

OTIF



**ORGANISATION INTERGOUVERNEMENTALE POUR
LES TRANSPORTS INTERNATIONAUX FERROVIAIRES**

**ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
INTERNATIONALEN EISENBahnVERKEHR**

**INTERGOVERNMENTAL ORGANISATION FOR
INTERNATIONAL CARRIAGE BY RAIL**



**INTERNATIONAL INSTITUTE FOR THE UNIFICATION
OF PRIVATE LAW**

**INSTITUT INTERNATIONAL POUR L'UNIFICATION DU
DROIT PRIVE**

**COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF
A DRAFT PROTOCOL TO THE CONVENTION ON
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS
SPECIFIC TO RAILWAY ROLLING STOCK**

**PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC
TO RAILWAY ROLLING STOCK**

COMMENTS

(presented by the Government of Chile)

COMMENTS ON THE PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC TO RAILWAY ROLLING STOCK

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With a view to the holding of the third session of the Joint Committee of governmental experts on the preliminary draft Rail Protocol, to be held in Berne from 5 to 13 May 2003, the UNIDROIT and OTIF Secretariats drew the attention of Governments to certain important points which, in their view, merited detailed consideration before the holding of the session so as to permit the making of real progress (cf. § 8 of the introductory remarks to UNIDROIT 2002 Study LXXIIIH-Doc. 8).

The Director-General of Chilean Railways (Empresa de los ferrocarriles del Estado – EFE) has submitted the following comments, which did not unfortunately arrive in time to be considered at the Berne session.

“(a) Definition of “railway rolling stock”, and do modular components (i.e. engines for locomotives) (Art. I(2)(i)) need to be provided for?”

The definition as currently set forth in the text is fine and it is not necessary to take account of modular components, such as locomotive engines.

(b) Which provisions should be mandatory (Art. III)?

We refrain from expressing an opinion for want of information in this regard.

(c) Remedies on insolvency: Is the solution of the Aircraft Protocol (voluntary opt-in with two alternatives A and B) or a single compromise solution (e.g. Alternative C) to be preferred (Art. IX)?

EFE is of the view that Alternative C as proposed by the Rail Working Group should be adopted.

(d) Is the problem of “short term leases” satisfactorily solved by Art. Xter (2) and (3) as drafted by the Drafting Committee?

The provisions of Article Xter (2) and (3) provide a satisfactory regulation of the question of “short term leases” as provided in the draft proposed by the Joint Committee.

(e) Registry: structure and entities, including the issues of autonomous regional authorities and review mechanism for a local registry to become a portal to the International Registry (Art. XI et seq.)

We are in agreement that a local register should serve as a portal to the International Registry.

(f) Definition of “public service rolling stock” and of the remedies which may be excluded by a declaration (Art. XXIIbis)

The definition of “public service rolling stock” (Article I (2) (g)) is well drafted.

(g) Which provisions should be subject to opting-in or opting-out declarations (see especially Articles VI (1), VIII, IX (1), XXIIbis)? The relevant article of the Final provisions has not yet been drafted.

We refrain from expressing an opinion for want of information in this regard.

(h) How should the transitional provisions apply (Art. XXIII)?

We refrain from expressing an opinion for want of information in this regard.

(i) Should “internal transactions” be the subject of the Protocol and if so, what are the criteria (Art. XXV (3))?

We refrain from expressing an opinion for want of information in this regard.