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**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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#### **SUMMARY OF THE DECISIONS TAKEN ON 20 FEBRUARY 2007**

1. The Commission followed the proposals of Canada and the United States of America regarding Article XIII(1) and asked the Drafting Committee to find a more general and thus more flexible wording instead of “a body consisting”. At the same time, it asked the Drafting Committee to formulate a provision regarding the composition of the Supervisory Authority at the initial stage of its activities in order to have a sufficient number of members and a fair representation of various States.
2. The Commission adopted, in principle, the revised proposal concerning Article XXV as presented by Austria, Finland, Germany, Greece, Luxembourg, Switzerland, the United States of America and the Rail Working Group and referred the wording of this Article to the Drafting Committee, asking it to make sure that the term “person” used in paragraph 2 also covered Governments and administrative agencies.
3. The Commission also adopted the alternative approach to the inclusion of contracts of sale as proposed by the United States of America and the Rail Working Group taking into account the result of the discussion in the Commission, based on the concept of a notice of sale fulfilling purely information purposes to be filed with the Registry without any effect for the priority of competing interests. It referred both the formulation of this provision and its place within the system of the Rail Protocol to the Drafting Committee. The Committee was in particular asked to adapt the words “authorising the Registrar to register” and to complete the reference as a reference to all provisions concerning registration whether included in the Cape Town Convention or in the Rail Protocol.

4. The Commission adopted a proposal of Luxembourg, supported by the United States of America and Canada, to revise the wording of Article IX Alternative C paragraph 3 in such a way that the insolvency administrator is not obliged “to pay all sums and perform all other obligations ...”. It asked the Drafting Committee to adapt the wording correspondingly.
5. The Commission took note of the first report of the Registry Committee.
6. The Commission took note of the first report of the Drafting Committee. It asked the Committee to revise the provisions of Article VII paragraphs 1 and 4 taken from Article IX(1) and (5) of the Aircraft Protocol, adapting them to the fact that a de-registration would not be an appropriate remedy in the rail industry.

#### **SUMMARY OF THE DECISIONS TAKEN ON 21 FEBRUARY 2007**

1. The Commission took note of part II of the Report by the Drafting Committee presented by its Chairman.
2. The Commission adopted a new provision in Article XIII proposed by the Drafting Committee (1 quater) laying down the principle of a double majority for the adoption of the initial Rules of Procedure for the Supervisory Authority, i.e. majority of all the representatives in this body and majority of the representatives appointed by State Parties.
3. The Commission, following its decision to foresee for the Supervisory Authority the possibility to establish a commission of experts to assist the Supervisory Authority, in principle adopted another new provision in Article XIII (1 quinquies) as proposed by the Drafting Committee, but decided to complete it, specifying that, apart from persons nominated by the Signatory and Contracting States, the Commission of experts itself may call other experts. The Drafting Committee was asked to adapt the wording correspondingly.
4. The Commission reverted to Article XIV and decided, firstly, to keep the three-month-period prior to the entry into force of the Protocol for the first regulations to be drawn up and, secondly, to propose to the Conference to transfer this provision from the Protocol itself to a resolution relating to the establishment of the Supervisory Authority and International Registry for railway rolling stock.
5. With regard to Article XVI the Commission followed a proposal of the President of the Drafting Committee to add a second paragraph to this provision which would allow but not compel the use of the designated entry points for notices of sale.
6. The Conference took note of the second report of the Credentials Committee.
7. The Commission decided to insert a new Article XVI bis in Chapter III as proposed by the Drafting Committee. The proposed paragraph 5 of this provision was deleted.

8. The Commission adopted a proposal submitted by one delegation and seconded by two other delegations regarding the maximum aggregate liability of the Registrar, which however also took into account the principle that in case of loss or damage caused by gross negligence or intentional misconduct of the Registrar or its officers the liability shall not be limited. The Commission asked the Drafting Committee to include this proposal into the wording of Article XVII.

9. The Conference took note of the report of the Drafting Committee on draft final provisions as reviewed by it following their preliminary consideration by the Conference. It did not adopt the editorial adaptation made in Article XIX(3) and reverted to the original wording of this provision as it was adopted by the three sessions of governmental experts before the Diplomatic Conference.

10. On a proposal submitted by the delegate of Canada, the Commission agreed to recommend to the Conference to change the name of the Protocol to “Luxembourg Protocol” in order to express gratitude to the Government of Luxembourg for organizing the Conference.

11. The Conference adopted with minor amendments a Resolution relating to the establishment of the Supervisory Authority and International Registry for railway rolling stock. It followed in particular the proposal of the Commission to include the text of Article XIV in this resolution. The Conference agreed that additional amendments, if necessary from editorial point of view, may be done later by the Secretariat. A clause on this issue – not only with regard to the text of the Protocol but also with regard to the text of the resolutions - would be included in the Final Act.

12. The Conference adopted a resolution as proposed by Luxembourg relating to technical assistance with regard to the implementation and the use of the International Registry, which aimed at setting up a fund with contributions on a voluntary basis for this purpose.

13. In order to express its gratitude to the Government of Luxembourg for organizing this Conference, the Conference adopted a resolution recommending that the Grand Duchy of Luxembourg be the host state of the International Registry.

14. On a proposal of Kenya and Togo, the Conference adopted a Resolution relating to the Official Commentary on the “Luxembourg Protocol”.

15. In order to encourage States to negotiate and adopt other Protocols and pursuant to Article 2(3)(b) and (c) of the Convention, the Conference adopted a resolution which, on the one hand, invites the negotiating States to work towards expeditious adoption of the draft Protocol on Space Assets, and on the other hand, to initiate preliminary work on a Protocol on agricultural, construction and mining equipment.

16. The Conference adopted the Final Act with minor amendments regarding the participants listed therein.