

**Protocol**  
of 3 June 1999  
**for the Modification of the Convention concerning International Carriage by Rail**  
**(COTIF) of 9 May 1980**  
**(1999 Protocol)**

**Explanatory Report**

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## Explanatory Report <sup>1</sup>

### Background

1. The decisions taken by the Fifth General Assembly (Vilnius, 26.5 – 3.6.1999) concerning the 1999 Protocol for the Modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, in the terms of the Amendment Protocol of 20 December 1990, and the opening of the 1999 Amendment Protocol for signature at the end of the Fifth General Assembly mark the final point of the in-depth revision of COTIF. Entry into force of the Protocol is subject to its ratification, acceptance or approval by more than two thirds of Member States (Art. 20, § 1 COTIF 1980).
  
2. The preparatory work within the Central Office was started as far back as 1993, initiated essentially by the Council Directive 91/440/EEC of 29 July 1991 on the development of Community's railways. In its circular letter of 22 January 1993, the Central Office presented the Member States of the Intergovernmental Organisation for International Carriage by Rail (OTIF) with an analysis of the consequences of the Directive 91/440/EEC of 29 July 1991 for international rail transport law. In 1994, the Central Office had sent a questionnaire to the Member States of OTIF and to the international organisations and associations involved. This questionnaire was intended as a means of determining the opinions of the Member States and of the international organisations and associations in respect of the need to amend COTIF and its Appendices, or the usefulness of such amendment. On the basis of the responses, which were not very numerous, and taking account of the mandate of the Third General Assembly (14 – 16.11.1995, see No. 7.9 of the Final Document, published in the 1995 Bulletin, p. 193), as well as on the basis of its knowledge and own convictions, the Central Office submitted the following drafts during the years 1995, 1996 and 1997:
  - Uniform Rules concerning the Contracts of International Carriage of Goods by Rail (CIM Uniform Rules) of 5 May 1995 (published in the 1995 Bulletin, pp 88 and 118),
  - Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV Uniform Rules) of 25 January 1996 (published in the 1996 Bulletin, pp 17 and 62)
  - International Customs Transit System for Goods Carried by Railway (RTD) of 15 March 1996 ( published in the 1998 Bulletin, p. 378)
  - Uniform Rules concerning Contracts of Reciprocal Use and the Registration of Vehicles (UIV Uniform Rules) of 4 April 1996 (published in the 1996 Bulletin, pp 106, 110 and 114)
  - Uniform Rules concerning the Contract of Use of Railway infrastructure (RUI) of 1 July 1996 (published in the 1996 Bulletin, pp 181 and 187)

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<sup>1</sup> The articles, paragraphs, etc. which are not specifically designated are those of the 1999 Protocol; unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

- 1997 Protocol of 30 August 1996 for the modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 (published in the 1996 Bulletin, pp 217 and 221)
  - Convention concerning International Carriage by Rail (COTIF), Annex to the 1997 Protocol, of 30 August 1996 (published in the 1996 Bulletin, pp 228 and 258)
  - Uniform Rules concerning the Technical admission of Railway Vehicles (ATV Uniform Rules) of 1 July 1997
  - Regulation concerning the International Carriage of Dangerous Goods by Rail (RID) – without Annex – of 1 July 1997 (published in the 1997 Bulletin, pp 255 and 268)
  - Uniform Rules concerning the Recognition and Validation of Technical Standards and concerning the Adoption of Uniform Technical Prescriptions for Railway Material Intended to be used in International Traffic (APTU Uniform Rules) – without Annexes – of 19 December 1997 (published in the 1998 Bulletin, pp 2 and 7)
  - Uniform Rules concerning the Technical admission of Railway Material Intended to be used in International Traffic (ATMF Uniform Rules) of 19 December 1997 (published in the 1998 Bulletin, pp 16 and 26)
3. These drafts were examined, in accordance with Article 6, § 7 of COTIF 1980, by the Revision Committee with a view to preparation of the decisions to be taken by the General Assembly. In total, there were 21 Revision Committee sessions. In addition, the Central Office had organised three sessions with experts for the purpose of preparing its drafts. In detail:
- Central Office meeting with experts in connection with the CIV Uniform Rules (16 – 18.10.1995)
  - Third session of the Revision Committee: first reading of the draft CIM Uniform Rules (11 – 15.12.1995)
  - Central Office meeting with experts in wagon law (9 – 11.1.1996)
  - Fourth session of the Revision Committee: continuation of the first reading of the draft CIM Uniform Rules (25 – 29.3.1996)
  - Fifth session of the Revision Committee: first reading of the draft CIV Uniform Rules (17 – 21.6.1996)
  - Sixth session of the Revision Committee: continuation of the first reading of the draft CIM Uniform Rules (26 – 29.8.1996)

- Seventh session of the Revision Committee: continuation of the first reading of the draft CIV Uniform Rules (14 – 18.10.1996)
- Eighth session the Revision Committee: first reading of the draft UIV Uniform Rules (11 – 15.11.1996)
- Ninth session of the Revision Committee: first reading of the draft RUI (Uniform Rules concerning the Contract of Use of the Railway Infrastructure) (9 – 13.12.1996)
- Tenth session of the Revision Committee: first reading of the draft COTIF (25 – 28.2.1997)
- Eleventh session of the Revision Committee: continuation of the first reading of the draft COTIF (18 – 20.3.1997)
- Twelfth session of the Revision Committee: continuation of the first reading of the draft UIV Uniform rules (5 – 7.5.1997)
- Fourth General Assembly (8 – 11.9.1997): decisions on the guidelines with regard to the continuation of deliberations within the Revision Committee concerning the draft of a new COTIF. The General Assembly also noted the status of the work done.
- Thirteenth session of the Revision Committee: second reading of the draft COTIF (27 – 30.10.1997)
- Central Office meeting with experts : discussions of the draft ATV Uniform Rules with a view to preparing the draft APTU Uniform Rules and ATMF Uniform Rules (2 – 4.12.1997)
- Fourteenth session of the Revision Committee: continuation of the second reading of the draft COTIF (19 – 23.1.1998)
- Fifteenth session of the Revision Committee: first reading of the draft APTU Uniform Rules and ATMF Uniform Rules (2 – 6.3.1998)
- Sixteenth session of the Revision Committee: second reading of the draft CIM Uniform Rules (23 – 27.3.1998)
- Seventeenth session of the Revision Committee: first reading of the draft RID, second reading of the draft RUI – Uniform Rules concerning Contract of Use of Railway infrastructure (subsequently : CUI Uniform Rules) and CIV Uniform Rules (4 – 7.5.1998)
- Eighteenth session of the Revision Committee: continuation of the first reading of the draft APTU Uniform Rules and ATMF Uniform Rules (25 – 28.5.1998)

- Nineteenth session of the Revision Committee: continuation of the second reading of the draft COTIF (9 – 12.6.1998)
  - Twentieth session of the Revision Committee: second reading of the draft RID and continuation of the second reading of the draft UIV Uniform Rules (subsequently : CUV Uniform Rules) and CIM Uniform Rules (1/2.9.1998)
  - Twenty-first session of the Revision Committee: third reading of the draft COTIF, first reading of the draft Amendment Protocol 1997 (subsequently: 1999) and first reading of the Protocol on Privileges and Immunities, in the version in force (23 – 28.10.1998)
  - Twenty-second session of the Revision Committee: second reading of the draft Amendment Protocol 1999, in part, fourth reading of the draft COTIF and discussion of other proposals relating to the CIV/CIM/CUV/CUI and APTU Uniform Rules (1 – 4.2.1999)
  - Twenty-third session of the Revision Committee: continuation of the discussion of the other proposals relating to the CIM/CUI/APTU and ATMF Uniform Rules (23.3.1999)
4. From 1993, the draft of the new RID, as a separate Appendix to COTIF, was discussed in 15 sessions (as at June 1999) of a Commission working group of experts on RID. It was submitted to the Revision Committee for the first time in the seventeenth session. See also the Explanatory Report on RID.
  5. Following the meeting of experts in December 1997, the draft ATV Uniform Rules were incorporated in the draft APTU Uniform Rules and ATMF Uniform Rules. The draft RTD was not discussed within the Revision Committee, since the Fourth General Assembly had decided that COTIF should not include such an Appendix (see also 1998 Bulletin, p. 370).
  6. The results of the deliberations (with the exception of the results of the twenty-third session of the Revision Committee of 23.3.1999) and the explanatory reports were contained in the General Assembly documents AG 5/3.1 to 3.10 of 15 February 1999. It was on the basis of these texts that the Fifth General Assembly took its decisions.
  7. At the final vote, the Fifth General Assembly unanimously adopted the 1999 Protocol in its entirety, with the previously decided amendments.

### General Points

1. In substance, the Amendment Protocol and the appropriate provisions of the new Basic Convention (see General Assembly document AG 5/3.2 of 15.2.1999 and the explanatory report relating to it) far exceed the framework given by Article 2 of COTIF 1980 concerning the purpose and functions of the Organisation. The Protocol and COTIF in its new terms seek to create an international Organisation at State level which deals with *all the major questions* relating to *international rail traffic* which come within the remit of the States (see Articles 2 to 4, COTIF).
  
2. Following the example of the International Civil Aviation Organisation (ICAO) and the International Maritime Organisation (IMO), OTIF is to constitute, in future, the *only* intergovernmental organisation within which the Member States resolve the questions and problems which arise in matters relating to international rail traffic and which come within the *responsibility of the States* (Article 3 of COTIF). In addition to the legal bases for international rail transport, i.e., transport law (the current CIV Uniform Rules and CIM Uniform Rules), these matters include:
  - The safety aspects of railway operation, particularly in the transportation of dangerous goods (current and future RID)
  - The use of private wagons and railway wagons
  - Liability in the use of the infrastructure, particularly that of third parties
  - The elimination of obstacles in the crossing of frontiers (“ease”)
  - Technical questions (harmonisation and standardisation of vehicles and the infrastructure). The elimination of obstacles in the crossing of frontiers does not, in the context, preclude customs matters from being dealt with under OTIF. This also applies to environmental protection aspects, particularly with regard to the reduction of noise nuisance caused by rail traffic, which may be discussed within the context of technical questions
  - Furthermore, OTIF will constitute a framework within which the Member States will be able to devise other international conventions such as, for example, of financial guarantees for investments in railway vehicles and new regulations concerning the distraint of railway stock.
  
3. In global-scale international traffic, all of these questions are dealt with by a single intergovernmental organisation, namely, the ICAO for civil aviation and the IMO for maritime navigation. By contrast, on the basis of the geographical area of the Member States of OTIF, the rail sector is regulated by a multitude of supra-national, intergovernmental and semi-state organisations. This results in a conflict of powers, duplication of posts, a flood of documents, reduced efficiency and the need for a large degree of co-ordination and information exchange. See also the explanations regarding Article 3 of COTIF. In addition to OTIF, the following organisations, in particular, also deal with railway questions:

- The European Community (EC), as a single, supra-national organisation. The Treaties of Rome, Maastricht and Amsterdam have granted the EC some exclusive powers which have replaced the powers and sovereignty rights of its Member States
  - The United Nations Economic Commission for Europe (UNECE)
  - The European Conference of Ministers of Transport (CEMT)
  - The Organisation for Railways Co-operation (OSJD)
  - The International Union of Railways (UIC), with numerous sub-organisations such as the Central Compensation Bureau (BCC), the European Rail Research Institute (ERRI), Forum Train Europe (the former European Timetable Conferences) and others
  - The Community of European Railways (CER)
  - The Arab Railways Union (UACF)
  - The International Rail Transport Committee (CIT)
  - The European Infrastructure Management Organisation (EIM).
4. The current system, and the fact that a large proportion of the Member States of OTIF have entrusted and left state powers, particularly with regard to the establishment of standards in the widely differing areas, to the state railways and their international associations, primarily the UIC, were both acceptable and understandable as long as international rail traffic was linked to a network and transport monopoly of precisely those railways which, in the majority of cases, were part of the state administration. This was also the consequence of the Governmental Conferences of Portorož (1921) and Genoa (1922).
  5. The structural, economic and legal changes brought about by the Directive 91/440/EEC, at least for the EC Member States, no longer allow the maintenance of the current system whereby the States, called upon to act, transfer their powers to the railways. It is also for competitive reasons that the States (once again) have to resume the tasks which ensue from state sovereignty and which therefore come within the scope of their remit.
  6. The legal and organisational separation of infrastructure and transport already undertaken in certain Member States, the creation of rail transport undertakings with the legal status of private companies (private company, private limited company), the privatisation of those companies which were partially State-owned (sale of shares held by the State) and the progressive liberalisation in the use of the infrastructure have had the effect that international rail traffic is progressively adapting, on an international scale, to the situation that prevails in civil aviation and maritime navigation.
  7. In aviation, for many years international traffic has operated as follows: an air transport company, generally with the legal status of a private company, transports passengers and goods from one airport (use of a foreign infrastructure under private or public management) and lands in an airport (again, use of a foreign infrastructure) in another State. To do this, when flying over the national territories of other States (air spaces), the company makes use of the state air safety systems. This procedure is regulated by the Chicago Convention of 7 December 1944 and the bilateral agreements between the States relating to air traffic. The market, organised in this way, is highly competitive.

8. In future, the situation may be similar for international rail traffic. A rail transport company undertakes the international transportation of passengers and goods from a station, which is not managed by that company but by a state authority or by a private company, to a station located in another State, by using its own infrastructure or a foreign infrastructure which the company will use in every case beyond the frontier, this being without any involvement on the part of a second or third rail transport company. One can imagine certain passenger or goods traffic services being operated by several competing rail transport companies. In this regard, there are some approaches that stand out, but they are still hesitant. All aspects which are not of a purely commercial nature, resulting from competitive situation, should be regulated and handled at state level in an impartial and non-discriminatory manner and, if possible, in accordance with uniform rules, provided, of course, that there is a need to regulate the matter at state level. This applies, firstly, to the establishment of standards in the legal and technical fields and also, in a subsequent phase, to the application of uniform international law in railway matters.
9. With regard to application of the law, likewise, the development of civil aviation serves as an example and shows the route to follow. With the creation of the Joint Aviation Authorities (JAA), a first step was taken towards co-operation and standardisation of state activities in the area of (state) aeronautical inspection. In the medium term, a similar structure would be one that could be recommended for the areas of technical admission and the inspection of railway stock (rail inspection). A first step, in the same direction was taken with the establishment, in 1997, of the International Liaison Group for Governmental Rail Inspectors (ILGGRI). However, OTIF could also constitute the nucleus of such an international rail inspection authority.
10. If there was unrestricted application of the possibilities contained in COTIF, in the terms of the Annex to the 1999 Vilnius Protocol, which have as their objective a concentration and greatly enhanced efficiency of international co-operation in rail matters, the States, and also the rail companies, would be able to achieve significant *cost reductions* (reduction of contributions to be paid to the organisations due to reduced personnel and equipment requirements). The planned broadening of the tasks to be performed by OTIF does not necessarily involve a proportional increase in manpower. It could, however, allow a substantial reduction in personnel and equipment requirements in other organisations. The 1999 Protocol, together with its Annex, offers the opportunity of a fundamental reorientation, promising State co-operation in the rail sector.

### **In particular**

With regard to the formalities necessary for amendment of COTIF and its Appendices as currently in force, the 1999 Vilnius Protocol takes account of Article 20, § 1 of COTIF 1980.

### **Preamble**

The Whereas clauses in the Preamble set out the grounds for certain provisions in the articles of the actual Protocol or in the new COTIF. Consequently, detailed explanations are given in dealing with the relevant articles of the Protocol and the new Basic Convention respectively.

### **Article 1**

#### **New version of the Convention**

In the interest of greater clarity, the full text of the new version of COTIF and its Appendices, and not just the text of the amendments made, has been appended to the Amendment Protocol. Article 1 states that the amendments made to COTIF 1980 and its Appendices are included in a new, complete version. Contrary to the initial idea of the Central Office, a new Convention to replace COTIF 1980 has not been created, but the amendments have been made in such a way that the legal continuity of both COTIF and OTIF have been safeguarded, in accordance with Article 20 of COTIF 1980.

### **Article 2**

#### **Provisional Depositary**

1. Anticipating the final content of Article 36 of the draft COTIF, § 1 provides for a provisional rule. For the Central Office, the Revision Committee and the Fifth General Assembly, there were no grounds which justified leaving the role of depositary under the responsibility of the government of one of the Member States of OTIF. Following the example of other intergovernmental organisations which, like OTIF, constitute a legal entity in international public law, the Organisation itself performs the role of depositary, its functions being performed by the Secretary General (e.g. the United Nations Organisation – UNO, the International Atomic Energy Agency – IAEA). See Article 4, § 2 regarding the anticipated application of the new rule concerning the depositary.
2. § 2 specifies the tasks of the Provisional Depositary, i.e. of the existing OTIF, acting through the intermediary of the Director General of the Central Office.

### **Article 3**

#### **Signature. Ratification. Acceptance. Approval. Accession**

1. § 1 states the period during which the 1999 Protocol remains open for signature by the Member States and the place at which the Protocol can be signed.
2. § 2 indicates the need for ratification and the obligation to lodge with the Provisional Depositary, as soon as possible, the instruments relating to this.
3. § 3 states that, prior to the Protocol coming into force, the Member States which have not signed this Protocol within the periods provided for in § 1, and also States whose application for accession to COTIF 1980 has been admitted by right in accordance with Article 23, § 2 of the latter, may accede to this Protocol by lodging an accession instrument with the Provisional Depositary.
4. Since accession to COTIF during the period prior to the Amendment Protocol coming into force can relate only to COTIF which is in force, § 4 states that such an accession, which is to be treated in accordance with the provisions of Article 23 of COTIF 1980, refers both to COTIF 1980 and COTIF in its new version, in accordance with the Amendment Protocol 1999. This provision is intended to prevent accessions prior to the entry into force of the 1999 Protocol from relating only to COTIF 1980; furthermore, this provision means that there will be no need for a procedure for subsequent accession to COTIF in its 1999 Protocol version. With regard to the internal ratification procedure, this means that it is necessary to take into account both the version of COTIF 1980 and the new version.

### **Article 4**

#### **Entry into force**

1. § 1 regulates the entry into force with reference to Article 20, § 2 of COTIF 1980. With 39 Member States at present (status: June 1999), 27 ratifications, acceptances or approvals of the 1999 Protocol would be required. In order to avoid the difficulties which arose in achieving a quorum, which arose in the past, the second sentence specifies what is to be understood by "Member State" within the meaning of Article 20, § 2 of COTIF 1980.
2. § 2 emphasises that the rules provided for by Article 3 relating to the Provisional Depositary are applicable from the time at which the Amendment Protocol is opened for signature. This provision has not been opposed by the current depositary, the Swiss government. In accordance with the generally recognised rules of international public law (see also Article 24, § 4 of the Vienna Convention of 23 May 1969 on treaty law), the provisions of a treaty which regulate the authentication of the text, the date of entry into force, the functions of the depositary, etc. are applicable from the time at which the text of an agreement is adopted.

**Article 5**  
**Declarations and reservations**

1. The declarations and reservations, in accordance with Article 42, § 1 of COTIF, cannot in principle be made or issued until the 1999 Protocol has come into force, since this provision will be in force from that time. Nevertheless, there is a practical requirement to be able to make or issue such declarations and reservations from the time of signing of the 1999 Protocol, at the time of an accession or at another time, prior to the entry into force of the 1999 Protocol.
2. Since the reservations, in accordance with COTIF 1980, can relate only to this version of COTIF, Article 5 states that declarations and reservations concerning provisions of COTIF in its new version can be made or issued even prior to the entry into force of the 1999 Protocol. However, they do not take effect until the 1999 Protocol has come into force.

**Article 6**  
**Transitional provisions**

1. Since the end of the mandate of the Administrative Committee, the end of the five-year period for the maximum amounts of expenditure which may be incurred by the Organisation and the end of the mandate of the Director General of the Central Office will not coincide with the time of entry into force of the 1999 Amendment Protocol, transitional provisions have proved necessary (§ 1).
2. The Technical Annexes of the APTU Uniform Rules did not exist at the time when the 1999 Protocol was adopted by the Fifth General Assembly. They will be devised during the period up to the entry into force of the 1999 Protocol. Consequently, § 2 obliges the Secretary General of OTIF to convene the Committee of Technical Experts within a relatively short period following the entry into force of the 1999 Protocol. In this first session, the Committee would be required to adopt formally the Annexes of the APTU Uniform Rules. This decision will come into force in accordance with Article 35 of COTIF, in the version of the 1999 Protocol.
3. § 3 provides for a regulation which guarantees a trouble-free transition from the mandate of the Administrative Committee appointed in accordance with COTIF 1980 to the mandate of the Administrative Committee nominated by the General Assembly, which will be convened, in accordance with § 1, on the basis of COTIF in the terms of the 1999 Protocol.
4. § 4 regulates the expiry of the mandate of the Director General in post at the time of entry into force of the 1999 Protocol.

5. The purpose of § 5 is to guarantee the trouble-free transition from COTIF 1980 to COTIF in its new version with regard to the auditing of the accounts and the approval of annual accounts, the determination of the definitive contributions of the Member States, the payment of the contributions and with regard to the maximum amount of expenditure which may be incurred by the Organisation in the course of a five-year period.
6. § 6 specifies the bases of calculation for the contributions of the Member States which are due for the year in which the 1999 Protocol comes into force.
7. The Fifth General Assembly has decided upon transitional measures for those Member States whose contributions which are due on the basis of the new financing system will be significantly greater than the contributions due in accordance with Article 11 of COTIF 1980. Provision is made whereby the sum due according to the former system is adjusted in three stages until the amount according to Article 26 of COTIF in the version of the 1999 Protocol is reached. The minimum amount of 0.25 %, according to Article 26, § 3, must be paid in any case. Otherwise, the Member State concerned must formulate a corresponding application, to be decided by the General Assembly.
8. § 8 determines the law that applies to contract of carriages concluded on the basis of the CIV Uniform Rules or the CIM Uniform Rules of 1980 prior to the entry into force of the 1999 Protocol.
9. The express regulations of the law applying to contract of carriages concluded prior to the entry into force of the 1999 Protocol raises the question of the law applying to contracts of use of vehicles and to contracts of use of infrastructure which were concluded prior to the entry into force of the 1999 Protocol. The Revision Committee had discussed this problem during the twenty-first session and had sided with the viewpoint of the Central Office, namely, that the question does not arise in the same way for contract of carriages based on the CIV Uniform Rules and CIM Uniform Rules and for contracts based on the CUV Uniform Rules or the CUI Uniform Rules. Whereas, for contract of carriages, there already exists a mandatory uniform international law, some points of which will be amended, such a uniform international law does not currently exist for contracts of use of vehicles or for contracts of use of infrastructure. This is why the *mandatory* provisions of the CUV Uniform Rules and CUI Uniform Rules would have to be applicable to such contracts from the time at which the 1999 Protocol comes into force (Report on the Twenty-First Session, p. 81).
10. The United Kingdom was of the opinion that it would be unacceptable for amended provisions to be applied to existing contracts and proposed that the Fifth General Assembly state that contracts of use of vehicles and use of infrastructure should remain subject to the law which was in force at the time at which the contract was concluded, even after the new version of COTIF comes into force. This, however, would have the consequence that the parties to the contract would be able to evade on a long-term basis the application of the mandatory provisions of the CUV Uniform Rules and CUI Uniform Rules, particularly in respect of liability for physical injury. As a compromise, the Fifth General Assembly decided

to provide for a transitional period of one year before the mandatory provisions of the new law become applicable to such contracts.

### **Article 7**

#### **Texts of the Protocol**

This provision corresponds to Article 45, § 1 of COTIF in its new version and provides that the 1999 Protocol be concluded on an equal basis in the three languages stated. Nevertheless, the French text will continue to be determinant in the event of divergences. With regard to the official translation in other languages, the solution also provided for the 1999 Protocol corresponds to Article 45, § 2 of COTIF in its new version.

#### **Final clauses**

1. The 1999 Protocol and its Annex were opened for signature by the representatives of the Member States, at the close of the Fifth General Assembly, in the English, French and German languages. They have already been signed, on 3 June 1999, by 22 Member States.
2. In accordance with its Article 3, the 1999 Protocol will remain open for signature until 31 December 1999 at Bern with the Provisional Depositary, OTIF. Following expiry of the signing period, the Member States of OTIF may still accede to the Protocol (Article 3, § 3).