so. To deal with this technical issue, we make the following proposal for amendment to Article XIII (1) of the Rail Protocol:

Proposed changes to the Draft Protocol

Wording highlighted shows additional proposed changes to the proposals submitted by the drafting committee (markings retained)

*Article XIII**The Supervisory Authority and the Registrar*

1. The Supervisory Authority shall be a council-body consisting of representatives, one representative to be appointed by each State Party, and shall adopt or amend, as the case may be, its internal rules of procedure (including procedures by which it elects its officers) as it shall determine from time to time by a simple majority vote of the State Parties. *

- END -

* To make sure that the Supervisory Authority is ready to operate when the Protocol comes into effect, appropriate resolutions should be adopted. The role of signatory States during the transition period (preparatory commission) must be envisaged.